IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : D : NEW DELHI

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.1220/Del/2024
Assessment Year : 2018-19

Youcloud DMCC, Unit 1501, 15th Floor, Fortune Executive Tower, Ciuster T Jumeirah Lake Tower, Dubai,UAE. PAN: AABCY5529Q	v.	DCIT, International Taxation, 3rd Floor, Vanijya Nikunj, HSIIDC Building, Udyog Vihar, Phase V, Gurgaon-122001, Haryana.
(Appellant)		(Respondent)

Assessee by	:	Shri Naman Maloo, CA (through VC)
Revenue by	:	Shri M.S. Nethrapal, CIT, DR
Date of Hearing	:	14.01.2026
Date of Pronouncement	:	06.02.2026

ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal in ITA No.1220/Del/2024 for assessment year: 2018-19 has been filed by the assessee against the re-assessment order dated 25th January, 2024 passed by the learned Assessing Officer(hereinafter called "the AO") u/s 147 r.w.s. 144C(13) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), wherein addition to the tune of Rs.1,02,54,839/- has been made in the

hands of the assessee , which re-assessment order u/s 147 of the Act has been passed by the AO in pursuance to the directions given by the Ld. DRP dated 06.12.2023 u/s 144C(5) of the Act(DIN & Document No. ITBA/DRP/M/ 144C(5)/2023-24/1058517816(1)). The AO had earlier issued draft re-assessment order dated 20th March, 2023 u/s 144C(1) of the Act, wherein the AO proposed an addition to the tune of Rs.1,02,54,839/- which additions were challenged by the assessee by filing objection before the ld. DRP which objections stood dismissed by ld. DRP , and which culminated into an directions dated 06.12.2023 issued by ld. DRP u/s 144C(5) of the Act.

2. The brief facts of the case are that in the case of the assessee, specific information was flagged as per High Risk Management Strategy formulated by the CBDT under clause (i) to Explanation 1 to Section 148 of the Act. As per the specific information , the assessee namely M/s Contec Technologies DMCC, Dubai (now known as Youcloud DMCC, Dubai) had received Rs.1,02,54,839/- from M/s Comviva Technologies Ltd., India(In short 'Comviva, India') , as Fee for Technical Services (FTS) during the financial year 2017-18, but, the same was not offered to tax in India by the assessee. It was also observed by the AO that the remitter Comviva , India has not deducted TDS on such remittance. During the verification proceedings of Form No. 15CA/15CB in the case of Comviva , India, it was found that payments were in the nature of FTS , and the same were liable to tax in India as per provisions of the 1961 Act. The AO

further observed that the assessee has not filed return of income for the impugned assessment year. Re-assessment Proceedings u/s 147/148 of the 1961 Act were initiated by the AO against the assessee. Order u/s 148(1)(d) dated 31.03.2022 was also passed by the AO .Statutory notice dated 31.03.2022 u/s 148 was issued by the AO to the assessee. In response to the notice thereof, the assessee filed return of income on 08.12.2022. The AO observed that payments received by the assessee are fee for technical services , and chargeable to tax in India. The AO issued statutory notices u/s 143(2) and 142(1) of the Act. The AO further observed that the said M/s Comviva ,India was held to be an 'assessee in default' u/s 201(1)/201(1A) of the Act for non-deduction of TDS on payments made to the assessee as the said payments were in the nature of FTS chargeable to tax in India.

2.2 The assessee submitted before the AO that it is a UAE based company. The assessee submitted that the assessee is a system integrator in providing messaging service, namely SMS, chatbot, MMS, e-mail, etc. to the mobile network operators in the UAE. It supports in installation, commissioning and support of the platforms. It provides main services of (a) installation of hardware, software of SS& related products in Dubai & Abu Dhabi (b) Testing of telecom application (c) Performance testing and scalability of testing. The AO observed that the assessee admitted during the assessment proceedings that the nature of services were technical in nature, but the assessee has explained that the reason for not offering to tax the aforesaid income was absence of FTS

clause in India-UAE DTAA. The AO observed that the assessee has claimed that it did not offered the aforesaid income to taxation as the said receipts as per assessee are to be treated as business profits , and since the assessee does not have any PE in India, the same cannot be brought to tax in India in the absence of any specific clause concerning FTS in the India-UAE DTAA. The assessee also claimed that the payer of the income namely Comviva , India has duly filed Form No. 15CA wherein it is declared by the payer that the income is not chargeable to tax in India , and hence no income-tax was deducted at Source by the payer while remitting the amount to the assessee.

2.3 The AO rejected the contentions of the assessee , and observed that the assessee has admitted that receipts from M/s Comviva, India were FTS in nature. The AO observed that there is no FTS clause in the India-UAE DTAA, and hence the aforesaid income is to be brought to tax as per provisions of the 1961 Act, and the assessee cannot claim that said FTS be charged to tax as business income. It was observed by the AO that the assessee can claim applicability of provision of DTAA to the extent it is contrary to the provisions of the 1961 Act, as the provisions of DTAA or provisions of the Income-tax Act, 1961, whichever is more beneficial to the assessee shall be applicable. But, in the instant case, there is no clause governing FTS in India-UAE DTAA, and hence provision of the 1961 Act shall be applicable. The AO rejected the contention of the assessee that in absence of FTS clause in India-UAE DTAA, FTS is to be treated as Business Income and in view of no PE in India, the same cannot be brought to

tax in India. It was observed by the AO that the treaties are entered into between the two countries, and they are to be read in good faith. The AO observed that the said income is chargeable to tax in the hands of the assessee u/s 5(2) r.w.s. 9(1)(vii) of the Act as deeming fiction will apply and it will be deemed that the said income has accrued or arisen in India , and the said income will be chargeable to tax in India. The AO referred to Article 25 of the India-UAE DTAA , which reads as under:

> "Article 25
>
> Elimination of Double Taxation
>
> 1.*That the laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except where express provisions to the contrary are made in this Agreement*."

The AO observed that there is no FTS clause in the India-UAE DTAA , and, hence the assessee cannot take the benefit of the Treaty , and provisions of the 1961 Act will apply, which is also covered by Article 25 of India-UAE DTAA. The AO observed that the payer has also declared this remittance to the assessee as payment towards FTS , and not as business income. The assessee also has admitted that the income received was in nature of FTS, and hence there is no dispute on nature and character of income. Thus, As per AO the income of Rs. 1,02,54,839/- received by the assessee from Comviva, India is FTS shall be chargeable to Income-tax under the provisions of Section 9(1)(vii) of the 1961

Act, keeping in view that there is no provision wrt FTS in India-UAE DTAA, vide draft assessment order dated 27.03.2023 passed by the AO u/s 144C(1) of the 1961 Act.

3. The assessee raised objection before the ld. DRP , which was dismissed by the ld. DRP, vide directions dated 06.12.2023 passed by ld. DRP u/s 144C(5) of the 1961 Act.

4.The AO passed the assessment order dated 25.01.2024 u/s 147/144C(13) of the Act in pursuance of the directions of the Ld. DRP.

5 Still aggrieved, the assessee has filed this appeal before the Tribunal.

5.2 The Ld. Counsel for the assessee, at the outset, submitted before the Division Bench that the assessee is based in Dubai, UAE , and is tax-resident of UAE. It was submitted that the assessee is in the business of system integrator in providing messaging service, namely, SMS, chatbot, MMS, e-mail, etc. to the mobile network operators in the UAE. It supports in installation, commissioning and support of the platforms. It was submitted that the Indian company, namely, M/s Comviva, India through its Branch office in UAE is engaged in providing services to their UAE client namely Etisalat , Dubai which is also a Dubai based company. It was submitted that the assessee provided some of the services in UAE to Branch office in Dubai of Comviva, India for their client Etisalat, Dubai. It was submitted that no services were provided in India. It was reiterated that

the said Indian company Comviva, India has a branch office in Dubai which has awarded the work to the assessee , and the assessee was dealing with the said branch office in Dubai and rendering services in Dubai, UAE to Comviva Branch office at Dubai for their client Etisalat, Dubai, UAE. It was submitted that it is only for the administrative convenience and centralization of purchases that the Indian head office i.e. Comviva, India has issued the purchase order to the assessee. It was brought to our attention that even in the purchase order, it is mentioned that: *"Ship to HO: PO Box: 109594, Abu Dhabi"*. Our attention was drawn to Page 7&10/PB, wherein purchase order(s) are placed. It was submitted that the nature of services were towards implementation charges , onsite project management services and onsite engineer support services . It was submitted that the services might be technical in nature and accepted by the assessee to be Fee for Technical Services, but, these are not FTS as are defined under the DTAA. It is submitted that incidentally in the India-UAE DTAA, there are no clause governing FTS and its chargeability to tax. Our attention was also drawn to section 9(1)(vii) of the Act and it was submitted that there are exceptions where the services are consumed outside India and are not consumed in India, then, the same cannot be brought to tax in India. It was submitted that the assessee was rendering services to the branch office in Dubai of M/s Comviva , India. It was submitted that no services were rendered in India or consumed/utilized in India. It was also submitted that if it is considered as FTS in the absence of a clause in the DTAA, the same has to be treated as business profit and since the assessee

does not have a PE in India, the same cannot be brought to tax in India. Our attention was drawn to the reply dated 24th March, 2022 filed by the assessee before the AO which read as under:-

"1. Contec Technologies DMCC (now Youcloud DMMC) ('Company') is a company incorporated under the laws of UAE and at all times had its effective management in UAE. Further, our company never had any office including branch or liasoning office or permanent establishment in India.

2. During the year under consideration, the company was engaged by Comviva Technologies, Dubai branch office for rendering services for our common customer M/s. Etisalat (www.etisalat.ae) which is also a company based out of Dubai [i.e. a place outside India], Therefore, no services were provided in India or to a customer in India.

3. Comviva Technologies, Dubai office released a purchase order dated 17th October 2016 to Contec Technologies DMCC through their company headquarter based in India which executes central purchases [for the purpose of administrative convenience]. Please refer the purchase order No.30951,32289 & 32109 attached for your reference. We have attached the same as Annexure 2.

4 & 5…

6. We wish to humbly submit that we are engaged in the business of providing services in UAE and not to any source in India. Accordingly we wish to respectfully submit that no income is accrued/arisen in India.

We also wish to submit that section Sub clause b of section 9(1)(vii) of the Act provides that a fees shall not be considered as fees for technical service, where the fees is payable by a resident in respect of services utilized in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

7. For the facts of our case, as the receipt by the Company is in respect of services provided in UAE for the source of business in UAE and for the purpose of earning income in UAE(as customer base is also in UAE) . There ought to be any income/receipt chargeable to Tax in India.

8……"

5.3 The Ld. counsel submitted that since the assessee was dealing with the branch office in UAE of an Indian company namely Comviva India, and the services were rendered by the assessee outside India, the same cannot be brought to tax in India. The assessee relied upon the judgment and order of Hon'ble Delhi High Court in the case of *International Management Group(UK) v. CIT (2024) 164 taxmann.com 225(Del HC)* , decision of ITAT, Delhi Benches in the case of HCL Australia Services Pty Ltd v. DCIT (2024) 169 taxmann.com 169(Del-trib.). The assessee also relied on the order of the Tribunal in the case *McKinsey Business Consultants Sole Partner Limited Liability Company MEPE vs. DDIT, [2015] 54 taxmann.com 300 (Mumbai-Trib.)* for the proposition that in the absence of FTS clause in India-UAE DTAA, the fee for technical services are to be classified as business income and in the absence of PE in India, the same cannot be brought to tax in India.

5.4 The ld. CIT-DR, on the other hand, submitted that it is the source of the income which is to be seen and not the receipt of income , which is relevant. It was submitted by ld. CIT DR that the assessee worked for Comviva, India. The said Indian company carried out the contract for Etisalat, Dubai and most of the work was executed by the said company in India, and only some of the part of the contract was executed by the assessee based at Dubai for Etisalat, Dubai on behalf of the Comviva, India. Thus, it was submitted by ld. CIT-DR that the services were utilized/consumed in India. Thus, the said fee for technical

services paid by Comviva , India to the assessee are chargeable to tax in India as the source of income is situated in India. The receipt in Dubai of said fee for technical services is immaterial. It was submitted by the Ld. CIT-DR that there is no clause of FTS in the India-UAE DTAA. It was submitted that Section 9(1)(vii) of the Act is applicable as it was admitted by the assessee that they have received Rs.1,02,54,839/- as FTS. The ld. CIT-DR relied heavily on the decision in *CIT v. Havells India Ltd. [2012] 21 taxmann.com 476 (Delhi)*. The ld. CIT-DR submitted that the aforesaid income is liable to be taxed in India as per provisions of Income-tax Act, 1961. It was reiterated by ld. CIT-DR that the contract was concluded in India and the assessee was dealing with an Indian company who got a contract from Etisalat, Dubai, and most of the contract was completed in India, so, it cannot be said that the services were not consumed in India. It was submitted that the situs of the income was in India. Our attention was drawn to section 9(1)(vii), Explanations 3 and 4. The ld. CIT-DR also relied upon the decision of the Chennai Bench of the Tribunal in *DCIT v. TVS Electronics Ltd. [2012] 22 taxmann.com 215 (Chennai),* and submitted that it has to be seen what is the nature of the income received by the assessee.

5.6 The ld. Counsel for the assessee, on the other hand, in rebuttal, relied upon the decision of the Delhi ITAT in the case *Solvay Asia Pacific (P) Ltd. v. DCIT [2024] 159 taxmann.com 90 (Delhi-Trib.); DCIT v. Michelin ROH Co. Ltd. [2022] 138 taxmann.com 497 (Delhi-Trib.); Global Vectra Helicorp Ltd. v.*

DCIT [2024] 159 taxmann.com 282 (Delhi-Trib.), and submitted that since there is no PE in India, FTS is to be treated as business income and, hence, since the services were rendered outside India, consumed outside India, the same are not to be taxed in India.

6.1 We have heard rival submissions and considered the material placed on record. We have observed that the assessee is a company incorporated under the laws of UAE. The assessee has claimed to be tax-resident of UAE. The assessee has claimed to be engaged in the business of system integrator in providing messaging service, namely SMS, chatbot, MMS, e-mail, etc. to the mobile network operators in the UAE. It is claimed by the assessee that it supports in installation, commissioning and support of the platforms. It provides the following main services:-

(a) Installation of hardware, software of SS & related products in Dubai & Abu Dhabi;

(b) Testing of telecom application; and

(c) Performance testing and scalability of testing.

6.2 The proceedings u/s 147/148 were initiated by Revenue against the assessee, which ultimately culminated into an addition of Rs. 1,02,54,839/- in the hands of the assessee. It is observed that the assessee has received Rs.1,02,54,839/- from M/s Comviva, India. It is observed that the assessee had admitted before the authorities below that the aforesaid payments received by it

were towards 'Fee for Technical Services'. The perusal of the purchase orders placed on record in paper book(page 7 and 10/PB) reveals that the nature of services provided by the assessee were towards implementation charges, onsite project management services and onsite engineer support services. The said purchase orders were issued by Comviva , India in favour of the assessee. It is observed that the assessee has claimed before the authorities below during the reassessment proceedings that the assessee was dealing with the Branch office in UAE of Comviva, India, and was rendering services to M/s. Etisalat, UAE on behalf of the Branch office in Dubai of Comviva, India . Thus, it is claimed by the assessee that the services were availed by the Branch Office in Dubai of Comviva , India , and not by Comviva, India itself. Admittedly, the assessee does not have PE in India. It is also claimed that it is only for administrative convenience and centralization of purchases, that the purchase orders were issued by Comviva, India, but otherwise Branch office in UAE of Comviva , India has executed the contract for Etisalat , Dubai, for which the assessee has rendered the services to Etisalat, Dubai on behalf of Comviva Branch office in Dubai. Thus, it is claimed by the assessee that the services were rendered by the assessee outside India, utilized as well consumed outside India by Branch office in UAE of Comviva, India. The contentions raised by the assessee before the AO are reproduced below:-

> *"1. Contec Technologies DMCC (now Youcloud DMMC) ('Company') is a company incorporated under the laws of UAE and at all times had its*

effective management in UAE. Further, our company never had any office including branch or liasoning office or permanent establishment in India.

2. During the year under consideration, the company was engaged by Comviva Technologies, Dubai branch office for rendering services for our common customer M/s. Etisalat (www.etisalat.ae) which is also a company based out of Dubai [i.e. a place outside India], Therefore, no services were provided in India or to a customer in India.

3. Comviva Technologies, Dubai office released a purchase order dated 17th October 2016 to Contec Technologies DMCC through their company headquarter based in India which executes central purchases [for the purpose of administrative convenience]. Please refer the purchase order No.30951,32289 & 32109 attached for your reference. We have attached the same as Annexure 2.

4 & 5…

6. We wish to humbly submit that we are engaged in the business of providing services in UAE and not to any source in India. Accordingly we wish to respectfully submit that no income is accrued/arisen in India.

We also wish to submit that section Sub clause b of section 9(1)(vii) of the Act provides that a fees shall not be considered as fees for technical service, where the fees is payable by a resident in respect of services utilized in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

7. For the facts of our case, as the receipt by the Company is in respect of services provided in UAE for the source of business in UAE and for the purpose of earning income in UAE(as customer base is also in UAE) . There ought to be any income/receipt chargeable to Tax in India.

8……"

6.3 The assessee has relied upon the provisions of section 5(2) of the Act wherein the income of the non-resident would include all income from whatever source derived which –

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Further, the assessee has relied upon the provisions of Section 9(1)(vii) of the 1961 Act which creates a deeming fiction vis-à-vis income deemed to accrue or arise in India during the year , to claim that the said income cannot be brought to tax in India in the hands of the assessee owing to exceptions carved out in Section 9(1)(vii) itself . The aforesaid provision stipulates that income by way of fees for technical services payable by resident , inter-alia, shall be deemed to accrue or arise in India wherein income by way of fees for technical services is payable by a person who is a resident***, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India***. The explanation to Section 9 stipulates that for the removal of doubts, it is hereby declared that for the purposes of this section , income of a non-resident shall be deemed to accrue or arise in India under clause (v), (vi) or clause (vii) of sub-section (1) and shall be included in the total income of the non-resident , whether or not (i) **the non-resident has a residence or place of business or business connections in India** (ii) **the non-resident has rendered services in India.** One of the main bone of contention of the assessee is that it was rendering the services to the Branch Office in UAE of M/s Comviva , India for a project of M/s Etisalat, UAE , and no part of the services

were consumed in India nor the services were utilized in India. It is claimed that the Etisalat, Dubai awarded contract to Dubai Branch office of Comviva, India , and it is the said Branch office in UAE of Comviva,India which executed the project. Thus, it is the claim of the assessee that the fees for technical services were received for services utilized/consumed by business carried on by the Branch office in UAE of Comviva, India , and the source of earning income is located outside India which is the Branch office in UAE of Comviva , India. Thus, it is claimed that income received by the assessee by way of Fees for Technical Service to the tune of Rs. 1,02,54,839/- cannot be brought to tax in India . The contention of the department on the other hand is that the contract and/or purchase orders were issued by Comviva, India and hence the contracts/purchases were concluded in India, and also further it is claimed by Revenue that it is the Comviva , India who executed the most of the project from India , hence the fee for technical services paid to the assessee is chargeable to tax in India as the services rendered by the assessee are utilized/consumed in India. The department has relied on the decision of Hon'ble Delhi high Court in the case *of Havells India Limited (supra).* The department has not given any finding on the claim of the assessee to have dealt with Branch office in Dubai of Comvia, India and/or that the Branch office in UAE of Comviva , India which got the contract and executed the contract for Etisalat, UAE. Thus, there is dispute between the rival parties in appreciation of facts itself. Merely because purchase order was issued by Comviva, India in favour of the assessee will not

make the said income taxable in India. The source of the income is to be seen whether it is the Branch office in UAE of Comviva, India who got the contract from Etisalat, UAE and whether the said contract was executed by Branch office in UAE of Comviva, India, which is relevant i.e. the source of income being located outside India to fall in exception crafted u/s 9(1)(vii). The assessee on its part has not placed on record clinching and sufficient evidences to that effect to arrive at conclusive findings., although pleadings are there on record. In our considered view, the aforesaid contentions raised by the assessee are not examined by the authorities below in proper perspective. These contentions raised by the assessee goes to the root of the matter and needs thorough examination by the authorities, as chargeability to tax will depend upon the findings based upon the proper appreciation of the evidences/explanations produced/provided or to be produced/provided by the assessee. The assessee is claiming exemption and hence primary onus is on the assesse to prove that it fulfils the conditions as are stipulated for claiming exemption, and the onus is on the assessee to bring on record cogent evidences. The judgment and order of Hon'ble Supreme Court in the case of *Commissioner of Customes(Imports) v. Dileep Kumar & Co. (2018) 95 taxmann.com 327(SC) is relevant*. Thus, keeping in view the entire facts and circumstances of the case, it will be in the interest of justice and fair play to restore the matter back to the file of the AO for denovo reassessment after re-examination the entire matter afresh . The assessee is directed to produce necessary and cogent explanation/evidence in context

thereto before the AO during the remand proceedings. The matter is, thus, remanded back to the file of the AO for denovo framing of the re-assessment. We order accordingly.

6.4 Further, it is also argued by ld. Counsel for the assessee that India-UAE DTAA does not have separate Article dealing with 'Fees for Technical Services', and hence in the absence thereof , the said income of Rs. 1,02,54839/- is to be treated as business profit , and since the assessee is not having PE in India, the said income is not chargeable to tax in India. Both the parties have placed judicial precedents in their favour. So far as this contention is concerned , we are of the considered view that for the reasons recorded vide para 6.1 to 6.3 , we have already remitted the matter back to the AO for framing denovo re-assessment afresh , keeping in view of the contentions of the assessee that no income by way of fees for technical services deemed to have accrued or arisen in India as the source of the income itself was located outside India i.e. the Branch office in UAE of Comviva , India wherein it is claimed that the said Branch office in UAE of Comviva, India was awarded the work contract by Etisalat, UAE and the said Branch office in UAE of Comviva, India executed the said work. Be that be so , in that situation if the plea of the assessee is accepted by Revenue after verification in remand proceedings , then there will not be any occasion to invoke the aforesaid alternative contention of the assessee which will then be only of academic in nature. Thus, we refrain from adjudicating the same and the aforesaid issue is kept open. We order accordingly.

7. In the result, the appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 06.02.2026.

Sd/-	Sd/-
(RAJ KUMAR CHAUHAN) JUDICIAL MEMBER	(RAMIT KOCHAR) ACCOUNTANT MEMBER

Dated: 06th February, 2026.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi