| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |

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

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

LT.A. No. 4708/Mum/2023
Assessment Year: 2021-22

Atos Information Technologies HK Limited C/o. Atos Global IT Solutions and Services Private Limited 7th Floor, Building -3, Mindscape Gigaplex Plot No. LT. 5, MIDC Airoli Knowledge Park T.T.C Industrial Area, Airoli West Navi Mumbai - 400708 **[PAN: AAKCS8720L]**	Vs	**Deputy Commissioner of Income Tax (International Taxation) - 1(1)(2), Mumbai**
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Ms. Chandani Shah a/w Ms. Tejal Saraf & Shri Yogesh Malpani, A/R
Revenue by :	Shri Satya Pal Kumar - CIT D/R

सुनवाई की तारीख/**Date of Hearing : 29/09/2025**
घोषणा की तारीख /**Date of Pronouncement: 06/10/2025**

आदेश/**O R D E R**

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 26/10/2023 framed u/s 143(3) r.w.s. 144C(13) of the Act pertaining to AY 2021-22.

2. The grievance of the assessee reads as under:-

"1. On the facts and in the circumstances of the case and in law, the final assessment order dated 26.10.2023 passed by the Learned Deputy Commissioner of Income-tax (International Taxation) 1(1)(2), Mumbai (Learned AO') under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 ('Act) is without jurisdiction, barred by limitation, invalid and bad in law.

The Appellant humbly prays that the final assessment order is liable to be quashed.

2. On the facts and in the circumstances of the case and in law, the notice dated 2 7.06.2022 under section 143(2) of the Act issued by the Assistant Commissioner of Income Tax/Deputy Commissioner of Income Tax (International Taxation), Circle -1(1)(1), Delhi is without jurisdiction and all proceedings pursuant to the aforesaid notice under section 143(2) (ire without jurisdiction, bad in law, void-ab-initio and liable to be quashed.

The Appellant humbly prays that the draft assessment order and the final assessment order are liable to be quashed.

3. On the facts and in the circumstances of the case and in law, the Ld. AO and the Ld. Dispute Resolution Panel ('the DRP') erred in holding that the receipts of Rs. 85,63,75,446/- are in the nature of 'Royalty' under Section 9(l)(vi) of the Act as well as under the Double Taxation Avoidance Agreement between India and Hong Kong ("India - Hong Kong DTAA")

The Appellant humbly prays that the Learned AO be directed to not treat the aforesaid receipts as Royalty' under the Act and the India-Hong Kong DTAA respectively.

4. On the facts and in the circumstances of the case and in law, the Learned AO and the Ld. DRP erred in holding that the receipts of Rs. 85,63,75,446/- are in the nature of' Fees for Technical Services' ("FTS') under Section 9(l)(vii) of the Act as well as under India - Hong Kong DTAA.

The Appellant humbly prays that the Learned AO be directed to not treat the aforesaid receipts as 'FTS' under the Act and the India-Hong Kong DTAA respectively.

5. On the facts and in circumstances of the case and in law, the Learned AO has erred in levying surcharge and education cess on the income chargeable to tax as per India - Hong Kong DTAA.

The Appellant humbly prays that the Learned AO be directed to delete surcharge and education cess levied on the income chargeable to tax as per India - Hong Kong DTAA.

6. On the facts and in the circumstances of the case and in law, the Learned AO has erred in levying interest under section 234A of the Act amounting to Rs. 4,08,932/-.

The Appellant humbly prays that the Learned AO be directed to delete interest under Section 234A of the Act.

7. On the facts and in the circumstances of the case and in law, the Learned AO has erred in levying interest under section 234B of the Act amounting to Rs. 31,69,223/-.

The Appellant humbly prays that the Learned AO be directed to delete interest under Section 234B of the Act.

8. On the facts and in the circumstances of the case and in law, the Learned AO has erred in initiating penalty proceeding under section 270A of the Act. The Appellant humbly prays that the Learned AO be directed to drop the penalty proceedings initiation under section 270A of the Act."

3. The substantive grievance of the assessee can be summarized as (i) characterization of income as fees for technical service in respect of payments received from Atos India Private Limited and; (ii) characterization of income as 'royalty' in respect of payments received from Atos India.

4. Briefly stated, the facts of the case are that the assessee is a group company of Atos Group, headquartered in France, which is a multinational IT Services group engaged in the business of providing Hi-tech transactional services, consulting and technology services, systems integration and managed services. The assessee company is incorporated in Hong Kong, providing services/facilities for processing data from Hong Kong. The company's expertise covers a wide range of specialized services including managed services, systems integration and Hi-tech transactional services. The assessee filed its return of income declaring total income of Rs. 6,64,89,345/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4.1. During the year under consideration, the receipts from India for which the assessee company is through its group entity Atos India. During the past years, the assessee used to get receipts from its client, Standard Chartered Bank, India, directly. In the year under consideration, the receipts are received from its Indian entities i.e., Atos

India. Though the services have been rendered by the assessee to Standard Chartered Bank through the Indian entity. The assessee rendered its services to Standard Chartered Bank directly and collected receipts directly from Standard Chartered Bank, according to the arrangement entered by Atos Group and SCB, through the global arrangement dated 12/02/2004. Since the agreement dates back to 12/02/2004 and since we are in AY 2021-22, this arrangement is coming from past many years except for the change that Atos India has been made collecting agent for the services of assessee without there being any change in the nature of services. During the year, the assessee has received Rs. 85,63,75,446/- as sub-contracting charges from Atos India and has not offered the receipts of tax.

5. The impugned quarrel is no more *res integra* as the same has already been decided by the Co-ordinate Bench in *IT A No. 237, 238, 230, 240/Mum/2016, vide order dated 09/02/2017.* The relevant findings read as under:-

> *"18. We have carefully considered the entire gamut of facts as discussed above, relevant findings given in the impugned order as well as the rival submissions made before us. The main issue involved, which has been raised vide ground no. 1.1 is, whether the payments made by Standard Chartered Bank India (SCB) to the assessee is in the nature of „royalty" u/s 9(1)(vi) or „fees for technical services". Since the assessee-company is incorporated in Hong Kong and is providing services/facilities for processing data to SCB from Hong Kong, therefore, the payment made by SCB India to assessee has to be seen from the perspective of domestic law, i.e. Income-tax Act and not under any treaty. The assessee-company is mainly engaged in the business of providing services/facilities for data processing through computer hardware and software to banking entities. It had entered into an agreement which has been termed as "Cocteau agreement" with SCB for provision of data processing support, which is for 68 countries with various branches. Under the said „Cocteau agreement", the role and responsibilities of assessee in respect of providing data processing services has already been discussed in detail in the earlier part of the order including the manner in which the entire processing activity is carried out. The Revenue"s case is that first of all, it is in the nature of royalty and for coming to this conclusion, the main contention of Assessing Officer is that, firstly, the assessee is not merely providing data processing services, but also providing technology in the*

form of data centre, infrastructure, connectivity and application technology for its banking operations; and secondly, it has created and provided facility in the form of dedicated centres for exclusive use of SCB with disaster recovery facility and storage facility. These infrastructure facilities in the form of data centre, storage area network, disaster recovery facility and dedicated network connectivity is translated into functional process by defined service flow for the various geographic locations for various business application which would constitute process. The assessee in this process has also made available SCB use of its equipment, model, design, invention and process. After coming to the conclusion that the payment is in the nature of "royalty" within the scope of section 9(1)(vi), the revenue went further to hold that, since assessee has provided technical, managerial and consultancy services to SCB, therefore, it also falls in the nature of „FTS" and for coming to this conclusion, certain clauses in the Cocteau agreement has been referred to.

19. First of all, we will deal with the issue whether the said payment falls within the realm of „royalty" or not. From the perusal of the various clauses of the agreement which has been referred to extensively by both the parties at the time of hearing and discussed herein above, we find that the main objective of the „Cocteau agreement" is to provide SCB group all across the world, processing of data through a network of computer systems in Hong Kong. In the entire agreement there is no whisper of any technology transfer or application of technology per se to SCB. This is a kind of outsourcing activity which has been given by SCB to Atos to process its data from various branches across the country. We agree with the contention of the ld. Counsel that the reference to the various details in the agreement is merely to ensure quality, standard and various safeguards which are to be adopted in the course of processing data especially looking the volume of data required to be processed from all around the Globe. The provisions mainly contains assessee"s responsibility to ensure adequate facility, systems and software which are located in Hong Kong and to ensure that all the hardware which is used in Hong Kong is maintained and housed in secured building space and infrastructure, manage proper performance of the hardware and operating systems, ensure adequate technical support of operating systems, to ensure system performance, maintain adequate security measures and effective internal control environment and also put in place appropriate disaster recovery plan. All these are to be maintained by the assessee to conduct the processing of data through computers. There is no providing or giving any use or right to use of any process to SCB. The technology, infrastructure, data centre, connectivity, etc. is solely used by the assessee for its own purposes and not to make available any such thing to SCB as explained by the ld. Counsel. At the first stage, SCB transmits raw data through operating software owned by it to the hardware facility of assessee in Hong Kong. The assessee in Hong Kong mainly receives the data so transmitted and at this stage there is absolutely no use or right to use of any process of assessee in Hong Kong by SCB. At the second stage, the raw data transmitted by SCB is processed by the assessee in its computer system/hardware as per the requirement of SCB and at times may be using the application software owned by SCB. At this stage also, SCB does not use or have any right to use any process. At the third stage, the processed data is transmitted electronically to SCB in India and at this stage also there is no use or right to use of any process which is given or made available to SCB. Here, in this case there is absolutely no use of equipment also as alleged by the Department within the definition given in clause (iv a) of Explanation 2 to Sec.

9(1)(vi) of the Act. The said clause deals mainly with the „use" or „right to use" any industrial, commercial or scientific equipment and applies only to income from leasing of such industrial, commercial or scientific equipment. This is borne out from the Memorandum to the Finance Bill, 2001 through which the said clause was inserted w.e.f. 1.4.2002, the relevant extract of the Memorandum has already been incorporated in the earlier part of our order and same proposition is also held by Mumbai Bench in Yahoo India P, Ltd. Vs DCIT (supra). Here, in the case of assessee, there is no income from leasing of any equipment. The legislature thus, has clearly envisaged that clause (iva) is to cover lease rent of industrial, commercial and scientific equipment in the definition of royalty and the said definition has been widened to that extent only. Thus, there is no concept of right to use of equipment here in this case. So far as applicability of Explanation 5 & 6 are concerned, we agree with the contentions of ld. Counsel, as reproduced above, that same would not be applicable at all in the case of assessee because, firstly, Explanation 6 enlarges the scope of process to include transmission by satellite cable, fibre optic, etc.; and secondly, Explanation 5 is applicable where consideration is of any right, property or information as defined in clauses (i) to (v) of Explanation 2 only and not in clause (iva) for the reason that Explanation 5 has been inserted with retrospective effect from June 1, 1976. In other words, Explanation 5 has been inserted retrospectively from the birth of Section 9(1)(vi) to clarify the intention behind the legislation. Hence, Explanation 5 is to be read with the Section 9(1)(vi) which was there on the statute as on April 1, 1976. Whereas clause (iva) to Explanation 2 was inserted from April 1, 2002. Thus, retrospective effect of clause (iva) cannot be deemed from 1.06.1976 and hence it cannot be held that Explanation 5 also applies to the said clause as this clause never existed as on April 1, 1976 and accordingly, the legislation cannot clarify the intention of the clause which never existed on the said date. Hence Explanation 5 & 6 would not be applicable in the case of assessee.

20. Further, for any payment to fall within the term of "royalty" it is sine qua non that there should be some kind of a transfer of any right in respect of various items as given in Explanation - 2 or any imparting of any information or use of any patent, invention, model, design, secret formula, process, etc. Here, in this case, there is neither transfer of any of right in respect of any patent, invention, model, design, secret formula or process or trademark or any similar property by the assessee to SCB, nor there is any imparting of any information or use of any of similar nature of things. Here, the entire equipment and technology which are used for processing the data is solely for performing the activity of assessee for itself while rendering data processing services to SCB. There is absolutely no transfer of any technology, information, knowhow or any of the terms used in Explanation 2 or any kind of providing of technology in the form of data centre, infrastructure, connectivity and application technology by the assessee to SCB for SCB"s banking operations. Thus, we are of the opinion that the payment made by SCB to assessee-company does not fall within the realm of "royalty" and hence cannot be taxed in India as royalty u/s 9(1)(vi) of the Act.

21. As regards whether the payment is in the nature of FTS or not, we find that the provision regarding services provided by assessee to SCB is mainly a standard facility and there is no constant human endeavour or human intervention which is required to provide the data servicing service. As stated earlier, raw data fed into by SCB India are transmitted to assessee and the data so transmitted stands captured

by the mainframe computers owned by assessee wherein such data are processed automatically and the final result is then transmitted to SCB India. All these transmission and processing of data is done automatically by computers and there is not much human involvement or intervention. There is no application of mind by the employees of assessee on said data because, they are processed through programmed software and neither any verification nor any analysis is carried out by the assessee on such data. The employees of the assessee-company are only required to oversee as to whether the computer systems are functioning properly and performing well and if there is any breakdown or fault, then same needs to be taken care of. The human intervention if at all is mainly for repairing and monitoring the hardware and software of the assessee which are processing the raw data of SCB and there is no human involvement or endeavour for rendering any kind of technical or consultancy services in data processing. It has been stated that before us that even the faults are corrected automatically. Further, looking to the number of volume of transactions transmitted by SCB to assessee, it would be impossible for any number of humans to apply their mind and generate reports. This has been demonstrated by the ld. Counsel before us by way of an example which has been already incorporated above. Thus, the magnitude of transactions undertaken by assessee itself goes to show that the computer systems installed by the assessee in Hong Kong is standard facility through which data is processed. In this regard, strong reliance was placed on the decision of ITAT, Mumbai Bench in the case of Siemens Limited (supra), wherein the Tribunal has emphasised upon the element of human intervention for rendering of technical services. The relevant observation in this regard reads as under:-

"----------In our opinion, this cannot be the criteria for understanding the term "technical services" as contemplated in Explanation 2 to section 9 (1)(vii). If any person delivers any technical skills or services or make available any such services through aid of any machine, equipment or any kind of technology, then such a rendering of services can be inferred as "technical services". In such a situation there is a constant human endeavour and the involvement of the human interface. On the contrary, if any technology or machine developed by human and put to operation automatically, wherein it operates without any much of human interface or intervention, then usage of such technology cannot per se be held as rendering of "technical services" by human skills. It is obvious that in such a situation some human involvement could be there but it is not a constant endeavour of the human in the process. Merely because certificates have been provided by the humans after a test is carried out in a Laboratory automatically by the machines, it cannot be held that services have been provided through the human skills.

Even in the latest decision of Hon'ble Supreme Court in the case of M/s. Kotak Securities Ltd. (supra), (the relevant portion of which has already been reproduced above), the Hon"ble Court opined that, if services are provided through fully automated standard facility, the same cannot be reckoned as rendering of technical services as contemplated u/s 9(1)(vii) of the Act. The relevant observation reads as under:-

"8. ..... All such services, fully automated, are available to all members of the stock exchange in respect of every transaction that is entered into. There is nothing special, exclusive or customized service that is rendered by the Stock Exchange. "Technical services" like "Managerial and Consultancy service" would denote seeking of services to cater to the special needs of the consumer/ user as may be felt necessary

and the making of the same available by the service provider. It is the above feature that would distinguish / identify a service provided from a facility offered. While the former is special and exclusive to the seeker of the service, the latter, even if termed as a service, is available to all and would therefore stand out in distinction to the former. The service provided by the Stock Exchange for which transaction charges are paid fails to satisfy the aforesaid test of specialized, exclusive and individual requirement of the user of consumer who may approach the service provider for such assistance/service.

It is only service of the above kind that according to us, should come within the ambit of the expression "technical services" appearing in Explanation 2 of Section 9(1)(vii) of the Act. In the absence of the above distinguishing feature, service, though rendered, would be mere in the nature of a facility offered or available which would not be covered by the aforesaid provision of the Act."

Before us, the ld. Counsel has also pointed out that assessee is also providing similar services to other clients like Hong Kong Government and other big MNEs and there is nothing special or exclusive about the services which are being rendered to SCB. In view of the entire gamut of facts as discussed above, we are of the opinion that the payment made by SCB to assessee- company does not fall within the realm of „fees for technical services" as contained in Sec. 9(1)(vii), albeit the assessee has only provided a standard facility for data processing without any human intervention. Accordingly, we hold that the said payment is not taxable in India as „fees for technical services" in terms of Sec. 9(1)(vii) of the Act. Thus, the issue raised in ground no. 1.1 is decided in favour of the assessee."

6. As no distinguishing decision has been brought to our notice, respectfully following the decision of the Co-ordinate Bench *(supra)*, we hold accordingly. Since we have decided the appeal on the merits of the case, the legal issues raised by the assessee are left open.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 6th October, 2025 at Mumbai.

Sd/-	***Sd/-***
(SAKTIJIT DEY)	**(NARENDRA KUMAR BILLAIYA)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai, Dated 06/10/2025
SC SrPs

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER**
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Assistant Registrar
आयकर अपीलीय अधिकरण
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