

**IN THE INCOME TAX APPELLATE TRIBUNAL “I” BENCH MUMBAI**

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

**ITA No. 1222/MUM/2025  
Assessment Year: 2022-23**

|                                                                                                                                                                                                                                       |     |                                                                                          |
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| Linklaters LLP<br>C/o. Deloitte Haskins & Sells<br>LLP, Tower 3, 27-32 Floor, One<br>International Centre,<br>Elphinstone Mill Compound,<br>Senapati Bapat Marg,<br>Elphinstone (West),<br>Mumbai – 400 013.<br><br>(PAN: AABCL5182G) | Vs. | Assistant Commissioner of<br>Income Tax (International<br>Taxation) - 3(1)(2),<br>Mumbai |
| <b>(Appellant)</b>                                                                                                                                                                                                                    |     | <b>(Respondent)</b>                                                                      |

**Present for:**

Assessee : Shri Niraj Sheth, Advocate  
Revenue : Shri Krishna Kumar, Sr. DR

Date of Hearing : 14.08.2025  
Date of Pronouncement : 11.11.2025

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the assessment order passed under the directions of Dispute Resolution Panel-1, Mumbai, vide order no. ITBA/DRP/F/144C(5)/2024-25/1070782259(1), dated 30.11.2024, u/s. 144C(5) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), for Assessment Year 2022-23.

2. Grounds taken by the assessee are reproduced as under:

1. *The learned Hon'ble Dispute Resolution Panel (Panel) erred in relying on its finding for the AY 2016 17.*

2. *The learned AO erred in computing the total income of the appellant at Rs 1,36,88,625*

3. *The learned AD erred in not appreciating the facts of the appellant's case for the captioned year and proceeded with the assessment merely based on surmises and conjectures*

4. *The learned AO erred in making certain observations at the following paras of the order without any basis/evidence.*

*(a) Para 12 at Page 26 of the order*

*(b) Para 13.5 at Page 28 of the order*

*(c) Para 137 at Page 30 of the order*

*(d) Para 13 12 at Page 32 of the order*

*(e) Para 16 at Page 33 of the order*

*(f) Para 17 at Page 33 of the order*

*(g) Para 23 at Page 40 of the order*

5. *The learned AO erred in taking the below contradictory positions in the above order.*

*(a). The learned AO held that the appellant is not entitled to the benefits of the India-UK Double Taxation Avoidance Agreement ('DTAA') and at the same time held that the services were performed through a permanent establishment in India Further, the learned AO held that the appellant's income is taxable on net basis.*

*(b). The learned AO held the taxability of income would be governed under section 9(1)(1) of the Act as well as under section 9(1)(vii) of the Act*

*(c). The learned AD held the income would be taxable as per Article 7 of the India-UK DTAA as well as per Article 15 of the India-UK DTAA*

*Denial of India-UK Tax Treaty benefit*

6. *The learned AO erred in holding that the appellant is not entitled to the benefits of India-UK DTAA*

7. *The learned AO erred in holding that the appellant cannot be treated as resident of the UK within the meaning of Article 4(1) of the India-UK DTAA*

8. *The learned AO ought to have appreciated that income of the appellant is subject to UK laws and therefore the appellant is "liable to taxation" in the UK*

*Fees considered as "fees for technical services" under the Income Tax Act, 1961*

9. *The learned AD erred in holding that the fees earned by the appellant is in the nature of "fees for technical services as defined under section (1)(vii) of the Act.*

10. *The learned AD ought to have appreciated that the income earned by the appellant is covered by the provisions of section 9(1)(1) of the Act*

11. *Without prejudice to the above, the learned AD ought to have appreciated that in view of the specific provisions of section 9(1)(vii)(c) and also the fact that the services rendered by the appellant were not utilised by the clients in India, the appellant's entire income cannot be considered as deemed to accrue or arise in India*

12. *The learned AO erred in rejecting the appellant arguments on utilisation of services, by referring to the retrospective amendment to Section 9 of the Act.*

13. *The learned AO also ought to have appreciated that the said amendment does not apply to income covered under clause (i) of Section 9(1)*

*Non-existence of permanent establishment in India*

14. *The learned AO erred in holding that the appellant's income is considered a technical service rendered through a permanent establishment without any basis or evidence.*

15. *The learned AO ought to have held that the appellant does not have a permanent establishment in India as defined in Article 5 of the India-UK DTAA*

16. *The learned AO ought to have appreciated that the personnel of the appellant have furnished services in India only for 4 days during any twelve month period relevant to the financial year 2021-22 and hence as per Article 5(2)(k) of the DTAA the appellant does not have permanent establishment in India*

17. *The learned AO ought to have appreciated that in the absence of permanent establishment in India as per Article 7(1) of the DTAA the income earned by the appellant is not liable to tax in India.*

18. *Without prejudice, the learned AD ought to have allowed deduction for entire expenditure instead of restricting to 5% of the total income*

*Fees considered as 'fees for technical services' under the India-UK DTAA*

19. *The learned AO erred in holding that the income of the appellant is in the nature of "fees for technical services as defined under Article 13(4)(c) of the DTAA*

20. *The learned AO ought to have appreciated that the services rendered by the assessee did not make available technical knowledge, experience, skill, know-how or process and hence fees earned by the appellant is not covered by the Article 13 of the DTAA*

21. *The learned AO ought to have appreciated that merely because the services to be rendered include the technical input does not per se mean that the technology is made available*

22. *The learned AO erred in observing that reliance cannot be placed on the Memorandum of Understanding to the India-USA Tax Treaty for the explanation of the term 'make available'*

23. *The learned AO ought to have appreciated that the definition of "fees for technical services as provided in Article 13(4) of the DTAA is much narrower than the definition provided in section 9(1)(vi) of the Income-tax Act*

24. *Without prejudice to the above the learned AD erred in holding that entire receipt is liable to tax in India under Article 13 of the DTAA. The learned AO ought to have appreciated that as per Article 13(2) read with Article 13(7) only fees arising or deemed to arising in India can be subject to tax in Article 13 of the DTAA*

25. *The learned AO ought to have appreciated that the DTAA has different provisions for taxing fees for technical services and fees for professional income and that the taxability of fees earned by the appellant is governed by the provision of Article 7 le business profits of the DTAA*

26. *The learned AO ought to have appreciated that in absence of permanent establishment in India and as per Article 7(1) of the DTAA no part of the income shall be taxable in India.*

27. *The learned AO erred in holding that the entire income earned by the appellant is taxable under the DTAA which has been held in the appellant's own case. The appellant submits that in its own case for the AY 2011-12, the Tribunal has held that if there is a PE only income in respect of services rendered in India are liable to tax in India as income attributable to the PE*

28. *Without prejudice the learned AO ought to have allowed deduction for expenses incurred outside India relating to services rendered.*

*Disbursement taxed as income*

29. *The learned AO erred in observing that amount representing reimbursement of expenditure is also a part of gross receipt. The appellant submits that reimbursement of expenditure is not income and therefore the same cannot be brought to tax*

30. *The learned AO erred in not providing an opportunity of being heard before taxing the disbursements*

31. Without prejudice to the above, the learned AO ought to have allowed deduction for expenditure incurred for such disbursements.

32. Without prejudice ought to have allowed deduction for entre expenses instead of restricting to 5% of the income

*Income taxable under Article 15 of the India-UK DTAA*

33. The learned AD erred in holding that the appellant was liable to tax in India under Article 15 of the india UK DTAA The learned AD ought to have appreciated that Article 15 was applicable only to individuals and was not applicable to the case of the appellant

34. Without prejudice to the above, in terms of Article 15(1) the learned AD ought to have taxed income only in respect of services rendered in India

35 The learned AD erred in holding that the appellant had a fixed base in India from which the appellant was performing its activities

36. The learned AO erred in holding that appellant's partners and staff, use the hotels or the places provided by clients as an office or place of work and from such premises the appellant provides services to its client

*Rate of tax*

37. The learned AO erred in applying tax rate of 42. 43% on the gross fees including disbursement earned by the appellant.

38. Without prejudice to the claim that no income is liable to tax in India, since the learned AD has held the appellant's income as technical services taxable under the Act, the learned AO ought to have considered tax rate at 10% (plus surcharge and cess) being beneficial rate provided under section 115A of the Act for fees for technical services.

*Interest under section 234B*

39. The learned AO has erred in levying interest under section 2348 of the Act at Rs. 18,20,907. The appellant denies liability for the interest levied under section 2348

*Initiation of Penalty under section 270A*

40. The learned AO erred in initiating penalty proceedings under section 270A.

3. Brief facts of the case are that assessee filed its return of income on 03.10.2022 reporting total income at nil. From the submissions made by the assessee in the course of assessment proceedings, it is noted that assessee is a limited liability partnership incorporated under the laws of United Kingdom. According to it, as per section 2(17) of the Act, the status claimed by it that of a company. assessee provides legal services to various clients all over the world, including India. assessee is registered with the Registrar of Companies for England and Wales under the Limited Partnership Act, 2000 of the United Kingdom. During the year under consideration, assessee provided services to certain clients and also worked on various projects for which work was done in India and partly work was done outside India. Details of services provided by the assessee during the year under consideration is tabulated below:

| S. No. | Name of the Indian Client         | Fees in INR |
|--------|-----------------------------------|-------------|
| 1      | BOFA SECURITIES INDIA LIMITED     | 6,67,080    |
| 2      | KESORAM INDUSTRIES LIMITED        | 62,68,976   |
| 3      | STANDARD CHARTERED BANK,<br>INDIA | 2,30,025    |
| 4      | RELIANCE INDUSTRIES LIMITED       | 65,22,544   |
|        | Total                             | 1,36,88,625 |

3.1. Nature of services provided to each of its clients tabulated above is extracted below from the submissions made by the assessee:

*“(a) BofA Securities India Limited - Linklaters LLP provided UK regulatory advice to BofA Securities India Limited for their operations outside India. Linklaters LLP did not attend any meetings in India.*

*(b) Kesoram Industries Limited - Linklaters LLP provided advice to Deutsche Bank Trust Company Americas in relation to technical changes necessary to the GDR programme of Kesoram Industries Ltd to reflect the demerger of its Birla Tyres*

*Ltd business. These were technical changes and no new funding was raised through the process. Linklaters LLP did not attend any meetings in India.*

*(c) Standard Chartered Bank - Linklaters LLP advised Standard Chartered Bank on matter JLR Term facility which was a matter raising Finance in the International Markets. Linklaters advised on the drafting of loan documentation, no meetings were attended in India. The funds raised where utilised by the group outside of India/the asset acquired was outside of India.*

*(d) Reliance Industries Limited - Linklaters LLP advised the syndicate of lenders to Reliance Industries Limited on the matter RIL Refinancing 2021. This matter involved RIL raising cross-border ECBs from international lenders. Linklaters LLP advised on the drafting and finalisation of the loan and related documentation governed by English law. No travel to India was involved and no meetings were attended in India. The funds raised where utilised by the group for general corporate purposes in accordance with relevant ECB Guidelines.”*

3.2. Assessee being a foreign company and an eligible assessee in terms of section 144C(15)(b)(ii) of the Act, a draft assessment order dated 28.03.2024 was communicated to the assessee proposing a variation to the total income returned by the assessee. Assessee filed its objections against the proposed variations to the income before the Id. Dispute Resolution Panel (DRP). Ld. AO passed the final assessment order in conformity with the directions issued by the Id. DRP and the assessment was completed at total assessed income of Rs.1,30,04,190/- which is tabulated below:

| Particulars                                            | Total Amount Invoiced in the year under consideration (INR) |
|--------------------------------------------------------|-------------------------------------------------------------|
| Receipts from India clients brought to tax             | 1,36,88,625                                                 |
| Less: Expenditure estimated at the rate of 5% of above | 6,84,431                                                    |
| Net Income / Total Income                              | 1,30,04,194                                                 |
| Total Income Assessed                                  | 1,30,04,190                                                 |

3.3. Ld. DRP while giving its directions on the objections raised by the assessee in respect of variations proposed by the ld. AO through the draft order, observed in para 14.1 that the issues are legacy issues which have come up before ld. DRP in the preceding assessment years also, more particularly assessment year 2016-17. Thus, ld. DRP took the basis for finalizing the directions for the impugned year by resorting to the directions given for Assessment Year 2016-17. Para 14.1 in this respect is extracted below for ready reference:

*14.1 We have considered the submissions of the assessee. We have also perused the draft assessment order. It is noted that the issues involved in the above Grounds of Objections also came up for directions before the DRP in AY 2016-17. Therefore, the basis of the Panel's order for AY 2022-23 shall be the directions issued by the Panel for AY 2016-17 and earlier years mutatis mutandis. The DRP has issued directions in the order for AY 2016-17, as under.*

3.4. Ld. DRP also noted that for Assessment years 2011-12, 2012-13, 2013-14, Department has filed appeals before the Hon'ble High Court of Bombay against the decisions of ITAT which are still pending. It further noted that only the assessee has a right to appeal against the final assessment order framed by the Assessing Officer after incorporating the directions of DRP and Department does not have any such right of appeal. According to it, as the issue involved has not attained finality and are being contested by the Department before the Hon'ble High Court of Bombay, it noted that if the issues are decided in favour of the assessee at this stage, it will amount to prejudicing the issues pending before the higher forum. Accordingly, it followed its directions given in the preceding years and rejected the grounds of objections raised by the assessee, confirming the variations proposed by the ld. AO through its draft order. The issues raised by the ld. AO for proposing variation in the draft order are legacy issues and are no longer

*res integra* in view of plethora of decisions of the Coordinate Bench in assessee's own case for past several assessment years.

4. In the present appeal before us, assessee has raised as many as 36 grounds which can be bucketed into four broader issues which have been dealt by the Coordinate Bench in past several assessment years. The four major issues are listed below which covers ground numbers from 6 to 36. Ground nos. 1 to 5 are general in nature and therefore their adjudication gets covered while dealing with the four broader issues and hence are not dealt separately. The four issues listed below are:

1. Entitlement to claim the benefits under India-UK Tax Treaty which covers ground nos. 6 to 8.
2. Taxability of income as fees for technical services under India-UK Tax Treaty which covers ground nos. 19 to 28.
3. Non-existence of permanent establishment which covers ground nos. 14 to 18.
4. Taxability of income under Article 15 of India-UK Tax Treaty which covers ground nos. 33 to 36.

5. Before us, ld. Counsel for the assessee has placed on record decisions of the Coordinate Bench in assessee's own case for Assessment Years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 which have been perused in detail. On a specific query by the Bench in respect of status of years subsequent to Assessment Year 2016-17, it was submitted that these years until the year under consideration were not picked up for scrutiny and hence no assessment was done and therefore no appeal arose out of that. We thus, take up the decision of the Coordinate Bench in assessee's own case for

Assessment Year 2016-17 in ITA No.1256/Mum/2021, dated 22.02.2023 to deal with the four issues listed above. Ld. Counsel for the assessee having taken the Bench through all the preceding orders of the Coordinate Bench in assessee's own case, demonstrated evidently that the factual matrix in all these case vis-a-vis the present appeal remains the same. He further demonstrated that the position of law both, under the Act and the India-UK Tax Treaty remains the same and hence, the four broader issues raised through several grounds are squarely covered in assessee's favour by the preceding decisions of the Coordinate Bench in assessee's own case. We thus, respectfully following the decisions in the preceding years, deal with the issues before us by reproducing the relevant extract on each of the issue for ready reference to adjudicate on the same.

6. On the first issue relating to entitlement to claim the benefit under India-UK Tax Treaty covering ground Nos. 6 to 8, the relevant extract from the decision of Coordinate Bench for AY 2016-17 in ITA No. 1256/Mum/2021 is extracted below:

*10. We have heard the rival submissions and perused the materials on record on this issue. It is observed that the assessee's case for A.Y. 2011-12, the coordinate bench has held that the assessee is entitled to the benefits of India - UK DTAA by following the previous year's decision of the Tribunal in the case of Linklaters LLP v. Dy. CIT (International Taxation) [2017] 79 taxmann.com 12 (Mum.-Trib.). The relevant extract of the said decision is cited hereunder for ease of reference:*

*9. We have gone through the orders passed by the AO as well as DRP and also the submissions made before us and also the orders passed by the Tribunal in case of M/s. Linklaters for earlier years. With the assistance of both the parties, it was noted that this issue has cropped up in various earlier years in case of M/s. Linklaters Le. A.Ys 1995-96, 1997-98, 1998-99, 1999-2000 and 2001-02 wherein, the Tribunal has decided this issue in favour of Linklaters by holding that it is eligible for the benefits of India - UK DTAA. Our attention has been drawn upon the orders passed by the Tribunal for all these years. In A.Y. 1995-96, the Tribunal vide its order reported in 132 TTJ 20 made elaborate discussion at paras 21 to 28 before arriving at the conclusion at paragraph 79 as under:-*

*"In view of the above discussions, as also bearing in mind the entirety of the case, we hold that the assessee was indeed eligible to the benefits of India-UK tax treaty, as long as entire profits and the partnership firm are taxed in UK whether in the hands of the partnership firm though the taxable income is determined in relation to the personal characteristics of the partners, or in the hands of the partners directly. To that extent, L.T.A. No. 1690/Mum/2015 objection taken by the learned Departmental Representative, on the question of admissibility of India-UK tax treaty benefits, is held as maintainable but rejected on merits".*

*10. Similarly, in other years, the Tribunal has followed its earlier order and held that M/s. Linklaters is eligible for the benefits of India-UK DTAA so long as entire profits of the partnership firm are taxed in UK, whether in the taxable income is determined in relation to personal characteristics of the partners or in the hands of the firm directly. In the year before us, there is no dispute on facts that ultimately tax has been paid either by the said firm or by its partners in UK. No distinction has been pointed out by the Ld. CIT-DR on facts or law. Under these circumstances, respectfully following the orders of the Tribunal in Linklaters's case for earlier years, we hold that the assessee is entitled to claim benefits of India UK- DTAA. Therefore, Grounds 8 to 8.4 are allowed.*

*11. From the above observation, it is evident that this issue being a recurring one, has been dealt with by the Tribunal since A.Ys. 1995-1996 in various years and has held that the assessee is entitled to the benefit of India-UK tax treaty. The AO has rejected the assessee's contention for the reason that the provisions of Article 4(1) read with Article 1(1) which states that unless the assessee can be said to be a resident of UK, the assessee cannot claim treaty benefits and unless the assessee is liable to tax in UK, the assessee cannot fulfill the requirement of being the resident in UK. The AO also stated that the assessee is not taxable unit with regard to the income of the LLP and the term 'liable to tax' cannot include a person who is not taxable in the home country. The AO further denied the assessee's claim by stating that since the assessee was not taxed, the assessee will not be covered under the expression 'liable to tax', thereby not treating the assessee as a resident of UK and denied the benefits of the said treaty.*

*12. The A.O. has held that as per UK laws, LLP is not a taxable entity and since the assessee is not liable to tax and only its partners are assessed to tax, the assessee cannot be given the benefit of the Tax Treaty. We are not in agreement with the view taken by the A.O. No doubt that the firm consists of Partners and the income of the firm are taxed in the hands of the partners, the assessee is also said to be incorporated and registered under the laws of UK. Other than the fact that the assessee has not paid tax, we have observed from the orders of the DRP and the A.O. that there is no detailed analysis as to why the said benefit is to be denied to the assessee. There has been no discussion neither in the DRP's order nor in the assessment order explaining why the income of the assessee is to be taxed in India. In the absence of such analysis, we are inclined to follow the decision of the Tribunal in assessee's case for earlier years which has held that the assessee was entitled to India - UK tax treaty benefits. In holding so, we allow ground nos. 12 to 14 raised by the assessee."*

6.1. In the appeal before us, there is no dispute on facts that ultimately tax has been paid either by the said firm or by its partners in UK, no distinction has been pointed out by Id. CIT DR on facts or law. Under these circumstances, respectfully following the above order, we hold that assessee is entitled to claim benefits of India-UK Tax Treaty. Accordingly, ground nos. 6 to 8 are allowed.

7. Second issue is in respect of taxability of income as FTS under the India-UK Tax Treaty which covers ground nos. 19 to 28. In this respect, the relevant extract from the said decision for Assessment Year 2016-17 (supra) is reproduced below:

*“14. The AO had taxed the above income as 'fee for technical services' by holding that the services rendered fall under the category of 'fees for technical services' as per the IT Act and as per the India - UK DTAA. Having denied the benefit of India - UK DTAA, the AO held that the impugned receipt was taxable in India. The AO relied on the decision of the Hon'ble Apex Court in the case of Continental Construction Ltd. v. CIT [1992] 60 Taxman 429/ 195 ITR 81, wherein it was held that the expression technical service' has a very broad connotation and it also includes Professional Services and also relied on the decision of the Hon'ble Apex Court in the case of CBDT v. Oberoi Hotels (India) (P.) Lal. [1998] 97 Taxman 453/231 ITR 148 which held that technical services include 'professional services. The A.O. also relied on various other decisions and held that the services rendered by the assessee to be technical in nature and the fees for included services are within the meaning of article 13 of the India-UK DTAA and taxed the whole income in India as per the Explanation 1 to section 9 of the IT Act which is suffice to say that if the services are utilized in India then the same amount to taxability in India. The AO also held that since the services are provided by professionals which requires expertise, the same are to be termed as technical and consultancy services', which services are made use by the recipient in different areas such as management, finance, risk management analysis and transaction services, etc. The assessee contended that the said services requires no technology and are provided by highly skilled professional not related to any specific industry. The assessee further submitted that the said services pertain to specific laws of the country performed by specific legal professionals. The assessee further contended that the said services rendered cannot be utilized by assessee's clients in future for their businesses in the area of management, financial and risk management analysis. The assessee reiterated that these are not 'make available' technical services. The contention of the assessee was not considered by the lower authorities, thereby making an addition of the impugned amount.*

15. *The Id. AR for the assessee contended that these are not 'make available technologies, which are utilized by the assessee's clients for future purposes. The Id. AR also stated that stated that the impugned services are provided to non-Indian parties in connection with the activities outside India and, therefore, cannot be deemed to arise in India. The Id. AR for the assessee relied on the decision of the Tribunal in assessee's case, wherein the same was held not to be 'fee for technical services and are not taxable under article 13. The Id. AR also relied on the decision of the tribunal in assessee's case for A.Ys. 2011-12 and 2015-16.*

16. *The Id.DR, on the other hand, controverted the same and stated that the said decision of the tribunal in assessee's case for previous years was challenged before the Hon'ble Jurisdictional High Court, thereby relied on the orders of the lower authorities.*

17. *Having heard the rival submissions and perused the materials on record. It is observed that the Tribunal in A.Y. 2013-14 and 2015-16 have dealt with this issue and has held that section 9 of the Act does not apply in the case of the assessee relating to 'fees for technical services' and that the assessee was entitled to the benefit of DTAA. The Tribunal also held that the Revenue has failed to prove otherwise that the same pertain to 'fees for technical services. The Tribunal also held that the provisions of India-UK DTAA would override the provisions of the Act, thereby holding the remuneration received by the assessee for providing legal services as not amounting to 'fees for technical services', where the provisions of section 9(1)(vii) of the Act is not applicable. The tribunal has also held that the revenue has failed to prove that the same would fall under the category of 'fee for technical services' as envisaged in article 13 of the India-UK DTAA and thereby holding that the same cannot be brought to tax as 'FTS' as per section 90(2) of the Act.*

18. *From the above observation, we are inclined to follow the said decisions, as the Revenue even during the impugned year has failed to controvert the contention of the assessee. Therefore, ground no. 20 along with the related grounds on this issue raised by the assessee are allowed.”*

7.1. On the above, Revenue failed to controvert the contentions of the assessee in the present appeal before us and therefore, respectfully following the same, there being no material change in the facts and the law, ground nos. 19 to 28 on this issue are allowed.

8. Third issue is in respect of non-existence of permanent establishment which covers ground nos. 14 to 18. In this respect, the relevant extract from the order for Assessment Year 2016-17 (supra) is reproduced below:

“19. The next issue pertains to whether the assessee has a permanent establishment in India. It is observed that the assessee has contended that it does not have a permanent establishment in India as defined in Article 5 of the India-UK DTAA and that the income earned by the assessee is in the nature of 'business income' and, hence, the same is taxable as per article 7 of India-UK tax treaty. The assessee further submitted that the personnel of the assessee who have rendered services was present in India for less than 90 days during the impugned year, thereby holding that there cannot be a permanent establishment of the assessee in India. The assessee also contended that only if the employee or personnel of the assessee has rendered services in India for a period aggregating to 90 days or more in the financial year, the same would constitute a 'permanent establishment. The Id. AR for the assessee placed reliance on the decision of the Tribunal in AY 2011-12, 2012-13 and 2015-16 which has held that since the period of stay in India by the personnel or employee of the assessee attributes to less than 90 days within 12 months period, it was held that the assessee do not have a permanent establishment in India during the year under consideration.

20. The Id. DR, on the other hand, controverted the same by stating that in all these years, the tribunal has remanded back this issue to the A.O. for verifying the fact as to whether the assessee's employees had stayed in India for less than 90 days or not to establish the fact that the assessee had a permanent establishment in India. The Id. DR prayed that the same may be remanded back to the A.O. for the impugned year also for the factual verification.

21. Having heard the rival submissions and perused the material available on record. It is observed that in the earlier years, the co-ordinate bench has remanded this issue back to the A.O. for verifying the number of days of stay in India by the employees of the assessee who had rendered services in order to ascertain whether the assessee had a permanent establishment in India during the impugned year. The Id. AR has placed reliance on the submissions dated 13-12-2019 made by the assessee before the A.O. stating that the personnel/employee of the assessee had stayed in India for rendering services for a total cumulative number of days amounting to 17 days. This fact has not been controverted by the Revenue. The AO has also not denied the said fact in the assessment order.

22. From the above observation, we are of the considered view that the assessee do not have a permanent establishment in India during the impugned year. As the period of stay of the employees of the assessee for rendering the services in India was only for 17 days and only when it amounts to 90 days or more, the assessee is said to have a permanent establishment in India as mandated by law. We hereby allow ground nos. 27 and 28 along with the related grounds raised by the assessee on this issue.”

8.1. From the above, it is noted that grounds raised by the assessee were allowed by holding that there is no permanent establishment in India during the year after verifying the number of days of stay in India

by the employees of the assessee, who had rendered services. It was noted that in the earlier years, the matter was remanded back on this issue to the file of Assessing Officer for verifying the facts as to assessee's employees had stayed in India for less than 90 days or not to establish the fact that assessee had a permanent establishment in India. In the present case before us, assessee had categorically furnished the details in respect of the employees staying in India for rendering the services in India. Ld. Counsel referred to the submission dated 12.01.2024 made before the ld. AO placed in the paper book, wherefrom at Para 18 it was noted that assessee had furnished the details of number of days in respect of services by personnel in India during the year. It was submitted that cumulative total number of days of furnishing of services is 4 days in the year under consideration. Extract of number of days for furnishing services in India in this respect is tabulated below:

| Name of Personnel | Period                   | No. of Days | Cumulative no. of days in previous year 2021-22 |
|-------------------|--------------------------|-------------|-------------------------------------------------|
| Savi Hebbur       | 16/11/2021 to 19/11/2021 | 4           | 4                                               |

8.2. From the above, it is evidently demonstrated by the assessee by making factual submission before the Assessing Officer that the period of stay of employees of the assessee for rendering services in India was only 4 days and thus, does not breach the threshold of 90 days or more resulting into non-existence of permanent establishment in India. Accordingly, on this issue, we allow the ground nos. 14 to 18 raised by the assessee.

9. Fourth issue is in respect of taxability of income under Article 15 of India-UK Tax Treaty which covers ground number 33 to 36. In this respect, the relevant extract from the aforesaid order for Assessment Year 2016-17 is reproduced below:

*“23. The last issue in this appeal pertains to whether the assessee was liable to be taxed in India wiiuci Article 15 India-UK DTAA. The assessee contended that article 15 is applicable only in the case of individuals where professional services or other independent activities either in their own capacity or in the capacity of the member of a partnership firm are rendered. The assessee further contended that the said DTAA between India-UK is different from that of India-USA where it specifically includes a firm of individuals. The assessee also stated that Article 15(1) of India France DTAA has also been made to a firm of individuals. The assessee has distinguished this with article 15 of the India UK DTAA where only the individual in his own capacity or an individual as a member of the partnership firm is covered under the said Act. The assessee further stated that only article 7 of the DTAA would be applicable in assessee's case which reads as under:*

*“(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is directly or indirectly attributable to that permanent establishment.’*

*24. From the above observation, the assessee has distinguished article 15 as compared with that of the article 7 of the DTAA where the assessee contends that only article 7 was applicable in assessee's case and not article 15. This contention of the assessee was not accepted by the lower authorities. The learned AR for the assessee relied on the decision of the tribunal in assessee's case for A.Y. 2012-13, wherein it was held that article 15 applies to determine taxable income in the hands of individuals and not the other persons and the assessee being a partnership firm will not come under the purview of article 15. The relevant extract of Article 15 of India UK DTAA is reproduced below for ease of reference:*

*(1) Income derived by an individual, whether in his own capacity or as a member of a partnership, who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character may be taxed in that State. Such income may also be taxed in the other State and if:*

*(a) he is present in that other State for a period or periods aggregating 90 days in the relevant fiscal year, or*

*(b) he, or the partnership, has a fixed base regularly available to him, or it, in that other State for the purpose of performing his activities;*

*(2) For the purpose of paragraph (1) of this Article an individual who is a member of a partnership shall be regarded as being present in the other State during days on which, although he is not present, another individual member of the partnership is so present and performs professional services or other independent activities of a similar character in that State.*

*(3) The term "professional services" includes independent scientific, literary artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants."*

*25. The Id. DR, on the other hand, stated that the decision of the tribunal has not reached finality, as the same have been appealed before the Hon'ble Jurisdictional High Court.*

*26. Having heard the rival submissions and perused the materials on record. This issue has been squarely covered by the decision of the tribunal in assessee's case for A.Ys. 2011-12, 2012-13 and 2015-16, wherein it was decided in favour of the assessee. The relevant extract of the decision in the assessee's case in Linklaters LLP v. Dy. CIT (International Taxation) [2018] 97 taxmann.com 464/ 172 ITD 459 (Mum. Tib.) for A.Y. 2011-12 is cited hereunder:*

*35. We have gone through the orders passed by the lower authorities and also article 15 of India-UK DTAA. It is noted by us that article 15 of DTAA deals with taxability of independent personal services. This article starts with the words "Income derived by an individual.in respect of professional services or other independent activities of similar character. It is noted by us that article 15 shall be applicable for determining taxable income in the hands of individual and not other persons. The assessee is certainly not an Individual. Thus this Article cannot be made applicable on the assessee being not an individual. Similar issue had come up before the Tribunal in the aforesaid case of M/s Linklaters (for AY 1995-96) wherein the Tribunal held at para 106 of the order that article 15 shall be applicable only when services are rendered by an individual. Thus, respectfully following the order of the Tribunal it is held that impugned amount of fee received by the assessee would not be liable to be taxed under Article 15 of India-UK DTAA. Thus, Grounds 10 to 10.5 are allowed in favour of the assessor.*

*27. From the above observations, we are of the view that as this issue has already been dealt with by the Tribunal extensively in the previous years, the same is also applicable for the impugned year as there is no change in facts for this year. The Tribunal has reiterated that Article 15 of India-UK DTAA is dealt with only for taxability of independent personnel services or independent activity of similar character and not for the assessee which is a partnership firm. On this context, ground nos. 38 and its related grounds raised by the assessee on this issue are allowed.*

9.1. From the above, we note that Article 15 of the India-UK Tax Treaty deals with taxability of independent personal services. It is in respect of income derived by an individual for professional services. In the present case, assessee is certainly not an individual. Accordingly, this Article cannot be made applicable on the assessee, being not an individual. Respectfully, following the decision of Coordinate Bench (supra), ground nos. 33 to 36 are allowed, there being no change in material fact and the law.

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

Order is pronounced in the open court on 11<sup>th</sup> November, 2025

Sd/-  
(Saktijit Dey)  
Vice President

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 11<sup>th</sup> November, 2025***

*MP, Sr.P.S.*

**Copy to:**

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai