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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 4706/Mum/2023
(Assessment Year: 2021-22)
&
ITA No. 1362/Mum/2025
(Assessment Year: 2022-23)

Factive Limited C/o. Price Waterhouse & Co. LLP 252, Veer Savarkar Marg, Shivaji Park, Dadar, Mumbai-400 028	Vs.	Asst. CIT(IT)-2(3)(1) 609, 6th Floor, Kautilya Bhavan, C-41, C-43, G Block, Bandra Kurla Complex, Bandra (E), Mumbai
PAN/GIR No. AACCF 5745 J		
(**Appellant**)	:	(**Respondent**)

Appellant by	:	Shri Dhanesh Bafna a/w Shri Yogesh Malpani & Ms. Kinjal Patel
Respondent by	:	Shri Krishna Kumar (Sr. DR)

Date of Hearing	:	21.08.2025
Date of Pronouncement	:	15.09.2025

O R D E R

Per Saktijit Dey, Vice President:

Captioned appeals by the assessee are against the final assessment orders passed u/s. 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 ('the Act' for short), in pursuance to the directions of learned Dispute Resolution Panel ('ld. DRP' for short) and pertains to the assessment years (A.Y.) 2021-22 and 2022-23.

2. Since the substantive issue on merits, arising in the appeals are more or less common in both the appeals, we propose to take up ITA No. 4706/Mum/2023, pertaining to A.Y. 2021-22, as the lead appeal.

ITA No. 4706/Mum/2023 (A.Y. 2021-22)

3. Ground nos. 1, 2 & 3 are basically on legal issues, challenging the validity of the final assessment order. At the outset, ld. Counsel appearing for the assessee submitted that he would prefer to address the issues on merits and, if warranted, may press the legal grounds.

4. The learned Departmental Representative ('ld. DR' for short) agreed with the aforesaid suggestion of ld. Counsel for the assessee.

5. In view of the aforesaid, we proceed to deal with the substantive issues on merits as raised in ground nos. 4 to 7, which are as under:

> *4. On the facts and in the circumstances of the case and in law, the Learned AO and the DRP erred in holding the sum of INR 8,17.59,532 as 'Royalty' under Section 9(1)(vi) of the Act read with Article 13 of the Double Taxation Avoidance Agreement ('the DTAA') entered into between India and UK.*
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> *5. On the facts and in the circumstances of the case and in law, the Learned AO and the Learned DRP erred in holding that Dow Jones Consulting India Private Limited (DJCIPL) constitutes a dependent agent Permanent Establishment ('PE') of the Appellant.*
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> *6. On the facts and in the circumstances of the case and in law, the Learned DRP erred in invoking the provisions of the Multilateral Instrument ('MLI') and also, holding that the exclusions under Article 5(3) of the DTAA will not apply to the Appellant.*
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> *7. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Learned DRP erred in treating fifty percentage of the turnover as liable to be apportioned to India and determining the profits of the alleged PE at 50% of the turnover apportioned to the alleged PE by invoking Rule 10(1) and Rule 10(iii) of the Income Tax Rules, 1962*

6. As could be seen from the grounds raised, basically there are two issues arising for consideration. Firstly, whether the amount received by the assessee from its Associated Enterprises (AE) in India, i.e., Dow Jones Consulting India Private Limited (‘DJCIPL’ for short) is in the nature of royalty, both u/s. 9(1)(vi) of the Act and under Article 13(2) of India United Kingdom (‘UK’ for short) Double Taxation Avoidance Agreement (‘DTAA’

for short). Whereas, the second issue relates to existence or otherwise of a Dependent Agent Permanent Establishment ('DAPE' for short) of the assessee in India in the form of DJCIPL. Of-course, the peripheral issues relating to applicability of provisions of Multilateral Instrument ('MLI' for short) to Article 5(3) India-UK Treaty and attribution of profit to PE are closely linked to the second issue relating to existence or otherwise of DAPE and would require adjudication only in the event it is held that the assessee, indeed, had a DAPE in India.

7. Be that as it may, briefly the facts relevant for deciding the issues noted above are, the assessee is a non-resident corporate entity, incorporated in U.K. and is a tax resident of U.K. The basic business activities of the assessee, as described by the Assessing Officer (AO) in the assessment order are, the assessee company is engaged in providing information products and services containing global businesses and financial news to organizations worldwide. It offers information via newspaper, newswires, websites, applications, newsletters, magazines and proprietary databases. It is noteworthy, both the assessee and DJCIPL belong to Factiva Group located in USA. Initially, the assessee and DJCIPL had entered into a distribution agreement effective from 01.04.2013. After termination of the said agreement, on 01.04.2017 the assessee and DJCIPL entered into a fresh distribution agreement, wherein, the assessee appointed DJCIPL as non-exclusive distributor of its products, such as, text materials, images and other related information, i.e., published therein. The DJCIPL was appointed as a Distributor of assessee's products in the territory of India, Bangladesh and Sri Lanka. As claimed by the assessee, in terms with the distribution agreement entered with DJCIPL on principal-to-principal basis, the assessee supplied its products to DJCIPL for distribution in the designated territories. For

performing such distribution activity, the DJCIPL was remunerated with Distributor Cost which shall include expenses connected with selling and distribution of products, excluding any extraordinary expenses incurred by the Distributor that are not part of the Distributor's under the distribution agreement. In consideration of the distribution right granted to DJCIPL, the Distributor has to pay the price of the products to the assessee, which will be an amount equal to the profit earned by the Distributor as reduced by an arm's length return of 5% on the costs (including the purchase price). The payment terms further provide that in case the profit earned by the Distributor is less than 5% of its cost, then, the Distributor would not pay the purchase price to the assessee. On the contrary, in such a situation, the assessee would pay to the Distributor an amount equivalent to the difference between mark up of 5% of the cost incurred by the Distributor and the profit earned by the Distributor. The payment terms further stipulate that the assessee shall raise an invoice on the Distributor on a quarterly basis. In case, the Distributor is to receive the payment from the assessee, the Distributor shall raise an invoice.

8. Thus, in terms with the distribution agreement, in the year under consideration, the assessee received an amount of Rs.8,14,57,186/- from DJCIPL towards 'distribution of its products'. Additionally, the assessee received an amount of Rs.3,02,346/- from another Indian entity, viz. KMPG Associates LLP, towards direct sale of products. Following the consistent position adopted regarding the taxability of the amount since A.Y. 2015-16, the assessee claimed the amounts received from the distributor/sale of its products in India, as not taxable, as they are in the nature of 'business receipt' and in absence of PE, are not taxable. The A.O., however, was not convinced with the claim of the assessee.

9. On perusal of the record in course of assessment proceedings, the AO noticed that the assessee had similar receipts in A.Ys. 2015-16 to 2019-20. In course of scrutiny assessment proceedings in these years, negating assessee's claim of non-taxability of such receipts, the A.O. had treated them as royalty u/s. 9(1)(vi) of the Act as well as under Article 13(2) of India UK DTAA. He observed, even assessee's claim was rejected by ld. DRP in A.Ys.2015-16 to 2019-20 and assessee's objection in A.Y. 2020-21 is still pending before ld. DRP. After examining the relevant facts, the A.O. further observed that the nature of receipts are identical to the nature of receipts in preceding assessment years, which were subjected to scrutiny assessment. Thus, he was of the view that there is no change in the nature of transaction as compared to earlier assessment years, wherein, the receipts have been held to be in the nature of royalty. In this context, he also referred to the analysis of factual position in the preceding assessment years relating to similar receipts. He also referred to various clauses of the Distribution Agreement dated 01.04.2017 between the assessee and DJCIPL.

10 Finally, in line with the decisions taken by the A.O. in the earlier assessment years, he ultimately concluded that the receipts are in the nature of royalty both u/s. 9(1)(vi) of the Act and Article 13(2) of India-UK DTAA, as there is transfer of right to use the copy-right. Hence, irrespective of the fact whether there is PE in India or not, the amount is taxable. Without prejudice, the A.O. observed that since DJCIPL is a wholly indirect subsidiary of assessee, it will fall within the concept of agency PE. Hence, it would not be correct to say that the assessee does not have any PE in India. However, ultimately, following the decision taken by the Departmental Authorities in A.Ys. 2015-16 to 2019-20, the A.O. concluded that the receipts from DJCIPL towards 'distribution of assessee's

products' and the amount received from KPMG towards 'subscription fee', would be taxable as royalty income u/s. 9(1)(vi) of the Act read with Article 13(2) of India-UK DTAA. In similar line, he framed the draft assessment order adding back the amount of Rs.8,17,59,532/- as 'royalty income'.

11. Against the draft assessment order so framed, the assessee raised objections before ld. DRP.

12. While deciding the objections of the assessee, ld. DRP took note of the fact that while deciding identical nature of dispute in assessee's case, in A.Y. 2020-21, ld. DRP has held the receipts to be in the nature of 'royalty'. Thus, finding parity of facts, ld. DRP followed the directions in assessee's case in earlier assessment years. However, taking note of the fact that in earlier assessment years, Income Tax Appellate Tribunal ('ITAT' for short) while dealing with identical nature of dispute has held the receipts not to be in the nature of royalty u/s. 9(1)(vi) of the Act read with Article 13(2) of India-UK DTAA, ld. DRP proceeded to independently analyze the facts. While doing so, the Panel referred to the information contained in the website of the assessee. Based on such information, which according to the panel's own admission, related to September, 2023, it found that in addition to selling its products, the assessee provides a plethora of value-added services like Risk Management & Compliance, Research, Monitoring & Discovery, Trading, Investing & Advice, Resources, etc. The Panel observed that the assessee has received the income in lieu of grant of access to such services. It is not the case that the assessee has only granted access to a database containing contents collated from open sources. Thus, according to the Panel, such services and not the database, effectively constitute royalty.

Accordingly, ld. DRP concluded that the receipts are in the nature of royalty in terms with section 9(1)(vi) read with Article 13(2) of India-UK DTAA.

13. Insofar as existence of DAPE in the form of DJCIPL, the ld. DRP agreed with the A.O. that the assessee indeed had a DAPE in India. In this context, ld. DRP referred to Article 13(4) of MLI between India and UK. Thus, ultimately, ld. DRP rejected assessee's objections on both counts, i.e., nature of the receipt as 'royalty' as well as existence of DAPE. In terms with the directions of ld. DRP, the A.O. finalized the assessment. That is how the assessee is before us.

14. At the time of hearing, ld. Counsel appearing for the assessee, at the very outset, submitted that both the issues arising for consideration are squarely covered by series of decisions of ITAT in assessee's own case rendered in A.Ys. 2015-16 to 2020-21. Thus, he submitted, in absence of any difference in factual position, the earlier decisions of the Tribunal would govern the issues arising for determination in the present appeal. Without prejudice, he submitted, though ld. DRP was aware of the decisions of ITAT in assessee's case, however, they have attempted to distinguish them by referring to certain change in facts. He submitted, while doing so, ld. DRP has referred to the website of Dow Jones and on mistaken belief that the information contained in such website is that of the assessee has recorded the finding that in addition to the contents kept in the database, the assessee has also provided various value added services and the receipts are for providing such value added services. The ld. Counsel further submitted, the Distribution Agreement between the assessee and DJCIPL would clearly demonstrate that sales of assessee's products are on principal-to-principal basis. He submitted, the Distribution Agreement between the assessee and DJCIPL in the present form continues from the year 2017 and there is no

change in the terms of the agreement. Therefore, when the issue is settled in earlier assessment years, at this stage, the Departmental Authorities cannot give a different meaning to the terms of the agreement and say that in addition to sale of products assessee is also providing value added services.

15. Insofar as, the allegation of existence of DAPE in the form of DJCIPL, ld. Counsel submitted that there is no reasonable basis available to the A.O. to conclude that the assessee had a DAPE in India. Drawing our attention to Article 5(4) of India-UK DTAA, ld. Counsel submitted, nothing has been brought on record by the A.O. to demonstrate that DJCIPL is habitually exercising authority to negotiate and enter into contracts for or on behalf of the assessee or habitually maintains stock of goods or merchandise of assessee for regular delivery of goods or merchandise or habitually secures orders in India wholly or almost wholly for the assessee. He submitted, merely based on a passing observation by the A.O., existence of DAPE cannot be established. He submitted, basis similar observations made by the A.O. in the earlier assessment years, the ITAT has found no justifiable reason to uphold the case of the Revenue regarding existence of DAPE. He submitted, though ld. DRP in its effort to justify the view of the A.O. regarding existence of DAPE has referred to Article 13(4) of MLI, however, the said Article is not at all applicable to Article 5(4) of India-UK DTAA and is only with reference to certain exceptions provided under Article 5(3) of the Tax Treaty, which in turn is with reference to fixed place PE under Article 5(1) of the Treaty. Thus, he submitted, there is no reason to deviate from the earlier decisions of the ITAT, consistently expressing the view that neither the receipts are in the nature of royalty nor the assessee has DAPE in India. In support of his contention, ld. Counsel relied upon the following decisions:

1. *Factiva Limited vs. DCIT* (in ITA No. 6455/Mum/2018 – Mum Trib.)
2. *Factiva Limited vs. DCIT* (in ITA Nos. 5489/Mum/2019 & 1247/Mum/2021)
3. *Factiva Limited vs. DCIT* (in ITA Nos. 1504 & 1505/Mum/2022)
4. *Factiva Limited vs. DCIT* (in ITA No. 758/Mum/2023)
5. *CIT(IT) vs. ESPN Star Sports Mauritius S.N. C ET Compagnie* [2024] 160 taxmann.com 389 (Delhi)
6. *ESS Distribution (Mauritius) SNC et Compagnie vs. DDIT* [2022] 145 taxmann.com 267 (Delhi-Trib.)

16. Per contra, ld. Departmental Representative ('ld. DR' for short) strongly relied upon the observations of the A.O. and ld. DRP.

17. We have given a thoughtful consideration to rival contentions and perused the materials on record. We have also applied our mind to judicial precedents cited before us. As discussed earlier in the order, the assessee is a tax resident of UK, hence, is governed under India-UK DTAA. As per the business model of the assessee, it collates various business-related information/news and has created a database of such content for providing global news and information services to organization across the world, employing content delivery through a suite of products and services under the brand name Factive. From the facts on record, it is quite evident that the assessee is not the creator/author of the content available in the database. For distributing its products through subscription, the assessee has appointed Distributors across the world. Insofar as India is concerned, the assessee has entered into a Distribution Agreement with DJCIPL initially in the year 2013 and after termination of the said agreement, has entered into a fresh distribution agreement effective from 01.04.2017. It is not in dispute that the Distribution Agreement entered on 01.04.2017

continues till date. In fact, in the impugned assessment order, the A.O. himself has referred to the Distribution Agreement dated 01.04.2017. The date of Distribution Agreement assumes importance in the sense that its terms and conditions and the factual position relating to the transaction between the assessee and its AE in India (DJCIPL) have remained identical all through. Apparently, there is no change either in the terms and conditions of the agreement or in the factual position in the impugned assessment year. In fact, at more than one place in the assessment order, the A.O. himself has stated that the facts relating to the transactions of the assessee in India and nature of receipts, are identical to the earlier assessment years starting from A.Y. 2015-16. Even, the A.O. has extensively referred to the submissions made by the assessee in the earlier assessment years and the decision taken by the A.O. in those assessment years. The A.O. has also observed that upto A.Y. 2019-20, ld. DRP has accepted the A.O's view in holding the receipts to be in the nature of royalty.

18. Even, ld. DRP in its directions has clearly and categorically observed that the issues relating to the nature of receipt and the existence of DAPE are identical to the earlier assessment years. In fact, ld. DRP has extensively referred to their directions in assessee's case in A.Y. 2020-21. We reiterate the aforesaid facts with the purpose to emphasize that there is no difference in factual position between the A.Ys. 2015-16 to 2020-21 and the impugned assessment years. It is relevant to observe, the dispute between the assessee and the Revenue with regard to the nature of receipt whether royalty falling u/s. 9(1)(vi) of the Act read with Article 13(2) of India-UK DTAA or is in the nature of business receipt is a legacy issue, which came up for consideration before the co-ordinate bench for the first time in assessee's case in A.Y. 2015-16. While deciding the issue in ITA No.

6455/Mum/2018, vide order dated 31.05.2022, the pertinent observations of the co-ordinate bench on the issue are as under:

> *10. From the grounds raised by the assessee in the present appeal, undisputed facts and argument addressed by the Ld. A.Rs. of the parties the sole question arises for determination is :*
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> *"AS to whether amount of Rs.2,82,15,036/- received by the assessee from the distribution of financial products of DJCIPL is a 'royalty' under section 9(1)(vi) of the Act and Article 13 of India-UK DTAA?"*
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> *11. When we examine the question framed in the light of the undisputed facts that the purchase price received by the assessee from DJCIPL is at arms length price; that the amount received by the assessee was for providing use of database specifically by not giving any copy right; and that transaction as to granting the right to distribute the Factiva product in the Indian markets to its group company DJCIPL on principle to principle basis, the amount received is not liable to be taxed as 'royalty' in the hands of the assessee.*
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> *12. Identical question has been decided by the co-ordinate Bench of the Tribunal in one of the assessee's group company Dow Jones & Company Inc. vs. ACIT (supra) by returning following findings:*
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> *"4. Briefly stated, the facts of the case are that the appellant company is a business corporation incorporated in USA and engaged in the business of providing information products and services containing global business and financial news to organizations worldwide. It offers information via newspapers, newswires, websites, applications, newsletters, magazines, proprietary databases, conferences and radio.*
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> *5. The appellant company appointed Dow Jones Consulting India Pvt Ltd [DJCIPL] on a principal to principal basis for distributing its products in the Indian market. Accordingly, the appellant company receives purchase price from DJCIPL at an arm's length price.*
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> *6. During the course of scrutiny assessment proceedings, the Assessing Officer was of the firm belief that the receipts from DJCIPL should be taxed in India as 'Royalty Income" under the provisions of the Act as well as India-USA DTAA.*
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> *7. Referring to the definition 'Royalty' given in Section 9(1)(vi) of the Act, the Assessing Officer treated the Indian receipts as taxable as 'Royalty'. The Assessing Officer further examined the relevant Article of India-USA DTAA and again formed a belief that Indian receipts are also taxable under the India-USA DTAA and concluded the proceedings by taxing the same.*
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> *8. Before us, the ld. counsel for the assessee vehemently stated that the assessee has received consideration for providing use of database by which it has allowed DJCIPL to used its copy right and has not given any coy of right, therefore, the impugned receipts cannot be taxed as 'Royalty' in the hands of the assessee.*
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> *9. Per contra, the ld. DR strongly supported the findings of the lower authorities.*
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> *10. We have given thoughtful consideration to the orders of the authorities below. At the very outset, we have to state that basis the provisions of section 92 of the Act, the assessee is entitled to invoke the provisions of India –USA DTAA to the extent it is more beneficial. Our view is fortified by the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Azadi Bachao Andalon 263 ITR 706. Accordingly, we will consider the beneficial provisions of the tax treaty to see whether the contention of the assessee that the alleged payment from DJCIPL is not royalty income.*

11. As per Article 12 of the Tax Treaty, 'Royalty" is defined as under:

"10.1.4.1 (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 cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, 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.

10.1.5 Thus, Article 12 of the Tax Treaty brings within the ambit of the definition of royalty, a payment made for the use of or the right to use a copyright of a literary, artistic or scientific work. Thus, only those payments that allow a payer to use / acquire a right to use a copyright in a literary, artistic or scientific work arc covered within the definition of royalty. Payments made for acquiring the right in use the product it sell, without allowing any right to use the copyright in the product, are not covered within the scope of royally winch may gel covered under the term 'Royalty' as per the Act. Further, unless the payments are made towards acquiring the right to use a copyright in a literary, artistic, or scientific work, definition of Royalty would not get attracted.

10.1.6 In the current case, there is no transfer of legal title in the copyrighted article as the same rests with the Applicant. All rights, title and interest in the licensed software, which is being claimed to be copyrighted article, are the exclusive property of the Applicant. DJCIPL has no authority to reproduce the data in any material form, to make any translation in the data or to make any adaptation in the data. Further, the end user cannot be said to have acquired a copyright or right to use the copyright in the data and accordingly, the payments made by DJCIPL for accessing the database would not qualify as payments for the use of copyright.

10.1.7 The Applicant submits that the payments made by DJCIPL is not for the transfer of all or any rights in respect of the database Under the agreement, DJCIPL does not acquire any right in relation to the. products.

10.1.8 Thus in view of the above arguments, n shall be possible to conclude that the payment received by the Applicant cannot be treated as a consideration for the transfer of any 'copyright'. The transaction under consideration is tor the provision of accessing the database of the Applicant/financial products license, the same cannot he considered as 'royally' under Article 12 of the India-US DTAA.

10.1.9 Furthermore, in determining whether or not a payment is for the use of copyright, it is important to distinguish between a payment for the right to use the copyright in a programme and the right to use the programme itself. We have outlined below our detailed submission on the distinction between copyright and the copyrighted article:"

12. A perusal of the above Article shows that it brings within the ambit of the definition of 'Royalty' the payment made for use of, or the right to use any copyright of a literary, artistic, or scientific work. In our understanding of the Article, only those payments that allow a payer to use/acquire a right to use copyright in literary, artistic or scientific work are covered within the definition of 'Royalty'. In our considered view, the payments made for acquiring right to use product itself, without allowing any right to use the copy right in the product are not covered with the scope of 'Royalty' which may get covered under the term under Royalty as per the Act.

> *13. The facts of the case in hand show that there is no transfer of legal title in the copyrighted article as the same rests with the assessee. All rights, title and interest in the licensed software which is being claimed to be copyrighted article are the exclusive property of the assessee. DJCIPL has no authority to reproduce the date in any material form to make any translation in the date or to make adaptation in the data.*
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> *14. We further find that the end user cannot be said to have acquired a copy right or right to use the copy right in data. A perusal of the agreement with DJCIPL shows that DJCIPL does not acquire any right in relation to the products. In our considered view, in determining whether or not a payment is for use of copyright, it is important to distinguish between 'a payment for right to use the copy right in a program' and 'right to use the program itself'.*
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> *15. In the case in hand, the revenue derived by the assessee from granting limited access to its data base is akin to sale of book, wherein purchaser does not acquire any right to exploit the underlying copyright. In the case of a book, the publisher of the book grants the purchaser certain rights to use the content of the book, which is copyrighted. The purchaser of the book does not acquire the right to exploit the underlying copyright. When the purchaser reads the book, he only enjoys the contents. Similarly, the user of the database does not receive the right to exploit the copyright in the database he only enjoys the product in the normal course of his business.*
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> *16. In the present case, the appellant is only granting access to its database to DJCIPL. In our considered opinion, the payments received cannot be said to be 'Royalty' in nature. The transaction under consideration is for provision of accessing database of the assessee. Hence the same cannot be considered as 'Royalty' under Article 12 of the India-US DTAA. We, therefore, set aside the findings of the Assessing Officer and direct the Assessing Officer to delete the impugned addition. Ground No. 1 is, accordingly, allowed."*

13. Identical issue has also been decided by Authority for Advance Rulings in case Dun and Bradstreet Espana S.A., IN RE (supra) confirmed by the Hon'ble Bombay High Court wherein the issue was of a Spanish Company giving permission to Indian company belonging to same group which has received request from Indian customers, to download information regarding business in Spain exclusively for Indian customers' use and the receipt from Indian company is not a 'royalty' or fee for technical services as the Indian company was not an agent or PE of Spanish company. So the Indian company was held not bound to deduct the tax at source from payment to Spanish company. Issue before the Bench in the case at hand is identical.

14. Co-ordinate Bench of the Tribunal in case of American Chemical Society vs. DCIT (supra) also decided the identical issue arisen under section 9(1)(vi) of the Act read with Article 12(3) of India-UK DTAA that:-

> *"As to whether the income earned by the assessee from Indian customer for granting online/web based access to its database and general Indian customer in consideration of subscription fees is a 'royalty' to be taxed in India."*

15. This question has been decided by the co-ordinate Bench of the Tribunal in favour of the assessee by returning following findings:

> *It is evident that the assessee merely accumulates and organizes information already available in public domain/publicly disclosed information, and organizes the same at one place, thereby creating a database which is accessed by its customers against payment of subscription fee termed as CAS fee. Thus, prima facie. there is no copyright or intellectual property lying with the assessee itself in relation to such information or the contents of the database. Thus, there cannot be a case that the assessee-company has transacted in the*

copyrights or intellectual property rights of the contents of the database of information which is merely collated and collected by it. It is abundantly clear from a perusal of some of the sample agreements with customers that what the customers get is only the right to search, view and display information (whether online or by taking a print) and reproducing or exploiting the same in any manner; and its use for purposes other than personal use is strictly prohibited. The OECD commentary referred in the assessment order brings out that the payments which are to be understood as 'royalty' in the context of information concerning industrial, commercial or scientific experience ought to be in relation to information which is undivulged and/or arises from previous experience. In other words, in order to be understood as 'royalty', the payment must be for information which is exclusively possessed or secret under the ownership of the grantor of such information. It is to be considered that the fact-situation in the instant case does not comply with the aforesaid requirement so as to be treated as a payment for 'royalty', [Para 7]

In the instant case, the assessee merely identifies, aggregates, and organizes publicly disclosed chemistry related scientific information or publishes research work submitted by scientists worldwide. Thus, this information is clearly not undivulged; rather, it is an information which is available in the public domain. Further, chemistry and related scientific information accumulated by the assessee in the form of a database is the experience of various scientists, researchers and various other persons and not that of the assessee. Thus. What the assessee collates is experience of others and provides access thereto. The database does not provide any information arising from assessee's own previous experience or knowledge of the subject. The assessee's experience lies in the creation and maintaining the database, which cannot be labelled as industrial or commercial or scientific in anyway in the context of the receipts in question. The Indian customers do not make payments for availing the knowledge of assessee's experience of creating/maintaining database; what they pay for is access to information that such database encompasses. By granting access to the information forming part of the database, the assessee neither shares its own experience, technique or methodology employed in evolving databases with the users, nor imparts any information relating to them.[Para 8]

In this context the Madhya Pradesh High Court in the case of ClT v. HEG Ltd. [2003] 130 Taxman 72/263 1TR 230 held that purchase of any and every type of commercial information cannot earn the status of royalty. To have the status of royalty, the infonnation transacted should have some special features, which is hitherto not available in public domain. [Para 10] With respect to the subscription fee for the CAS division being considered as royalty for 'use' of or 'right to use1 of a copyright, a reference to the Copyright Act, 1957 is also relevant. A person can be said to have acquired a copyright or the right to use the copyright in a computer software or database (as described by the Assessing Officer), where he is authorized to do all or any of the acts as per the definition of the term 'copyright' under section 14 of the Copyright Act, 1957. However, mere access to that work or permission to use the work cannot imply that the payer is paying for use or right to use the copyright. In other words, when no copyright is acquired by the payer, question of using it or getting a right to use it does not arise. [Para 11]

The transfer of a copyrighted right means that the recipient has a right to commercially exploit the database/software, e.g. reproduce, duplicate or sub-license the same; such payments may be classified as royalty, but factually speaking in the present no such rights in database or search tools (SciFinder or STN) are acquired by the customers, as is evident from the terms of the sample agreement of CAS customers. It is to be considered that the transfer of any right in a copyrighted article is analogous to the rights acquired by the purchaser of a book. In the instant case, customers of the assessee only enjoy the benefits of using SciFinder and STN and do not acquire the right to exploit any copyright in these software. The difference between a copyright and a copyrighted article in context of software has been brought out very clearly by the Supreme Court of India in the case of

Tata Consultancv Services v. State of Andhra Pradesh [2004] 141 Taxmann 132/271 ITR401. [Para 12]

Thus, it is to be held that the income earned by the assessee from the Indian customers with respect to the subscription fees for CAS cannot be taxed as royalty as per section 9(l)(vi) as well as article 12(3) of the Indian-USA DTAA. [Para 13]

The issue with respect to the PUBS division coincides with the issues on the CAS fee. The journal provided by the PUBS division do not provide any information arising from the assessee's previous experience. The assessee's experience lies in the creation of/maintaining such information online. By granting access to the journals, the assessee neither shares its experiences, techniques or methodology employed in evolving databases with the users, nor imparts any information relating to them. As is clearly evident from the sample agreements, all that the customers get is the right to search, view and display the articles (whether online or by taking a print) and reproducing or exploiting the same in any manner other than for personal use is strictly prohibited. Further, the customers do not get any rights to the journal or articles therein. They can only view the article in the journal that they have subscribed to and cannot amend or replicate or reproduce the journal. Thus, the customers are only able to access journal/articles for personal use of the information. No 'use or right to use1 in any copyright or any other intellectual property of any kind is provided by the assessee to its customers. Furthermore, the information resides on servers outside India, to which the customers have no right or access, nor do they possess control or dominion over the servers in anyway. Therefore, the question of such payments qualifying as consideration for use or right to use any equipment, whether industrial, commercial or scientific, does not arise. [Para 17]

In the instant case, what is acquired by the customer is a copyrighted article, copyrights of which continue to lie with assessee for all purposes. It is a well settled law that copyrighted article is different from a copyright, and that consideration for the former, i.e. a copyrighted article does not qualify as royalties. [Para 18] Thus, the principles noted in the context of the income earned by way of CAS fee are squarely applicable to the subscription revenue received from customers of PUBS division for sale of journal also, and, accordingly, PUBS fee also does not qualify as 'Royalty' in terms of section 9(l)(w) as well as article 12(3) of the India-USA DTAA. [Para 19]"

16. From the discussion made in the preceding paras and following the decision rendered by the co-ordinate Bench of the Tribunal and Hon'ble High Court of Bombay, we are of the considered view that Article 13 of India-UK DTAA defined 'royalty' only when a payment is made for the use or the right to use a copy right of literary, artistic or scientific work. So the only those payments which allow payers to use/acquire a right to use a copy right in literary, artistic or scientific work are commissioned under the definition of 'royalty'. In the instant case the assessee used to collect the information available in the public domains viz. newspaper and news wires from all over the world including global business and trade publications, targeted industry and regional publications, key websites and business blogs, market data and company professionals by collaborating with the news publishers and other sources and collates such relevant publically available news/information, then create a systematic database of news, article/information with advanced search capabilities and then subscriber of Factiva product gets access to the database, business puts a query in the search box, various news articles and other information in relation to search term, as actual public appears on the screen.

18. Moreover, payment received by the assessee is not for any information qua industrial scientific or commercial experience rather it is only for preparing a database on the basis of information already available in the public domain in the form of news, articles etc. Moreover, payment received by the assessee is merely for the use of database and not for the use or right to use any equipment as the subscriber and DJCIPL have no access, right or control of any manner

whatsoever offer the data storage devises or the server maintained by the assessee to update its database.

19. In these circumstances, copy right in the news article/blog never belongs to the assessee but always belongs to the publisher or author. So the database prepared by the assessee does not have any copy right or intellectual copy right with the assessee and the customer only gets the right to search, view and display information. So in these circumstances findings returned by the Ld. DRP that Factiva product (access to database) is in the nature of 'royalty' under Article 13 of India-UK DTAA was sector specific specialized knowledge portal as the assessee has a dedicated team of 100 specialists to collate and update the data on daily basis and as such fall within the ambit of use of copy right as well as information concerning industrial scientific or commercial experience is not sustainable in the eyes of law.

20. Even otherwise this issue is covered in favour of the assessee in its group company case M/s. Dow Jones and Company India Pvt. Ltd. (supra). So the question framed is answered in the negative and as such the payment received by the assessee is not a 'royalty' under Article 13 of India-UK DTAA. So we hereby set aside the addition made by the AO under section 9(1)(vi) of the Act read with Article 13(3) of India-UK DTAA and as such ordered to be deleted the same.

19. Identical view has been expressed by the ITAT consistently in subsequent A.Ys. 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21. Even, ld. DRP was conscious of the fact that the decisions of the Tribunal covers the issue in dispute. However, the Panel has made a futile attempt to distinguish the decisions of the Tribunal by providing a new dimension to the factual position referring to certain informations allegedly collected from the website of the assessee. The screenshots of the website appear at pg. nos. 144 and 145 of ld. DRP's directions. Based on such information, ld. DRP has concluded that receipts of the assessee are not for the access to the contents in the database, but for providing access to certain value added services like Risk Management & Compliance, Research, Monitoring & Discovery, Trading, Investing & Advice, Resources, etc. Hence, the receipts are in the nature of royalty u/s. 9(1)(vi) of the Act read with Article 13(2) of India-UK DTAA.

20. Unfortunately, as rightly brought to our notice by the ld. Counsel for the assessee, what ld. DRP has referred to is the information contained in the website of DOW Jones and not that of the assessee. On a careful perusal of the screenshots, it becomes clear that

not only the website is not of the assessee, but in addition to the products of the assessee, DOW Jones has its own products and services. This becomes clear from the screenshot at the top of pg. no. 145 of ld. DRP's order, wherein, in addition to the products of the assessee, there are products of Dow Jones. The aforesaid facts clearly demonstrate that in a desperate attempt to distinguish the decisions of ITAT, ld. DRP has completely misdirected itself by referring to certain information from webpages not of the assessee but some other entity. Therefore, the observation of Ld. DRP that ITAT did not have the benefit of these information while deciding the issue in earlier assessment years is wholly misconceived and fallacious. The attempt on the part of ld. DRP to factually distinguish ITAT's decisions is only to camouflage its intention not to follow the decision of ITAT because of some other reasons, which is discernible from the following observations in the later part of the directions:

> *5.5. Respectful Submission in re Decisions of Hon'ble Higher Authorities:*
>
> *The Panel finds that the issue involved is recurring in nature and is pending for adjudication before higher judicial forums for certain years. It is necessary to point out that for the year under consideration, only the assessee has a right to appeal against the Final Assessment Order framed by the AO after incorporating the directions of the DRP and the Department does not have any such right of appeal, unless there is an appeal by the Applicant Assessee. It is pertinent to point out that if the DRP for the year under consideration arrives at a conclusion, which is against the Department and in favour of the assessee, especially on a legal issue which has not yet attained finality in the Hon'ble High Court as well as Hon'ble Supreme Court, and if the said issue is eventually decided by the Hon'ble Court in favour of the Department, there will be no recourse available for giving effect to the binding decision of the Hon'ble Courts as well as thereafter, collecting the revenue attributable to the said issue, since the Department's appeal would not be pending (As for the year under consideration, DRP orders cannot be appealed against by the Department). In this backdrop, it is reiterated that the decision of the DRP is no longer appealable by the Department, apart from limited scenarios of cross-objection.*
>
> *Thus, if the contention of the applicant is to be accepted, the same would tantamount to pre-judging the issue and bringing finality to the issue pending before the Hon'ble High Court and subsequently, Hon'ble Apex Court. In this case, there have been no appeal against the Order of the Hon'ble Income Tax Appellate Tribunal on account of restriction of monetary limit. Hence, it can be taken that the Department has not accepted the decision and ratio of the Hon'ble Income Tax Appellate Tribunal.*
>
> *Thus, allowance of the Objection of the Applicant at this stage would also amount for the Department to giving up the issue, which is under litigation before the Honourable Court. Panel*

hastens to observe here that the Hon'ble High Court of Bombay in the Writ Petition No. 1877 of 2013 in the case of Vodafone India Services (P.) Ltd. v. Union of India [2013] 39 taxmann.com 201 (Bombay) wherein with regard to nature of proceedings and function of the DRP, the Hon'ble jurisdictional High Court of Bombay held that:

"47... The process before the DRP is a continuation of the assessment proceedings as only thereafter would a final appealable assessment order be passed. Till date there is no appealable assessment order. The proceeding before the DRP is not an appeal proceeding but a correcting mechanism in the nature of a second look at the proposed assessment order by high functionaries of the revenue keeping in mind the interest of the assessee. It is a continuation of the Assessment proceedings till such time a final order of assessment which is appealable is passed by the Assessing Officer. This also finds support from Section 144C(6) which enables the DRP to collect evidence or cause any enquiry to be made before giving directions to the Assessing Officer under Section 144C(5)..."

Thus, the process before the DRP is a continuation of assessment proceeding as it is only the draft assessment order which is being challenged before it. The final assessment order is yet to be passed by the assessing officer. Hence, the DRP is not an appellate authority and the proceeding before the DRP is continuation of assessment proceedings. This view is fortified by the decision of the division bench of Hon'ble High Court.

As discussed earlier, the Department would be contesting the above issue before a higher forum. Thus, the issue has not yet attained the finality and the possibility of the issue being decided in favour of revenue cannot be ruled out at this stage. However, at the stage when the issue attains the finality, it is likely that the remedial measures available to levy and collect tax on account of this issue, may not be available to the Revenue on account of limitation placed by the statute. In this regard, we may refer to the decision of the Hon'ble Supreme Court of India in the case of Malabar Industrial Co. Ltd. v. Commissioner of Income Tax [2000] 109 Taxman 66 (SC) wherein it is observed that "The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue."

21. Thus, the real reason for not following the orders of ITAT in assessee's case is because the Department has no right to appeal against the directions of the Panel. Having examined the factual as well as legal position relating to the nature and character of the receipts, we are of the view that they are identical to the earlier assessment years. Hence, we find no justifiable reason to deviate from the consistent view expressed by the co-ordinate benches in assessee's case in A.Ys. 2015-16 to 2020-21. Therefore, respectfully following the consistent view of the Coordinate Benches, we hold that the amount received by the assessee from DJCIPL and KPMG not being in the nature of royalty u/s. 9(1)(vi) read with Article 13(2) of India-UK DTAA, are not taxable in India.

22. Insofar as the second issue relating to existence or otherwise of DAPE, we find that except making some general and passing observations that DJCIPL is DAPE of the assessee in India, there is no other valid reason available to the AO to demonstrate existence of DAPE. In our view, ld. DRP has again misdirected itself in referring to Article 13(4) of MLI while upholding the decision of A.O. on existence of DAPE.

23. Having gone through Article 5 of the Treaty in its entirety and Article 13(4) read with Article 15 of MLI, we are of the view that the reference to Article 13(4) of MLI is totally irrelevant. It is a fact on record that both the A.O. and ld. DRP have held that the assessee had a DAPE in India in the form of DJCIPL. Article 5(4) of India-UK DTAA contemplates DAPE. Whereas, Article 13(4) of MLI is only with reference to Article 5(3) which provides certain exceptions to Article 5(1), which refers to a fixed place PE. The conditions of DAPE under Article 5(4) are totally different. As we have held elsewhere in the order, the A.O. has failed to demonstrate that the conditions of Article 5(4) are fulfilled in assessee's case. No material has been brought on record to establish that DJCIPL has authority to enter into contract on behalf of the assessee or DJCIPL keep stocks of goods and merchandise and sales on behalf of the assessee or DJCIPL habitually secures orders in India or almost wholly for the assessee.

24. Thus, in our view, there is absolute failure on the part of the Departmental Authorities to establish on record that the conditions of Article 5(4) of India-UK DTAA are satisfied. In this context, we must observe, on a query being made, ld. Counsel appearing for the assessee submitted that the transactions between the assessee and DJCIPL have been found to be at arm's length, insofar as, transfer pricing proceedings are

concerned. The aforesaid factual position remains uncontroverted before us. This further vindicates assessee's stand of non-taxability of receipts, even assuming existence of DAPE. We may further add that with reference to similar observations of the A.O. and ld. DRP regarding existence of DAPE in the form of DJCIPL, the ITAT in earlier assessment years has decided the issue in favour of the assessee. Thus, after considering the overall facts and circumstances of the case and respectfully following the decisions of ITAT in A.Ys. 2015-16 to 2020-21 (supra), we hold as under:

(i) The receipts in dispute are not taxable in India, as royalty income u/s. 9(1)(vi) read with Article 13(2) of India-UK DTAA.

(ii) The assessee does not have a DAPE in India.

25. In view of our decision above, ground no. 7 has become redundant. Since, we have decided the appeal on merits, the legal grounds, being ground nos. 1, 2 and 3 are not necessary for adjudication in the present appeal, hence, kept open. Ground no. 8 being premature at this stage, does not require adjudication.

ITA No. 1362/Mum/2025 (A.Y. 2022-23)

26. Our decision in ITA No. 4706/Mum/2023 with reference to ground nos. 4 to 7 would apply *mutatis mutandis* to ground nos. 4 to 7 of this appeal as well. In view of our decision, with reference to the nature of receipt and existence or otherwise of DAPE, ground no. 8 has become redundant. Since. We have allowed assessee's appeal on merits, the legal grounds, being ground nos. 1, 2and 3 are kept open. So far as ground no. 9 pertaining to short grant of TDS credit, we direct A.O. to verify the relevant facts and allow TDS credit as per law. Ground no. 10 being consequential and ground no. 11 being premature at this stage do not require adjudication.

27. In the result, both the appeals are partly allowed.

Order pronounced in the open court on 15.09.2025

Sd/-	Sd/-
(Girish Agrawal)	(Saktijit Dey)
Accountant Member	Vice President

Mumbai; Dated : 15.09.2025
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai