IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "I", MUMBAI

BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER

AND

SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

1. **ITA NO. 3359/MUM/2023 (AY:2020-21)**
2. **ITA NO. 4549/MUM/2023 (AY:2021-22)**

IQVIA AG Erlenstrasse 4, 6343 Rotkreuz Switzerland, C/o-IQVIA Consulting and Information Services India Pvt. Ltd. Unit No. 902, 9th Floor, Supreme Business Park, Hiranandani Gardens, Powai, Mumbai-400 076. **PAN: AACCI5872K**	***Vs.***	**The Deputy Commissioner of Income Tax (International Taxationa)-2,** 601, 6th floor, Cumballa Hill MTNL TE Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai-400 026
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri Madhur Agarwal & Shri Fenil Bhatt, Ld ARs.**
Department Represented by	**:**	**Shri Krishna Kumar, Ld. DR**
Date of conclusion of Hearing	**:**	**10.10.2025**
Date of Pronouncement	**:**	**02.12.2025**

O R D E R

PER RAJ KUMAR CHAUHAN (J.M.):

1. Both the appeals are filed by the appellant/assessee against the assessment order dated 27.07.2023 and 16.10.2026 passed by the AO in pursuant to the direction issued by Ld. DRP, Mumbai u/s 144C(5) of the Income Tax Act, 1961 [hereinafter referred to as "*the Act*"] vide order dated 28.06.2023 and 26.09.2023 respectively, wherein addition was made on income from royalty as per Indo-Switzerland Treaty at Rs. 37,51,81,193/- and Rs. 14,22,58,335/- respectively.

2. Since the facts of both the appeals filed by the assessee are exactly same and parties are same, hence both the appeals are taken up together in order to avoid the multiplicity of the decision. Firstly, we are taking ITA No. 3359/Mum/2023 for AY 2020-21 as lead case.

3. The brief facts as culled out from the proceedings before the authorities below are that the assessee is a company incorporated under the laws of Switzerland and has its entire management and control in Switzerland. The Assessee is engaged in the business of providing market research reports on pharmaceutical sector to it's customers across the globe at a predetermined subscription price. The Company mainly collects

process and utilizes the data and information, particularly in the fields of medicine and pharmaceuticals for the delivery of reports through online IQVIA Knowledge link. The assessee company filed its return of income for A.Y 2020-21 on 13.02.2021 declaring total income of Rs. 58,87,36,450/-. The case was selected for complete scrutiny under CASS and notice u/s. 143(2) of the Act dated 29.06.2021 was issued and duly served on the assessee. Thereafter notices u/s 142(1) of the Act dated 27.12.2021 was issued. In reply to the said notice, the assessee has claimed exemption from taxation for its income earned under the head Subscription fees, Commission and consultancy as per Art.7 r.w.s Art. 5 of India - Swiss DTAA Treaty. Further, the assessee was requested to show cause as to why the Subscription fees amounting to Rs. 37,51,81,193 /- received during the year should not be treated as "Royalty" and as to why the same should not be added to the total income for the year under consideration. Vide reply dated 21.09.2021, the assessee averred that as per business module, the assessee enters into an Agreement with its Customers for providing the Review Reports ('IQVIA Reports') and the Agreement sets out the details of the modules that are required by the customers and permitted to be accessed with applicable fees. The IQVIA Reports are akin to a magazine that provide latest information and developments and it relates to database,

information etc. relevant to the Pharmaceutical industry. After collecting the relevant data through various forms mainly from doctors, stockiest, dealers and other sources, the Company then merely compiles / extrapolates the data to provide statistical information to its Customers in the form of IQVIA Reports. The Company grants non-exclusive and non-transferable license to use the IQVIA Reports provided to the Customers and thereby it restricts the use of information by the Customer for its own benefit, back-up, etc. During the year under consideration, the Company has delivered to its Indian Customer, majorly the following types of IQVIA Reports:-

i) World Review Molecule

ii) World Review Pack

iii) Customized Insight.

4. The Company during the Financial Year 2019-20 received an income of Rs. 37,51,81,193/- as Subscription Income from its third-party Indian Customers for online subscription of IQVIA Reports. It is submitted by the assessee that the subscription income is in the nature of business income and is not in the nature of 'Royalty' under the Act as well the Tax Treaty as clarified in the ensuing paragraphs and therefore not taxable in India in absence of a PE. As per section 90(2) of the Act, the assessee is governed by

the beneficial provisions of the Tax Treaty as compared to the provisions of the Act, wherever is applicable. It is further submitted that in the assessment proceedings of AY 2013-14 to AY 2019-20, the Ld. DRP upheld the order of AO who held that Subscription Income received by the Company is in the nature of 'Royalty' under section 9(1)(vi) of the Act as well as under Article 12(3) of the Tax Treaty on the basis that it is consideration for the transfer of a right to use any copyright as well as for imparting information concerning industrial, commercial or scientific knowledge, experience or skill. However, the Hon'ble ITAT vide its order dated 13 July 2020 / 11 May 2022 has deleted the impugned treatment of Subscription Income as Royalty for AY 2013-14, AY 2014-15, AY 2015-16 and AY 2016-17. It was further stated that the order of the appeal for AY 2017-18, 2018-19 and 2019-20 was awaited from the Hon'ble ITAT. It was therefore stated that subscription income is that taxable as Royalty Income because the case is covered by the order of assessee's own earlier cases as mentioned above wherein the Hon'ble Tribunal has deleted the impugned treatment of Subscription Income as Royalty.

5. Further, it is stated that the subscription payments are not towards transfer or use or right to use any copyright; the subscription income is not

towards imparting any information. It was therefore submitted that the subscription income of Rs. 37,51,81,193/- received by the company from the Indian Customers is not towards transfer of or use or right to use any copyright or for imparting information concerning industrial, commercial or scientific knowledge, etc. and accordingly such income are not taxable in India as Royalty. The AO found the submission of the assessee not acceptable on the ground that the Indo-Swiss DTAA does not contain a make available clause. Ld. AO relied on the judgment of Hon'ble Supreme Court of India in the case of Ishikawajima-Harima Heavy Industries Ltd v. DIT, (2007) 288 ITR 408 (SC) wherein Hon'ble Apex Court had expressed the satisfaction of twin condition of (i) Rendering the services and India and (ii) utilization of services in India are satisfied for taxing subscription fees as Fees for Technical Services (FTS). It was observed that it is not the case of the assessee that the services are for a source outside India and the services rendered by the assessee, irrespective of the fact from where they are rendered, have been utilized in India, thus paving the way for taxability as FTS. It was further observed that the nature of services clearly falls under the concept of Fees for technical services, both under the Indo-Swiss DTAA as well as under the Act. Accordingly, in the draft assessment order,

the subscription fees was treated as Royalty / Fees for Technical services taxable @ 10% as per Indo-Switzerland Treaty.

6. The assessee filed the objection before the Ld. DRP who vide order dated 28.06.2023 u/s 144C(5) of the Act concluded that the receipts are Royalty as per paragraph 12(3) being for the use of, or the right to use, or scientific work, including or for the use of, or the right to use, any or for information, concerning industrial, commercial or scientific experience. The said payments are under consideration for the rendering of any managerial, technical or consultancy services, including the provision of services by technical or other personnel. It was therefore noticed that the DTAA does not contain a make available clause and therefore, the impugned services would squarely fall under the ambit of FTS as per the provisions of clause 9(1)(vii)/ explanation 2 and the explanation (at the end of the section 9), which was introduced by the Finance Act, 2010, with retrospective effect from 01.06.1976. Accordingly, Ld. DRP concluded that the Hon. ITAT, Mumbai, has ruled in favour of the Applicant and in order to keep the matter legally alive, and since the directions of the DRP are not appealable by the Department, the objections of the assessee are dismissed and AO was directed to give effect to the aforesaid directions in terms of the

provisions of sub-section 144C(13) of the Act. Penalty proceedings were also initiated separately.

7. Aggrieved by the impugned order, assessee preferred appeal before us and has raised the following grounds of appeal:-

> ***"Ground No. 1 - Non-taxable business income of Rs. 37,51,81,193 /- in the nature of Subscription Fees for standard online market research database on pharmaceutical sector taxed as Royalty under Section 9(1)(vi) of the Income-tax Act, 1961 ('the Act') and under Article 12(3) of the India- Switzerland Tax Treaty ('Tax Treaty')***
>
> *1. On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer (AO) / Dispute Resolution Panel (DRP) erred in concluding that the Subscription Income received by the Appellant for providing access to its online database of statistically compiled pharmaceutical data collected from public domain ("IQVIA Reports") is in the nature of 'Royalty as defined under section 9(1)(vi) of the Act as well as under Article 12(3) of the Tax Treaty.*
>
> *2. The AO / DRP erred in not appreciating that the IQVIA Reports provided by the Appellant are basically a statistical compilation of data collected from doctors, stockiest, dealers and other sources i.e. data available in the public domain and none of the clauses of Explanation 2 of section 9(1)(vi) of the Act which defines the term 'Royalty' are satisfied and also does not fall within the definition of 'Royalty' as per Article 12(3) of the Tax Treaty.*
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> *3. The Appellant prays that addition of Subscription Fees received of Rs. 37,51,81,193/- as Royalty under the Act as well as Article 12(3) of the Tax Treaty, be deleted.*
>
> ***Ground No. 2 - Non-taxable business income of Rs. 37,51,81,193 /- in the nature of Subscription Fees for standard online market research***

database on pharmaceutical sector taxed as Fees for Technical Service under Section 9(1)(vii) of the Income-tax Act, 1961 ('the Act') and under Article 12(4) of the India- Switzerland Tax Treaty ('Tax Treaty')

1. On the facts and in the circumstances of the case and in law, the AO / DRP has erred in not appreciating the fact that contract with the customers is not for rendering the service but to provide access to the market research on non-exclusive basis and hence at the outset the subscription income received for providing such access to market research report is not in the nature of fees for technical service under the provisions of Section 9(1)(vii) of the Act as well as Article 12(4) of the Tax Treaty.

2. The AO / DRP erred in not appreciating that none of the clauses of Explanation 2 of section 9(1)(vii) of the Act which defines the term 'Fees for Technical Service' are satisfied and also does not fall within the definition of 'Fees for Technical Service' as per Article 12(4) of the Tax Treaty.

3. The Appellant prays that addition of Subscription Fees received of Rs. 37,51,81,193/- as Fees for Technical Service under the Act as well as Article 12(4) ofthe Tax Treaty, be deleted.

Ground No. 3 – Without prejudice to Ground No. 1 above, erroneous computation of tax on the assessed income after levying surcharge and education cess as against the beneficial rate of tax provided under the India- Switzerland Tax Treaty ('Tax Treaty')

1. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in computing tax on the Subscription Fee income at 10.92 percent after levying surcharge and education cess as against the tax rate of 10 percent provided under the Tax Treaty without levying surcharge and education cess.

2. The Appellant has also filed a rectification application with the AO for the above mistake apparent from the record.

3. In view of the above, the AO should be directed to re-compute the tax on assessed income correctly after rectifying the above error apparent from the record and the excess consequential tax demand be deleted.

Ground No. 4 - Levy of Interest under Section 234A of the Act of Rs. 4,62,147

1. On the facts and circumstances of the case and in law, the levy of interest under Section 234A of the Act is consequential in nature and should be deleted or reduced once the relief as sought under Ground no. 1, 2 and 3 is allowed to the Appellant.

Ground No. 5 – Levy of Interest under Section 234B of the Act of Rs. 61,61,960

1. On the facts and circumstances of the cacase and in law, the levy of interest under Section 234B of the Act is consequential in nature and should be deleted or reduced once the relief as sought under Ground no. 1, 2 and 3 is allowed to the Appellant.

The Appellant craves, leaves to alter, amend, modify cancel and /or add any of the grounds of Appeal."

8. On perusal of the grounds, it is noticed that Ground no. 1 and 2 pertains to grievances regarding the business income of Rs. 37,51,81,193/- in the nature of subscription fees considered as Royalty u/s 9(1)(vi) of the Act. Ground no. 3 to 5 are consequential grounds, hence we proceed to decide Ground no. 1 and 2 simultaneously.

9. We have heard Ld. AR and Ld. DR and examined the record. Both the parties have filed their written submission. At the outset, Ld. AR brought to our notice that the assessee has raised additional grounds challenging the

limitation in passing the assessment order relying on the decision of Hon'ble Madras High Court in the case of ROCA Bathrooms Products Pvt. Ltd. and the SLP of the department against the said order has been admitted by the Hon'ble Supreme Court and pending for adjudication, therefore requested to keep the said issue open and in view of the submissions rendered, Ld. AR requested to adjudicate the appeal on merit.

10. In view of the SLP pending before the Hon'ble Supreme Court with respect to issue raised in additional ground, in view of submission of assessee, the same issue is left open and we now proceed to decide the grounds of appeal on merit.

11. In the written arguments, Ld. AR reiterated the same facts as submitted before the lower authorities and in addition, Ld AR relied on the judgment of Hon'ble Supreme Court as well as judgment of Tribunal in assessee's own case for earlier years i.e. AY 2013-14 to AY 2019-20 which are contained in page no. 141 to 218 of the paper book. It is therefore submitted that the case of assessee for the year under consideration is covered by the decision of Mumbai Tribunal in assessee's own case for AY 2019-20 passed in ITA No. 667/Mum/2022 order dated 20.03.2023.

12. On the other hand, Ld. DR filed the written submission and relied on the order of Ld. DRP and AO and nothing new has been brought to our knowledge which may contradict to the findings rendered by the Mumbai Tribunal in assessee's own case for AY 2019-20 passed in ITA No. 667/Mum/2022 order dated 20.03.2023

13. We have considered the rival submissions and examined the findings rendered by the Jurisdictional ITAT in ITA No. 667/Mum/2022 (supra) in assessee's own case. The relevant portion of the findings rendered by the Coordinate Bench of ITAT is extracted below:-

"2. The main issue arising in the present appeal is with regard to the taxability of subscription income received by the assessee as royalty u/s 9(1)(vi) and under Article 12(13) of the India-Switzerland Tax Treaty. The fact in brief is that assessee is a company incorporated under laws of Switzerland and has its entire management and control in Switzerland. The assessee is engaged in the business of providing market research report of pharmaceuticals sector to its clients. For this purpose, Iqvia AG (foreign company) the assessee collects relevant data through various sources/forms mainly from doctors/stockist/dealers which is compiled in statistical and strategic manner in its reports.

The assessee company has filed its return of income for assessment year 2019-20 on 29.11.2019. The case was selected for scrutiny assessment under CASS and notice u/s 143(2) of the Act was issued on 22.09.2019. During the course of assessment the assessing officer noticed that assessee had earned following income during the year under consideration:-

"(i) Commission Income Rs.6,61,872/-

(ii) Subscription fees *Rs.53,75,62,440/-*

(iii) Interest Income earned on debenture *Rs.18,55,90,049/-*

(iv) Interest Income earned on external commission borrowings Rs.2,33,80,101/-

The assessing officer noticed that out of the aforesaid income the assessee has claimed exemption from taxation for its income earned under the head subscription fees and commission as per Article 7 r.w. Article 5 of India-Switzerland DTAA Treaty. The assessing officer asked the assessee to show cause as to why the subscription fees amounting to Rs.57,75,62,440/- received from Indian customer should not be treated as royalty under the Income Tax Act, 1961 as well as under India-Switzerland DTAA Treaty. In this regard, the part of the reply made in the submission of the assessee is as under:

> *"1. Background*
>
> *1.1 IQVIA AG (the Company) is a company incorporated under the Laws of Switzerland and has its entire management and control in Switzerland.*
>
> *1.2 IQVIA AG is a fax resident of Switzerland under the India-Switzerland Tax Treaty ("Tax Treaty') The Tax Residence Certificates issued by the Cantonal Tax Administration, Zug for the calendar year 2018 and 2019 is already shared vide our submission letter dated 27 January 2020 Accordingly, the Company is eligible to take the recourse to the beneficial provisions of the Tax Treaty.*
>
> *1.3 The Company is engaged in providing market research reports on pharmaceutical sector to its Customers across the globe at a predetermined subscription price. The Company mainly collects, process and utilize the data and information, particularly in the fields of medicine and pharmaceuticals for the delivery of reports through online IQVIA Knowledge link.*
>
> *1.4 The Company enters into an Agreement with its Customers for providing the Review Reports (IQVIA Reports) The Agreement sets out the details of the modules that are required by the Customers and permitted to be accessed with applicable fees (sample copy of the report is enclosed as Exhibit A)*

1.5 The IQVIA Reports based on Modules selected, are statistical database compilations which provide geo-economical data about a pharma molecule (medicine) thereby providing insights into the economic and political issues affecting the pharmaceutical and healthcare industries in a jurisdiction The IQVIA Reports are akin to a magazine that provide latest information and developments and it relates to database, information etc. relevant to the Pharmaceutical industry. Further, IQIVA Reports are standard data reports of the Module selected by Customers.

1.6 For the purpose of its database and IQVIA Reports, the Company collects relevant data through various forms mainly from doctors, stockiest, dealers and other sources The Company then merely compiles/extrapolates the data to provide statistical information to its Customers in the form of IQVIA Reports.

1.7 The Company grants non-exclusive and non-transferable license to use the IQVIA Reports provided to the Customers and thereby it restricts the use of information by the Customer for its own benefit, back-up, etc.

1.8 During the year under consideration, the Company has delivered to its Indian Customer, majorly the following types of IQVIA Reports:

a) World Review Molecule. The said reports provides access to the database to the Indian Customers, of all details / characteristics of the selected molecule. Further the data comprises of the statistical data of 73 Countries across the Globe

b) World Review Pack The said reports provides access to the database to the Indian Customers, of selected details / characteristics of the selected molecules based on the customer's requirement Further the data comprises of the statistical data of 73 Countries across the Globe

c) Customized Insight: The said reports provides access to the database to the Indian Customers, of selected details/characteristics of selected molecules and for the selected countries based on requirement of the Indian Customers

1.9 The Company has during the Financial Year 2018-19 received an income of Rs. 53,75,62,440/- as Subscription Income from its third party Indian Customers for

online Subscription of IQVIA Reports on which taxes have been withheld at source by some of the Indian customers aggregating to Rs.3,46,25,688/-

1.10 In the given notice dated 15 September 2021, the Company have been requested to show cause as to why the Subscription Income should not be taxable as Royalty as assessed in Company's own case for the earlier assessment years.

1.11 In this regard, we submit that the subscription income is in the nature of business income and is not in the nature of Royally under the Act as well the Tax Treaty as clarified in the ensuing paragraphs and therefore not taxable in India.

1.12 As mentioned above IQVIA AG is resident of Switzerland, under Section 90(2) of the Act and accordingly we are governed by the beneficial provisions of the Tax Treaty as compared to the provisions of the Act, wherever applicable."

The assessee has also submitted that in the earlier years for assessment year 2013-14 to 2015-16 the ITAT, Mumbai has deleted the impugned addition made by the assessing officer by treating the subscription income as royalty. However, the assessing officer vide draft assessment order u/s 143(3) r.w.s 144C dated 24.09.2021 has not agreed with the submission of the assessee and held that subscription fees received by the assessee is in the nature royalty under the provisions of Sec.9(vi) of the Act and Article 12(3) of the Indo-Swiss DTAA. The assessing officer also stated that in the assessment proceedings for assessment year 2013-14 to 2015-16 the Dispute Resolution Panel has upheld the order of the assessing officer and held that subscription income received by the company is in the nature of royalty u/s 9(1)(vi) of the Act as well as under Article 12(3) Tax Treaty.

3. The assessee has filed detailed objection against the addition made by the assessing officer before the DRP. The DRP issued directions vide their order u/s 144C(5) of the Act on 24.01.2022 stating that for the assessment year 2013-14 & 2014-15 identical issue in the assessee's own case has been decided in favour of the assessee by the ITAT, Mumbai. However, to just keep the issue alive and to protect the interest of revenue rejected the objection filed by the assessee.

4. In conformity with the directions issued by the DRP the assessing officer has passed final assessment order u/s 143(3) r.w.s 144C(13) of the Act on 15.02.2022 and assessed

the aforesaid subscription fees as royalty u/s 9(1)(vi) of the Act as well as Article 12(3) of the Act Tax Treaty.

5. During the course of appellate proceedings before us at the outset the ld. Counsel submitted that similar issue on identical facts has been adjudicated in favour of the assessee by the coordinate bench of the ITAT in assessee's own case for assessment year 2013-14 to 2017-18 and placed the copies of order of the ITAT in the paper book.

On the other hand, the ld. D.R relied upon the order passed by the lower authorities.

6. Heard both the sides and perused the material on record. It is undisputed fact that in assessee's own case for earlier years for A.Y. 2013-14 to 2017-18 the ITAT, Mumbai has decided impugned issue in favour of the assessee and deleted the addition made on account of treating the subscription income as royalty by the assessing officer.

7. With the assistance of the ld. Representative we have gone through the decision of ITAT, Mumbai in the case of M/s Iqvia AG vide ITA No. 665/Mum/2022 for AY 2017-18 dated 10.10.2022. The relevant operating part of the decision is reproduced as under:

> *"7. Considered the rival submissions and material placed on record, we observe that Coordinate Bench in assessee's own case in ITA.No.1203/Mum/2021 dated 11.05.2022 for the A.Y. 2016-17 in the immediate previous assessment year held as under: -*
>
> *"10. We have considered the rival submissions and perused the material available on record. We find that the Co–ordinate Bench of the Tribunal in assessee's own case in IMS AG (now known as IQVIA AG) v/s DCIT, in ITA no.6445/Mum/2016, vide order dated 13.07.2020, for the assessment year 2013–14, while holding that subscription fees received by the assessee is not taxable as Royalty under the provisions of DTAA, observed as under:–*
>
> *"3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is a company incorporated, and fiscally domiciled, in Switzerland. The assessee company is engaged in providing market research report on pharmaceutical sector to its customers across the world at a predetermined subscription prices, The company collects, processes and utilizes the*

data and information, particularly in the field of medicine and pharmaceuticals for the delivery of reports through online IMS knowledge link. The company enters into agreements with its customers for providing the review reports (IMS reports) setting out the details of modules required to be accessed by the customers and the consideration for these services. In essence thus, the IMS reports, based on module selected, are statistical database compilations, providing geo economical data, about a pharma molecule, providing insight into the connected issues relating to information and developments. The licence access so granted is a non-exclusive and nontransferable right. It is consideration received, as allowing this non-exclusive, non-transferable access to the database and IMS reports which is subject matter of dispute before us. The authorities below have held that in the light of Hon'ble Karnataka High Court's judgment in the case of CIT Vs Wipro Ltd [(2011) 203 Taxman 621 (Kar)] and other judgments by the same Hon'ble High Court, which have been followed by a coordinate bench of this Tribunal as well, these receipts are required to be taxed as royalty under section 9(l)(vi) as also under article 12(3) of the Indo Swiss DTAA. The assessee is aggrieved and is in further appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. We find that Hon'ble jurisdictional High Court, in the case of DIT Vs Dun and Breadstreet Information Services India Pvt Ltd[(2012) 20 taxmann.695 (Mum)] has, while approving and concurring with the approach of Authority for Advance Ruling in the case of this very assessee, observed as follows:

> *"The assessee had imported business information reports from Dun and Bradstreet, USA, and made remittances in respect thereof without deducting tax at source. The Assessing Officer held that the assessee was liable to deduct tax at source and accordingly passed an order under section 195 read with section 201 of the Act. The appeal filed by the assessee was dismissed by the Commissioner of Income-tax (Appeals). On further appeal, the Income-tax Appellate Tribunal set aside the order passed under section 195 read with section 201 of the Act by following its decision in the assessee's own case for the assessment year 2002-03 in I.T.A. No. 1773/Mum/2006 and the decision*

of the Authority for Advance Rulings on identical facts in the case of Dun and S.A. Bradstreet Espana In re Authority for Advance Rulings No. 615 of 2003 [2005] 272ITR 99 (AAR)), D and B Europe Authority for Advance Rulings No. 657 of 2005, dated October 27, 2005, and D and B UK Authority for Advance Rulings No. 656 of 2005, dated October 27, 2005. In all these cases the Authority for Advance Rulings held that the sale of very same business information reports by the subsidiaries of Dun and Bradstreet US in Spain, Europe and V. K. to the assessee did not attract the provisions of section 195 of the Act. Though the decision of the Authority for Advance Rulings is not binding in the present case, since the decision of the Authority for Advance Rulings relates to the very same business information reports imported by the petitioner and no fault in the decision of the Authority for Advance Rulings is pointed out, we see no reason to interfere with the decision of the Income-tax Appellate Tribunal."

6. The AAR's decision, which is so concurred with, inter alia states as follows:

"The instant case it is not a case of paying consideration for the use of or right to use any copyright of literary, artistic or scientific work or any patent trade mark or for information of commercial experience. The Commissioner sought to bring the payments under royalty/fees for technical service for the reason that the BIRs are copyright protected and end-users are required to use for their own purpose and the analysis of raw data provided in the BIRs would be similar to that of providing a technical or consultancy services. We have already mentioned above that a BIR is a standardized product of D&B, it provides factual information on the existence, operation, financial condition, management and experience line of business, facility and location of a company; it also provides special events like any suit, lien, judgment or previous or pending bankruptcy. Further, banking relationship and accountants, information like whether it is a patent company or authority concerned, has any branches etc. It also gives a rating of the company. The informations that are provided in a BIR are said to be publicly available; they are collected and complied by D&B associates. A BIR is accessible by any subscriber on payment of requisite price with regular internet access for

which no particular software or hardware is required. The applicant states that access to data base of the applicant is available to public at large at a price as in case of buying a book and it is not a pre-requisite, that BIR must be downloaded by DBIS only and in fact some clients, such as Expert credit guarantee corporation, in fact, access the server themselves to download BIR. The applicant does not have any server in India for the use of DBIS. Indeed the applicant has specifically averred that the copyright in the BIR would neither be licensed nor assigned to either the DBIS or the Indian customer. From these aspects it is clear that the aforementioned ruling of the Authority is distinguishable on facts. If a group of companies collects information about the historical places and places of interest for tourists in each country and all informations are maintained on a central computer which is accessible to each constituent of the Group in each country, can a supply of such information electronically on payment of price be treated as royalty or fee for technical services ? We think not.

The next case relied upon by the Commissioner is also a ruling of the Authority in Ericsson Telephone Corpn. India AB, In re [1997] 224ITR 2031. In that case the applicant was a company incorporated in Sweden. It provided, inter alia, services within radio and telecommunication. It entered into contracts with three Indian companies for the introduction of the cellular system of telecommunication in India and opened branch offices in India at New Delhi, Bombay and Madras. The Indian company informed applicant that while making payments under the agreement they would withhold income tax at 55% as provided in the Finance Act, 1995. According to the applicant tax deduction could not have exceeded 5,5% of the gross payments, as the net profit on the contract would not be more 10%, It was, therefore, not a case of whether the amount paid could be termed as fee for technical services. It was admittedly a case of payment of fee for technical services.

For the abovementioned reasons, payments made by the DBIS to the applicant for purchases of BIRs do not answer the description of 'royalties' within the meaning of para 3 of article 13 of the treaty. So payments made by the DBIS to the applicant cannot be regarded as royalty payment. In our

view, the applicant has rightly equated the transaction of sale of BIRs to sale of a book, which does not involve any transfer of intellectual property or a book."

7. Article 12(3) of Indo Swiss DTAA, that we are currently dealing with, is verbatim the same as Article 13(3) of India Spain DTAA that Hon'ble Authority of Advance Ruling was dealing with. The conclusions so arrived at by the Authority for Advance Ruling, which now stand approved by Hon'ble jurisdictional High Court, are equally applicable in the context of Indo Swiss DTAA as well. It is only elementary that when the assessee is not taxable under the provisions of the respective DTAA, there is no occasion to examine the taxability under the Income Tax Act 1961, since the provisions of the Income Tax Act 1961 apply only when these provisions are more favourable to the assessee vis-a-vis the provisions of the applicable DTAA.

8. When the above position was brought to the notice of the learned Departmental Representative, he simply placed his reliance on the stand of the authorities below. He could not, however, neither point out any legally distinguishable features between the case before Hon'ble jurisdictional High Court visa-vis this case, nor any other reasons for not following the binding precedent from Hon'ble jurisdictional High Court. Once our Hon'ble jurisdictional High Court has expressed a view, it cannot be open for us to be swayed by a contrary view expressed by any other Hon'ble High Court. No decision from Hon'ble jurisdictional High Court, contrary to the above decision of Hon'ble jurisdictional High Court, was brought to our notice.

9. In view of the above discussions, as also bearing in mind entirety of the case, we delete the impugned addition of Rs.23,01,00,058 as royalty in the hands of the assessee. The assessee gets the relief accordingly.

10. No other issues were pressed before us. In any event, the other points raised in the appeal were in the nature of consequential levies. Once the main addition itself is deleted, all these issues are rendered academic."

11. We further find that similar findings were also rendered by the Co– ordinate Bench of the Tribunal in assessee's own case in IMS AG (now known as IQVIA AG) v/s DCIT, in ITA no.7291/Mum./2017, vide order dated 13.07.2020, for the assessment year 2014–15. The learned Departmental Representative could not show any reason to deviate from the aforesaid orders and no change in facts and law was alleged in the relevant assessment year. The issue arising in the present appeal is recurring in nature and has been decided in favour of the assessee by the decision of the Co–ordinate Bench of the Tribunal for preceding assessment years. Thus, respectfully following the orders passed by the Co–ordinate Bench of the Tribunal in assessee's own case cited supra, we uphold the plea of the assessee and delete the impugned addition in respect of subscription fees received by the assessee. As a result, ground nos. 1(1) to 1(4), raised in assessee's appeal are allowed." 8. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2016-17 and also following rule of principle of consistency, we allow the ground raised by the assessee."

We find that issue raised before the Tribunal in this year are similar to preceding years as discussed supra, there is nothing before us on hand differs from the issue raised in the cases cited supra so as to take a different view on this issue. Therefore, the issue on hand being squarely covered following principle of consistency we find merit in the submission of the assessee and allow the ground no. 1 raised by the assessee."

14. Therefore, respectfully following the aforementioned judgment of Coordinate Bench in assessee's own case, we uphold the plea of the assessee and delete the addition in respect of subscription fees which is not taxable as 'Royalty'. Accordingly, we set aside the impugned order passed by AO in pursuant to the direction of Ld. DRP. Resultantly, Ground No. 1 & 2 raised by the assessee are allowed. The other grounds no. 3 to 5 are consequential in nature, therefore needs no specific adjudication.

15. In the result, the appeal filed by the assessee is allowed in above terms.

ITA No. 4549/Mum/2023 (AY 2021-22)

16. Since, we have already decided the similar grounds of appeal as raised by the assessee in ITA No. 3359Mum/2023 for AY 2020-21, therefore the findings in ITA No. 3359/Mum/2023 as returned above shall mutatis mutandis apply to this appeal also. Hence, the similar grounds raised in this appeal are also allowed.

17. In the result, both the appeals filed by the assessee are allowed in above terms.

Order pronounced in the open court on 02.12.2025

Sd/-	**Sd/-**
(PADMAVATHY S)	**(RAJ KUMAR CHAUHAN)**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

Mumbai / Dated 02.12.2025
Dhananjay, Sr.PS

Copy of the Order forwarded to:

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

5. Guard file.
//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai