

IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH MUMBAI

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.5089/Mum/2024
(Assessment Year :2019-20)**

&

**ITA No.5091/Mum/2024
(Assessment Year: 2019-20)**

Deputy Commissioner of Income Tax (IT)-2(1)(2), Mumbai	Vs.	Deloitte Touche Tohmatsu India LLP, 32 nd Floor, One International Center Tower 3, Senapati Bapat Marg Maharashtra- 400 013
PAN/GIR No.AALFD7157J		
(Appellant)	..	(Respondent)

**CO No.250/Mum/2024
(Arising out of ITA No.5089/Mum/2024)
(Assessment Year :2019-20)**

&

**CO No.251/Mum/2024
(Arising out of ITA No.5091/Mum/2024)
(Assessment Year: 2019-20)**

Deloitte Touche Tohmatsu India LLP, 32 nd Floor, One International Center Tower 3, Senapati Bapat Marg Maharashtra- 400 013	Vs.	Deputy Commissioner of Income Tax (IT)-2(1)(2), Mumbai
PAN/GIR No. AALFD7157J		
(Appellant)	..	(Respondent)

Assessee by	Shri Niraj Sheth, Adv
Revenue by	Shri Krishna Kumar, Sr. DR
Date of Hearing	17/03/2025
Date of Pronouncement	21/03/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the Revenue and Cross Objections by the assessee against separate impugned order dated 24/07/2024 & 29/07/2024 passed by CIT (A)-56, Mumbai in relation to the order passed u/s.195(2) for A.Y.2019-20.

2. In both the appeals the common ground raised reads as under:-

1. *"Whether on the facts and circumstances of the case and in law, the ld.CIT(A) erred in following the decision of Hon'ble ITAT that the payment made by the assessee to the Deloitte Global Holdings Services Limited against 1) Global brand, 2) Global Communications and 3) Global technology/Knowledge Management were not for information concerning commercial experience in terms of Article 13(3) of the India-UK DTAA hence were not in the nature of royalty and is not liable for taxation in India with the meaning of Article 13(3) of the Indo US treaty?"*

2. *"Whether on the facts and circumstances of the case and in law, the ld. CIT(A) erred in directing the Assessing Officer to grant refund of taxes paid pursuant to the order u/s 195(2) dated 01.08.2018 even though the department has filed appeal against the decision of Hon'ble ITAT?"*

3. At the outset, both the parties agreed that this issue stands covered by the decision of the Tribunal in assessee's own in case and other related cases and sister concerns for the A.Y.2018-19 and 2019-20 and in support, judgment and order in ITA Nos.201 to 233/Mum/2021, 4800 to 4804/Mum/2019; 4810 to 4814/Mum/2019; ITA Nos.4744, 4745 to 4782/Mum/2019 dated 27/07/2022 & ITA No.5715/Mum/2024 dated 18/02/2025 have been filed.

4. The brief facts are that assessee is a limited liability partnership firm and renders professional services to clients which include large domestic as well as multi-national corporates. The assessee made application seeking authorization for payments of USD 1,15,00,000 to Deloitte Global Service Holding Limited (DGSHL) without withholding of any tax u/s. 195(1) of the Act. The ld. A.O after recording the detailed reasons in his order under section 195(2) allowed deduction at lower rate of 3%. He held three services, in the agreement viz., (1) Global technology /Knowledge management, (2) Global Communication and (3) Global Brand, as taxable holding it to be royalty. The ld. AO noted that assessee has entered into an agreement with DGSHL i.e. the payee which provides the payer number of services such as overseeing the development and distribution of common standards, policies, procedures, communication supports, development and distribution of internal and external communication, publication and reports for DTT, genuine legal services etc., where he has introduced the share services agreement and various clauses in the agreement and after

discussing the same and relying upon AAR judgment in the case of EY Global Services Pvt Ltd., dated 10/08/2016 in AAR No.1043 of 2011 and other judgments held that payments proposed to be made for (1) Global technology/Knowledge management, (2) Global Communication and (3) Global Brand is in the nature of Royalty as per the section 9(1)(vi) of the Income tax Act and Article 13 of the DTAA between India UK. Thus, accordingly he gave following directions for deducting TDS:-

“In order to determine the sum chargeable to tax on account of the above mentioned three components, the portion of remittance against the three services need to be identified. For this, the assessee has not submitted the details of payment on account of the three services. In absence of this, the amount chargeable to tax is determined on pro rata basis. Accordingly, the sum is determined as under:

“The amount of proposed remittance (In USD): \$1,15,00,000

*The amount of proposed remittance (in INR): Rs. (1,15,00,000
68.59-78,87,85,000)*

(Note: Exchange rate of US Dollar to INR is taken as Rs. 68.59 to 1 USD as on date of order Le 01/08/2018)

The amount of remittance determined against the three services:

78,87,85,000 \times 3/10 = 23,66,35,500

In view of the above discussion and considering the submissions made by the assessee, it is held, "The Payer (Deloitte Touche Tohmatsu India LLP) is authorized to remit the sum amounting to Rs. 78,87,85,000/- to the Payee Deloitte Global Services Holding Limited) after deducting tax at the rate of 10% on the remittance amounting to Rs. 23,66,35,500 against the three services(Global Technology/Knowledge

Management, Global Communication, Global Brand). In other words, the entire remittance amounting to Rs. 78.87.85.000/- shall be subjected to tax at the rate of 3%

This certificate is issued on the prima facie examination of details furnished by the applicant before the undersigned. It is purely provisional in nature and subject to final assessment. This certificate is valid for the period from 5th April 2018 to 31 MARCH 2019, unless cancelled or modified with prior intimation. This certificate is issued at the request of the applicant (Deloitte Touche Tohmatsu India LLP). It is also clarified that the issue of certificate shall not in any way prejudice the assessment of total income under the provisions of Income tax r.w. India-UK tax treaty.”

5. Deloitte Touche Tohmatsu India LLP (DTTILLP') entered into a shared service agreement dated 01/08/2011 with Deloitte Global Services Holding Limited ('DGSHL'), UK to avail various services from the latter DTTILLP applied under section 195(2) of the Income-tax Act, 1961 ('the Act') seeking authorization to remit payments for the services availed under the agreement to DGSHL without deduction of tax at source for the assessment years (AY) 2018-19 and 2019-20

6. The ld. AO passed orders dated 30/01/2018 and 01/08/2018 for AY 2018-19 and 2019-20 respectively holding that, out of the various services enumerated in the agreement, payments for three services, namely, Global Brand, Global Communication and Global Technology/Knowledge Management, were to be regarded as being in the nature of 'Royalty Accordingly, he directed DTTILLP to deduct tax at source from the said payments at the rate of 3%.

7. The AO had observed that facts of AY 2019-20 are similar to the facts of AY 2018-19. Following the view taken in AY 2018-19, the payments made on account of the three services viz Global Brand, Global Communication and Global Knowledge/Technology were held to be royalty and DTTILLP was directed to deduct tax at 3% on the remittance for AY 2019-20.

8. The ld. CIT (A) following the decision of the Tribunal in assessee's own case for A.Y.2018-19 and 2019-20 vide order dated 27/07/2022 held that payments made to Deloitte Global Services Pvt. Ltd., do not fall in the scope and definition of 'royalty' under Article 13(1) of India UK DTAA and consequently, assessee was not required to deduct tax while making the payment to DGSHL.

9. We find that the appeals for AY 2018-19 were decided by the ITAT vide order dated 17/01/2025 in ITA No 4515/Mum/2024) and 27/07/2022 in ITA No 4744, 4775 to 4782/Mum/2019 held that payments for the three services viz., Global Brand, Global Communication and Global Technology/Knowledge Management, were not in the nature of royalties and therefore DTTI LLP was not liable to deduct tax at source.

10. We also find that this issue has been discussed in detail by this Tribunal in the case of Deloittee Haskins & Sells LLP and Deloitte Touche Tohmatsu India LLP wherein the entire background has been discussed. For the sake of ready reference the Tribunal decision is reproduced hereunder:-

“3. The facts in brief and the background qua the issue involved are that the appellants, Deloitte Touche Tohmatsu India LLP (“DTTI”) and Deloitte Haskins & Sells LLP (“DHS”) are limited liability partnership firms rendering professional services to large domestic as well as multinational corporations and are part of Deloitte network worldwide. DTTL, also known as “Global Network” of various member firms, is incorporated in, and a tax resident of, the United Kingdom and it do not per se carry out any income earning activity and has no stream of income. It has been stated before us that, Deloitte Global Holding Services Ltd. (“Holdings”) is a company limited by guarantee organized and existing under the laws of England and Wales. Deloitte Global Holdings is a special purpose vehicle created by Global Network to facilitate the attainment of objectives, inter alia, to further international alignment, cooperation, cohesion and professional standards of the highest quality among its Member Firms (such as DTTI). Deloitte Global Holdings performs various activities for the common benefit of its members. Articles of Association of Deloitte Global Holdings do not permit it to perform any services for third party clients. As per Article 15 of the Articles of Association, Holdings is not permitted to distribute dividends or any other amounts to its members except on winding up in proportion of their contributions. While there may be a surplus/ deficit in a particular year due to over/under recovery of expenses, Holdings is intended to break-even over time. Deloitte Global Holdings incurs expenses in the course of carrying out the above activities for the benefit of all members, which are recovered from members without any mark-up. The terms on which the activities are carried out by Holdings and expenses are recovered by it from its members are embodied in an agreement named as **“Shared Services Agreement”** entered into by the member firms with Holdings vide agreement dated 1 August 2011 between DTTI and Holdings. The relevant recitals to the agreement (copy appearing at page 521 of the paper book) state that:

- DTTI is a member of Holdings and DTTL whose purpose is, among other things, to further international alignment, cooperation, cohesion and professional standards of the highest quality among its Member Firms and their Affiliates.

- *Deloitte Services has been established with a view to facilitating fulfilment of those purposes and Deloitte Services intends to provide certain services to its members (including Holdings).*
- *Holdings has also been established with a view to facilitating fulfilment of those purposes and Holdings intends to receive certain Services from Deloitte Services and supply the same to its Holding Members (including DTTI).*
- *Under para 2.A.2 parties acknowledge that Holdings does not have capacity to provide such services and shall, instead, outsource these services to Deloitte Services. Deloitte Services shall make available such services to Holding Members (DTTI).*
- *Para 3.C states that the parties acknowledge that Holdings will generally be run on a break-even basis.*

3.1 The services provided under the Shared Service Agreement are enumerated at pages 540 to 543 of the paper book. In short, these are:

- 1. Global AERS; Global FAS; Global Tax; Global Consulting*
- 2. Global Clients, Global Services and Related Programs*
- 3. Global Strategy; Research; Monitoring*
- 4. Global Brand*
- 5. Global Communications*
- 6. Global Talent/Human Resources*
- 7. Global Technology / Knowledge Management*
- 8. Global Risk Management and Regulations*
- 9. Global Office of General Counsel*
- 10. Global Finance; Procurement*
- 11. Global Corporate Responsibility*

4. In continuance with the earlier years, the appellants had made application for issuance of certificate under Section 195(2) for remittance of amounts under the “Shared Services Agreement” to Holdings without deduction of tax at source. It has been brought on record before us that, the respective Assessing Officer have issued certificates for financial year 2012-13 onwards till 2016-17 authorising the remittance of amounts similar to those which has been sought to be remitted in the current year without deduction of tax at source. The copies of these orders and the certificates have been placed in the paper book before us at pages 544 to 548. However, the Assessing Officer while deciding the application filed

by the appellants for the Assessment Years 2018-19 and 2019-20 held that payments to the extent they were relatable to, **(1) Global brand; (2) Global Communications; and (3) Global Technology/Knowledge Management**, were in the nature of royalties, being payments for use of computer software/literary work. Assessing Officer relied on the following decisions in support of his view and, in particular, AO has heavily relied on the decision of the **AAR** in the case of **EY Global Services Ltd. AAR No. 1043 of 2011**.

- *CIT vs Synopsis International Old Ltd (2012) 28 taxmann.com 162 (Kar)*
- *Shell India Markets (P) Ltd. In re (AAR) (342 ITR 223)*
- *Gartner Ireland Ltd. (37 taxmann.com 16) (Mum ITAT)*
- *CIT v. Wipro Ltd. (203 taxman 621/16 taxmann.com 275) (Kar)*
- *TNT Express Worldwide (UK) Ltd. (70 taxmann.com 129) (Bang. ITAT)*

Accordingly, Assessing Officer (for instance in appeal of ITA No. 4774/Mum/ 2019 for A.Y. 2018-19) held that the payments were liable for deduction of tax at source and worked out the withholding tax liability by applying a proportion of 3/10 to the total remittance of Rs. 95,49,00,000/-, since 3 out of 10 services were held by him to be in the nature of royalty. Accordingly, the Assessing Officer authorised the remittances after deduction of tax @ 3% on the overall remittances made by appellants to Holdings.

5. The ld. CIT (A) upheld the action of the Assessing Officer on the conclusion that the payments were in the nature of Royalty by holding that the payments were made for information concerning commercial experience in terms of Article 13(3) of the India-UK DTAA. The relevant observations of the ld. CIT (A) are as under :

“12. Comparing Article 11(3) of Double Taxation Avoidance Agreement with the detailed breakup reproduced above form basis for decision. Article 11(3) has several parts and we have to focus

whether the payment is for information concerned commercial experience [later part of Article 11(3)(a)] or right to use, any copyright of a literary, artistic or scientific work [initial part of Article 11(3)(a)]. A plain reading of the break up of each expenses, worst come worst, vis-a-vis multiple aspects in Article 11(3) of Double Taxation Avoidance Agreement, leads to the fact that the payment is for information concerned commercial experience.”

5.i Thereafter, the ld. CIT(A) after incorporating the submissions made by the assessee about the nature of payments made for the global brand, global communication and global technology and knowledge management observed and held as under :

“.....The decision can be on basis of description provided in the agreement between appellant and Deloitte Global Services Holding Ltd. The appellant submitted that the payment is not for right to use any copyright of literary, artistic or scientific work. The submission of the appellant is not explicit on whether the payment is for information on commercial experience under Article 11(3)(a). It is stated to be for internal purpose and not for commercial exploration. Aspect regarding Article 11(3)(b) is not relevant in the context of this case. Reading the submission of appellant along with the details available in the agreement, I find that each of the items falls within information on commercial experience and hence Article 11(3)(a) applies.

18. The shared Services Agreement is a standard business agreement. I had gone through clause 4 (Historical Services : Fees) and 5 (Service terms : Service Schedule; Revision; Notices) and 8 (Ownership and Licensing of Intellectual Property and Trademarks). The payment is undoubtedly for services. Para 8A reads as under :

A. Firm and Holdings acknowledge that all Services Firms will be parties to a Shared Services Agreement pursuant to which they will receive, directly or indirectly, Services from Deloitte Services.

Clause 5A also talks about providing services and clause 4 also deals with fees related to services. In clause 4, it is seen that the aspect of subsequent recovery is mentioned. Even considering this, as such the payment is for services rendered.

19. In view of preceding discussion, I hold that the payment indeed is royalty within meaning of article 13(3) of India-UK Double Taxation Avoidance Agreement, as per discussion above. Hence grounds 21 to 28 are dismissed.

20. Having held that the sum is royalty, aspects regarding mutuality (grounds 7 to 17) and reimbursements of expenses has turned irrelevant. Hence corresponding grounds are not needed to be adjudicated. However regarding these, a discussion is made in paragraphs 21 to 23.

21. The point emphasized by appellant is that the arrangement is non-profit making exercise, reimbursement of common expenses and hence mutuality applies. Effectively it is claimed to be reimbursement of expenses. According to appellant, the expense is for specified purpose matches income is in pre-determined manner and there is no surplus to be taxed. This argument is valid if attempt is to tax the same as business profit, which is never the focus of this discussion.

22. Let us consider the receipt of Royalty income in accordance with provisions of Double Taxation Avoidance Agreement. Under Double Taxation Avoidance Agreement, income is not determined, but tax is determined as a fixed per cent of gross receipt. Irrespective whether there is profit or loss and whatever be its extent, tax is determined at a fixed rate. This is the manner in which receipt suffers tax in hands of recipient and extent and nature of expense does not count. Hence the aspect of mutuality and reimbursement of expenses are not relevant.”

6. Before us, the learned senior counsel, Shri Percy Pardiwala, after referring to various clauses of Shared Services Agreement and the background of the case submitted that the amounts in question cannot be regarded as payment for the use of copyright of literary work (computer software) as held by the Assessing Officer. In fact, it is purely for providing common policies, guidance relating to brand, communications and other aspects and collaboration with other member firms cannot be considered as use of or right to use any copyright of literary, artistic or scientific work. Payments for use of Global Technology/ Knowledge Management cannot be regarded as provision of copyright in computer software or any literary work as no right to use copyright is given by Holdings to the appellants. He further pointed out that before the Assessing Officer it was explained in detail vide letter dated 08.01.2018 as to how the payments cannot be regarded as Royalty, however, the Assessing Officer has simply referred to certain decisions (cited supra) and held them to be in the nature of Royalty.

7. Mr. Percy Pardiwala submitted that now the Hon'ble Supreme Court in the case of **Engineering Analysis Centre of Excellence (P) Ltd. vs CIT, 432 ITR 471** has reversed the view taken in the various decisions which have been relied upon by the Assessing Officer in coming to the contention that the payments were in the nature of Royalty. He further submitted that the Assessing Officer has heavily relied upon decision of the **AAR in**

the case of EY Global Services Ltd., which was heavily relied upon by the AO in coming to the conclusion that the payments are made for use of copyright, has been reversed by the **Hon'ble Delhi High Court in EY Global Services Ltd. vs. ACIT, 441 ITR 54** following the decision in Engineering Analysis (supra). The decision of the Hon'ble Delhi High Court has thereafter been followed by the Hon'ble ITAT, Delhi Bench in **ITA Nos. 7017 to 7020/Del/2019 in the case of EY Global Services Ltd. vs. ACIT.**

8. Mr. Percy Pardiwala further submitted that the payments in question, for rendering the services categorized as Global Brand, Global Communications and Global Technology and Knowledge Management cannot be regarded as payments for use of information concerning commercial experience as held by the Id. CIT(A). As can be seen from the Shared Service Agreement, Holdings does not have any dealings with third parties or clients but it only performs various activities for the benefit of its members. The guidance provided by Holdings to its members is for internal use by the member firms. It is essentially an agreement for rendering services within the Deloitte network. Therefore, the payment for such services cannot be considered as payments for use of information concerning commercial experience. No intellectual property is transferred by Holdings to the appellants. Moreover, provision of services cannot be regarded as provision of information concerning commercial experience. The information utilised/provided in the course of rendering these services is not of confidential or secret in nature but is published information available in public domain. Therefore, such a payment cannot be regarded as consideration for imparting of any information concerning commercial or knowledge, experience or skill as contemplated in the definition of royalty as contained in clause (iv) of Explanation 2 to section 9(1)(vi) or under article 11(3)(a) of the India-UK tax treaty. In support of his contention, he relied upon the following decisions :

“a. CIT vs. HEG Ltd. 263 ITR 230 (MP)

In this case, the assessee had paid certain amounts to a USA company for purchase of some information. The transaction was held by the AO to involve imparting of information concerning technical, industrial, commercial or scientific knowledge, experience or skill and, therefore, the payment was held to be royalty. The Tribunal held that there was nothing secret or confidential in the booklet which was supplied to the

assessee in the form of information for the benefit of the assessee and that the correspondence between the assessee and the firm was only information in the form of collection of data on the subject available in the market and, therefore, the payment was not in the nature of royalty. The High Court held that any information cannot earn the status of royalty and that to have the status of royalty, the information must have some special feature. Some sort of expertise or skill is required. The matter was ultimately remitted to the Tribunal for carrying out factual verification as to whether the information in question was available in public domain. It is submitted that in the present case there is no imparting of information at all, only services are rendered and, in any event, there is no imparting of any confidential data or information. Therefore, the payments cannot be regarded as royalty.

b. *Marck Biosciences Ltd. vs. ITO 164 ITD 205 (Ahd)*

The assessee made payments to a US company on account of professional fee for global biopharmaceutical strategic counselling and advisory services rendered by this entity. The AO took the view that the services were covered by the definition of royalty since rendition of services by the US entity amounted to parting with the "information concerning industrial, commercial and scientific experience" gained by the US entity over a period of time. The Tribunal held that the services included (a) business promotion (b) marketing (c) publicity and (d) financial advisory, which were termed as 'Strategic and Financial Counselling Services'. Therefore, it was held that the payments were for rendition of these services and not for use of any information concerning industrial, commercial or scientific experience. It is submitted that in the present case also the payments are made for the services rendered by Holdings / Deloitte Services and, therefore, they cannot be regarded as consideration for imparting any information concerning industrial, commercial or scientific experience.

c. *Factset Research Systems Inc. In re 317 ITR 169 (AAR)*

The Applicant maintained a database which was located outside India and which contained financial and economic information including fundamental data of a large number of companies worldwide. The said information was made available to customers on a subscription basis. The question arose whether such a payment could be regarded as payment for information concerning industrial, commercial or scientific experience. In para 11 of the ruling, while dealing with this issue, AAR held that the clause does not contemplate merely imparting information on technical, industrial or commercial matters. The requirement is imparting of information concerning technical, commercial or scientific knowledge, experience or skill. The information which the licensee got through the database did not relate to the underlying experience or skill which contributed to the end-product. The applicant did not share its experience, techniques or methodology employed in evolving the

database with the subscribers. The information shared was published information which was already available in public domain and not something which was exclusively available to the applicant. The present case stands on a much stronger footing since there is no information being shared but on the contrary services are being provided. In any event, any information shared with members in the course of rendering services is also published information available in public domain.”

Thus, he submitted that the payments in question do not constitute Royalty and are even otherwise not chargeable to tax. His second limb of argument was that once for a similar nature of payment, certificate has been issued for non-deduction of tax in the earlier years by the Assessing Officer, then, in this year no different view can be taken in view of the principles of consistency, which ought to have been applied since there was no change in facts or in law.

9. *Another contention raised by him is that Holdings is a mutual concern inasmuch as there is complete identity between its participants and contributors. Holdings do not have any dealings with third party clients but wholly deals with member firms. Its activities are wholly performed for the benefit of member firms. Costs incurred in the course of performance of such activities are recovered from member firms by way of contributions without any mark-up. It operates on a break-even basis. Therefore, it must be regarded as a mutual concern. Accordingly, the payments made by the appellants to Holdings would not constitute its income. Consequently, there would be no requirement of deduction of tax at source there from. Payments made by M/s Deloitte Touche Tohmatsu, Delhi to DTT under an arrangement which is similar to the one with which the present appeals are concerned have been held to be covered by the principles of mutuality in ITA No. 6703/Del/2015 and connected appeals for the assessment years 2008-09 to 2011-12 by the Hon'ble ITAT, Delhi.*

10. *Lastly, he submitted that the payments are in the nature of reimbursements since Holdings operates on a break-even basis. The costs incurred by it in the course performing activities for the benefit of members are recovered from its members without any mark-up. In a particular year, there may be a surplus or deficit on account of over/under recovery but over time, it is intended to break-even. Therefore, the payments made by the appellants to Holdings being in the nature of reimbursements cannot be regarded as income.*

11. On the other hand, the ld. Department Representative strongly relied upon the order of the Assessing Officer and ld. CIT(A). He submitted that, in fact, the payments in question are for information concerning commercial experience.

12. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as the material referred to before us. As discussed above, the sole issue which permeates in all the appeals is, whether the appellants were liable to deduct tax at source under Section 195 of the Act on the payments made to Holdings by treating it to be Royalty under Article 13(3) of the India-UK DTAA. As noted above, Deolitte Global Holdings has been incorporated by DTTI to facilitate attainment of various objectives to further international alignment, co-operation, cohesion and professional standards of highest quality amongst its member firms, such as the appellants herein. It incurs expenses for the above activities for the benefit of all the members which are then recovered from the members without any mark-up.

12.1 The terms on which the activities are carried out by Holdings and the expenses recovered by it from the members have been enshrined in the "Shared Services Agreement". Though there are many services which have been enumerated in the said "Shared Services Agreement", however, the dispute is with regard to the payments made under the head global brand, global communication and global technology/knowledge management.

13. Now we have to analyse the scope of terms in light of the definition of 'Royalty' as provided in the India-UK DTAA, which is enshrined in Article 13(3), which reads as under :-

"3. For the purposes of this Article, the term "royalties" means :

(a) Payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematography films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and

(b) Payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or

scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.”

14. The scope of services and the terms under these heads needs to be analysed as per the definition and scope of Article 13(3), whether these services fall within the definition of Royalty. Our discussion and analysis are as under:

Global Brand

- Design and implement global brand strategy for use by the Deloitte Network.
- Provide Member Firms with common tools, training, and policies related to the Deloitte brand.
- Collaborate with DTT and Member Firm leadership, industries, functions and specialty groups on brand promotion and eminence building.

Global Communications

- Develop and distribute internal and external communications, publications and reports for DTT.
- Lead, manage, and support global public relations, thought leadership initiatives, strategic projects, events, and marketing activities.
- Promote an alignment of Member Firm communications goals and strategies.
- Provide strategic guidance, content, editorial services, and best practices for globally managed websites and related online vehicles.
- Provide communications support to DTT and its functions.

Global Technology/Knowledge Management

- Acquire, develop, manage, operate and distribute information technology products and services that service the Deloitte Network.
- Develop and maintain certain worldwide databases, networks and systems, and internal and external websites, that service the Deloitte Network.

- *Establish projects to develop global knowledge and develop or facilitate the development of methodology and techniques which further enhance the knowledge sharing capacity of Member Firms.*
- *Provide certain technology related security advice and services to the Deloitte Network.*
- *Promote common technology standards and platforms across the Deloitte Network and administer and monitor the same.*

15. *As regards payment for items of global brands, it has been stated that Holdings assists in implementing brand strategy for use of network of Deloitte members and also provides member firms with common training, policies and guidance related to the brands. Further, it will work together with all the member firms leadership, industries, functions on promoting brand addition eminence building. It has been stated to be more of guidance and advisory and not providing any intellectual property. Thus, providing common policies or guidance relating to the brand and collaborating with member firms ostensibly cannot be reckoned as use of or right to use any copyright of literary, artistic or scientific work. Holdings only perform various activities for its members and its guidance is only for internal use by the member firms. Hence, in our view payment for such services cannot be considered for information concerning industrial, scientific or commercial experience. Again, there is no transfer of intellectual property by Holdings to the appellants and also there cannot be a case of giving industrial, commercial or scientific equipment. Thus, the payments made for global brand cannot be treated as in the nature of Royalty as per Article 13(3) of India-UK DTAA. Another important thing is that the payment is also not for any use of trademark/patent provided by Holdings.*

16. *Insofar as payments for global activities given in Global Communication, Holdings distributes the publications and reports for DTTI and support global public relations, thought leadership initiatives, events, guidance, common standards, guidelines, organising internal events, etc so that there is alignment of all the member firms for internal and external communication. It gives guidance about the media communication, distribution of newsletter, external and internal distribution. From a bare perusal of aforesaid activities, it cannot be held that it is for use of or right to use of any copyright of literary, artistic or scientific work or for*

any other terms given in Article 13(3). Further, it also cannot be held for information concerning industrial or scientific experience and/or for commercial experience because the basic underlying fact is that it is purely for internal use of member firms and not for any third party or any client. Thus, these activities cannot be reckoned for providing industrial, commercial or scientific equipment to the appellants and, therefore, outside the nature and scope of Royalty as defined in Article 13(3) of the India-UK DTAA.

17. Lastly, as regards the services mentioned in global technology/global management, from the bare perusal of the same it cannot be said to be for use of or right to use any copyright or any literary, artistic or scientific work or any transfer of intellectual property rights. The above service is purely for internal purpose and not for any commercial exploitation, nor any scientific equipment is given to the appellants by Holdings. Global network acquires certain technology products from vendors and provides them to the member firms and also provides security advice to all the member firms for which it also develops certain database, systems and websites that is used by all the members of the network. The software acquired by the network and distributed to the members does not include payment for use of or right to use computer software as it has merely obtained a licenced product from vendors for use of member firms. The licensee was allowed to use the software only for its own business purpose and is not permitted to transfer copy of the software and as such there is no transfer of any right in respect of copyright by the vendors and it is a case of mere transfer of copyrighted article. Thus, the payments made for the activities/services under the aforesaid three heads cannot be held to be in the nature of Royalty as per the definition given in Article 13(3) of the India-UK DTAA and, accordingly, the payments made by the appellants to Holdings cannot be held to be Royalty.

18. Before us, the judgment of Hon'ble Delhi High Court in the case of **EY Global Services Ltd. v. ACIT, 441 ITR 54 (Del.)** has been relied upon, wherein on the issue of whether EY Global Services Ltd., which was a Limited Liability Company engaged in providing technology and other support services and software licences to member firms of EY Network in various countries all over the world and all the member firms using the brand Ernst & Young (E&Y) had entered into contract with various third party

vendors for procurement of software to be used by member firms. There also, the services which was rendered by Ernst & Young UK and the Memorandum of Understanding executed between itself and EYGBS India were as under :

“4. The specific services mentioned in the services schedule annexed to the MOU, which are rendered by the Applicant under the service agreement and the Memorandum of Understanding between the Applicant and EYGBS India are as follows:

1. Common standards and policies

1.1 Assisting in the development of Common Standards and Policies, including accounting policies, practices, principles and procedures.

1.2 When considered appropriate by EYG Services, providing practice manuals and other reference materials and otherwise assisting in the adoption and consistent application of Common Standards and Policies.

2. IT Services

2.1 Promoting the adoption, maintenance and development of high quality, common information technology and communication systems by Member Firms and providing advice and assistance in connection with the systems of Member Firms including where considered appropriate, developing or assisting in the development of such systems or any part of them.

2.2 Procuring for the Member Firms external software licences for their internal business use.

2.3 Coordinating and promoting a globally consistence policy with regard to technology infrastructure with the objective of delivering economies of scale for the Member Firms and avoiding duplicative systems or structures across the network.

3. Knowledge

3.1 Promoting and establishing global websites (both internet and intranet), establishing projects to capture and disseminate global knowledge and developing or facilitating the development of methodology and techniques which further enhance the knowledge sharing capacity of Member Firms.”

The Authority for Advance Ruling held the consideration received in respect of computer software deliverables as Royalty. The

Hon'ble Delhi High Court, following the ratio of the principles laid down in the judgment of Hon'ble Supreme Court in the case of **Engineering Analysis Centre of Excellence (P) Ltd.** (supra) observed and held as under :-

“13. A reading of the above judgment would clearly show that for the payment received by EYGSL (UK) from EYGBS (India) to be taxed as “royalty”, it is essential to show a transfer of copyright in the software to do any of the acts mentioned in Section 14 of the Copyright Act, 1957. A licence conferring no proprietary interest on the licensee, does not entail parting with the copyright. Where the core of a transaction is to authorise the end-user to have access to and make use of the licenced software over which the licensee has no exclusive rights, no copyright is parted with and therefore, the payment received cannot be termed as “royalty”.

14. In the present case, the EYGBS (India), in terms of the Service Agreement and the MOU, merely receives the right to use the software procured by the EYGSL (UK) from third-party vendors. The consideration paid for the use of the same therefore, cannot be termed as “royalty” as held by the Supreme Court in Engineering Analysis Centre (supra). In determining the same, the rights acquired by the EYGSL (UK) from the third-party software vendors are not relevant. What is relevant is the Agreement between the EYGSL (UK) and the EYGBS (India). As the same does not create any right to transfer the copyright in the software, the same would not fall within the ambit of the term “royalty” as held by the Supreme Court in Engineering Analysis Centre (supra).

15. We may also note that the learned AAR in its Impugned Order has relied upon its earlier view in Citrix Systems Asia Pacific Pty Ltd., In Re., (2012) 343 ITR 1 (AAR), which has been expressly stated to be bad law in Engineering Analysis Centre (supra).”

19. Further, the Delhi Bench of Tribunal in the case of EY Global Services Ltd. vs ACIT in ITA No. 7017/Del/2019 wherein almost similar facts were there, which have been discussed in para 4 as under :-

“4. Brief facts of the case are that EY Global Services Limited (hereinafter referred to as 'the assessee') is providing technology and other support services and software licenses to the member firms of the EY Network. The assessee is said to be established as a non-profit central service provider to enable EY member firms to share the

costs of centralized services. Accordingly, the assessee enters into agreements with each member firm, pursuant to which it provides services required by member firms and thereafter, recovered various costs incurred by it from the member firms on actual usage basis. Given the above, the assessee filed a 'NIL' return of income on 30th March 2012 contending that the payments received by the assessee from Indian member firms are mere reimbursement of costs and not taxable under the Act as well as the Double Taxation Avoidance Agreement between India and United Kingdom (hereinafter referred as "the treaty")."

The Tribunal had followed the aforesaid judgment of Hon'ble Delhi High Court wherein the judgment of AAR in the case of EY Global Services Ltd. has been reversed.

20. Here, in this case also, the Assessing Officer has heavily relied upon the same judgment of AAR in the case of EY Global Services Ltd., which now stands reversed by the Hon'ble Delhi High Court. Thus, we hold that the payments made to Holdings is not taxable as Royalty under Article 13(3) of the India-UK DTAA.

21. Insofar as pleading relating to principle of mutuality for which reliance was placed on the decision of Delhi bench of Tribunal in the case of Deloitte Touche Tohmatsu under an arrangement which was similar to the one in the present appeals, we are not going into this aspect, firstly, because, in our opinion, principle of mutuality cannot be examined in proceedings u/s 195; and secondly, principle of mutuality has to be seen qua in the hands of the recipient, i.e. entity which is receiving the payment and not in the hands of the payer, which is the appellant here. Therefore, we are not entering into the issue of mutuality in this case.

22. Lastly, insofar as issue of reimbursement is concerned, the same has become purely academic once we have held that the payments made are not in the nature of Royalty and is not taxable.

23. Accordingly, we hold that in all the appeals the payments made to Deloitte Global Holdings Ltd. do not fall in the scope and definition of Royalty under Article 13(3) of India UK DTAA and consequently appellants were not required to deduct TDS while making the payment. Thus, all the appeals of the assesseees are allowed.

24. *In the result, all the appeals of the assesseees are allowed.*”

11. Accordingly, following the aforesaid decision of the Tribunal, we hold that the payments made to DGSHL do not fall within the scope and ambit of royalty under Article 13 of India UK DTAA and consequently, assessee was not required to deduct TDS while making the payment. Accordingly, the appeals of the Revenue are dismissed.

12. It has been admitted that if the Revenue’s appeals are dismissed and the grounds raised in cross objection will become infructuous. Accordingly, cross objections raised by the assessee are dismissed as infructuous.

13. In the result, appeals of the Revenue and Cross Objections of the Assessee are dismissed.

Order pronounced on 21st March, 2025.

**Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER**

Mumbai; Dated 21/03/2025
KARUNA, sr.ps

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai