

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA Nos. 720 to 724/Coch/2023
Assessment Years : 2005-06 to 2009-10

M/s. Cochin International Airport Ltd., Room No. 35, 4 th Floor, GCDA Commercial Complex, Marine Drive, Cochin, Kerala – 682 031. PAN: AAACC9658B	Vs.	The Deputy Commissioner of Income Tax, Corporate Circle 1(1), Cochin
APPELLANT		RESPONDENT

Assessee by	:	Shri Gopi K, CA
Revenue by	:	Shri Omanakuttan, Snr. AR

Date of Hearing	:	02-07-2025
Date of Pronouncement	:	23-09-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

These are the appeals filed by the assessee challenging the separate orders of the Ld.CIT(A)-12, Bengaluru all dated 23/08/2023 in respect of the A.Ys. 2005-06 to 2009-10.

2. All these appeals are related to the same assessee and the issue involved in all the appeals are similar and therefore we decided to take up all the appeals together and pass a common order for the sake of convenience.

3. We will take up the appeal in ITA No. 720/Coch/2023 for A.Y. 2005-06 as the lead case and the result arrived in the said appeal will apply mutatis mutandis to the appeals in ITA Nos. 721 to 724/Coch/2023 for A.Ys. 2006-07 to 2009-10. Since the grounds raised by the assessee in all the appeals are identical, grounds of appeal raised for the A.Y. 2005-06 in ITA No. 720/Coch/2023 is reproduced herein below for reference.

"1. Whether on the facts and circumstances as per the agreement for Exclusive Procurement and supply of merchandise entered into with Alpha Airport Holdings (UK) Ltd (Alpha), the payment made by the appellant to Alpha is taxable in India as per the Agreement for Avoidance of Double Taxation entered into between India and UK.

2. Whether on the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in holding that specialized knowledge and experience of procurement of goods for duty free shop was made available to the appellant by the Alpha Airport Holdings (UK) Ltd. The Ld. CIT(A) erred in holding that the services rendered by Alpha were technical in nature and would have the effect of providing enduring benefit to the appellant in the form of the duty-free shop and thus the condition of make available as laid down in DTAA is met.

3. For these and other grounds that may be further adduced at the time of hearing the order of the learned Commissioner of Income Tax (Appeals) requires to be modified."

4. The brief facts of the case are that the assessee is a public limited company incorporated for the purpose of establishing an international airport at Cochin and in the said airport, the assessee was operating a duty free shop. The assessee for the purpose of procuring the merchandise for the duty free shop run by them, had entered into an agreement with M/s. Alpha Airport Holding Ltd., UK and Kreol Trading EST, UAE on 10/11/2000. The AO had issued an order u/s. 201 on the ground that the

assessee had not deducted tax at source u/s. 195 of the Act as against the payments made to the said two entities on the ground that the said non residents have business connection in India. The assessee's appeal was also dismissed by the Ld.CIT(A). Thereafter the assessee filed an appeal before the Tribunal and the Tribunal also vide its order dated 12/01/2016 in ITA Nos. 311 to 315/Coch/2014 had held that the non-residents are not having any business connection in India. The Tribunal also questioned the finding of the Ld.CIT(A) that the two entities have PE in India as per the DTAA. The Tribunal also considered the arguments that section 9(1)(i) would not be applicable to the facts of the present case when there is a specific provision in section 9(1)(vii) and therefore the Tribunal had held that the issue should be considered afresh and remitted the same to the AO.

5. The AO while giving effect to the remand order of the Tribunal, had examined the provision under which the payments made to the two entities would be liable to TDS. The AO also considered whether the said payments would fall under the provision of section 9(1)(vii) of the Act. If the said payment would fall u/s. 9(1)(vii), whether the said payments are eligible for exemption as per the DTAA. Finally, the AO arrived the conclusion that the non-residents do not have any business connection and PE in India. The AO further held that the fees payable to the said two non-residents are taxable u/s. 9(1)(vii) as "fees for technical services" both under the provisions of the Act as well as the DTAA treaties with UK and UAE. The assessee challenged the said orders before the Ld.CIT(A). The Ld.CIT(A) held that the payments to M/s. Alpha Airport Holding Ltd., UK is liable to tax in India as per the DTAA with the UK since the services rendered are of technical in nature and the condition of "make available" is also satisfied. Insofar as the payments made to Kreol Trading EST, UAE, the Ld.CIT(A) had held that the payments made to Kreol Trading EST, UAE are not liable to tax on the ground that in the absence of a specific clause relating to FTS in the India-UAE DTAA, the income of the non-resident arising in India would be business income but could be taxed as such only if the entity has a

permanent establishment in India. The Ld.CIT(A) had relied on the order of the Hon'ble Bangalore Bench of the Tribunal in the case of ABB-Fz LLC which was given by following the another order of the Hon'ble Bangalore Tribunal in the case of IBM India Pvt. Ltd. vs. DDIT.

6. As against the said order of the Ld.CIT(A) confirming the levy of tax on the payments made to M/s. Alpha Airport Holding Ltd., UK, present appeal has been filed before this Tribunal.

7. At the time of hearing, the Ld.AR submitted that the finding of the Ld.CIT(A) that services rendered by M/s. Alpha Airport Holding Ltd., UK are technical in nature and the said M/s. Alpha Airport Holding Ltd., UK is making available to the assessee the technical knowledge and therefore the payments made to the said concerned M/s. Alpha Airport Holding Ltd., UK would fall under the ambit of "fees for technical services" as per Sec 9(1)(vii) of the Act and Article 13 of the DTAA treaty made with UK is not correct. The Ld.AR also filed the copy of the DTAA entered into between India and UK. The Ld.AR also filed a paper book enclosing the agreement made with the two non-residents and the copies of the judgements rendered by the various Hon'ble High Courts and the Tribunal and submitted that the assessee has engaged M/s. Alpha Airport Holding Ltd., UK for the purpose of procuring the merchandise required for their duty free shops and therefore no technicality was involved in this process and also the said M/s. Alpha Airport Holding Ltd., UK had not transferred any technical knowledge to the assessee in order to term the transaction as "fees for technical services". The Ld.AR also took us through the DTAA entered with UK and prayed to allow the appeals filed by the assessee.

8. The Ld. DR relied on the order of the Ld.CIT(A) and prayed that the appeal deserves no merits.

9. We have heard the arguments of both sides and perused the materials available on record.

10. Before proceeding the matter, we gave our attention to the agreement executed by the assessee with M/s. Alpha Airport Holding Ltd., UK dated 10/11/2000 from which we are able to find that there is no clause for transferring any technical knowledge. It is only a procurement agreement for procuring the merchandise from abroad to keep the merchandise in the duty free shops at Cochin International Airport. We have also perused the various clauses in the said agreement and we do not find any clause requiring the transfer of any technical knowledge by the said M/s. Alpha Airport Holding Ltd., UK. To attract the Article 13 of the DTAA between India and UK, which dealt with the "royalties and fees for technical services", there should be a transfer of any technical knowledge or experience, skill, knowhow, or processes or consist of the development and transfer of the technical plan or technical design. In the present case on hand, M/s. Alpha Airport Holding Ltd., UK had not transferred any technical knowledge which is in their possession to the assessee, to attract the said Article 13 of the DTAA between India and UK. The transfer of technical knowledge to the assessee should be used by the assessee independently in the subsequent transactions/years, otherwise it could not be treated as a transfer of technical services. After the entering into the agreement in the year 2000, the assessee had regularly effected the purchases through M/s. Alpha Airport Holding Ltd., UK which shows that there is no transfer of any technical knowledge to the assessee. If the assessee had received any technical knowledge from the said M/s. Alpha Airport Holding Ltd., UK, the assessee should not have depended upon the said M/s. Alpha Airport Holding Ltd., UK for the subsequent purchases effected during the subsequent years.

11. We do not find any merit in the observation made by the Ld. CIT(A) that M/s. Alpha Airport Holding Ltd., UK is doing the technical services

within the meaning of DTAA between India and UK and therefore the said transactions are to be treated as "fees for technical services".

12. We have also perused the agreement in which the assessee is also having a control over the fixation of the prices and therefore it is not the exclusive domain of M/s. Alpha Airport Holding Ltd., UK to fix the price for the merchandise. The agreement also further states about the procedures for procurement of merchandise from abroad by M/s. Alpha Airport Holding Ltd., UK. Nowhere in the agreement, we can find that the assessee had entered into an agreement for getting the technical services by M/s. Alpha Airport Holding Ltd., UK. The agreement also made it clear that the assessee should not purchase the merchandise from other than the two non-resident Indians which shows that the assessee had entered into an agreement only for the purpose of procuring the merchandise and not for transferring any technical knowhow to the assessee.

13. We have also gone through the judgement of the Hon'ble Bombay High Court reported in 463 ITR 222 in the case of Shell India Markets Pvt. Ltd. vs. Union of India wherein it was held that the provision of general business support services do not involve anything of a technical nature and therefore the said services availed could not be technical service and Article 13 of India-UK DTAA was wholly applicable.

14. Similarly the Hon'ble Delhi Tribunal in ITA No. 517/Del/2022 dated 30/06/2023 in the case of N.M. Rothchild & Sons Ltd. vs. DCIT wherein the Tribunal had held that the advisory services given by the appellant are not in the nature of technical services and is only in the nature of managerial services and also does not satisfy the requirement of "make available" under clause 13 of DTAA with UK and therefore it is not taxable in India.

15. We have also gone through the unreported judgment of the Hon'ble Madras High Court in TCA No. 448 of 2012 in the case of CIT, LTU vs. M/s.

Wheels India Ltd. wherein it was held that the commission paid by the assessee to the non-residents were only for the services rendered by them outside India by way of canvassing sales order and cannot be regarded as "fees for technical services". To arrive the said conclusion, the Hon'ble Madras High Court relied on the judgements reported in 367 ITR 155 and 407 ITR 72.

16. We also relied on the judgement of the jurisdictional High Court reported in (2018) 97 taxmann.com 642 (Ker) in the case of US Technology Resources (P) Ltd Vs CIT wherein it was held that, "the payments made for the advices offered by the US company to Indian company regarding management, financial, legal services on a factual basis with respect to problems arising at various points of time without transfer of technical or other know how would not be taxable in India."

17. In another order, the Hon'ble Mumbai Tribunal in the case of WNS Global Services (P.) Ltd. vs. ITO reported in (2019) 103 taxmann.com 75, held that the marketing and management fee paid by the assessee to overseas AEs could not be treated as "fees for technical services" requiring deduction of tax u/s. 195(1) since payments made by the assessee were not for making available any technical services by AEs.

18. Considering the principles laid down by the Hon'ble High Courts and the Tribunals and also considering the facts involved in the present case, we are of the opinion that the commission paid to the non-residents M/s. Alpha Airport Holding Ltd., UK for procuring the merchandise for keeping them in the duty free shop would not be termed as "fees for technical services" since there is no transfer of any technical knowledge to the assessee by the non-resident M/s. Alpha Airport Holding Ltd., UK. Therefore the authorities below are not correct in treating the commission paid to M/s. Alpha Airport Holding Ltd., UK as "fees for technical services" when the essential conditions are not fulfilled. We, therefore set aside the order of the Ld.CIT(A)

insofar as the transaction effected with M/s. Alpha Airport Holding Ltd., UK, a non-resident is also concerned.

19. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 23rd September, 2025.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Cochin,
Dated, the 23rd September, 2025
/MS /

Copy to:

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|---------------|---------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin