

<p>आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई। IN THE INCOME TAX APPELLATE TRIBUNAL 'D' BENCH: CHENNAI</p> <p>श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष</p> <p>BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER</p>		
<p>आयकर अपील सं./IT (TP)A 68/Chny/2023 निर्धारण वर्ष/Assessment Year: 2020-21</p>		
M/s Hyundai Transys Inc 105 Sindang 1, RO Seongyeon Myeon Seosan CCN 356851, South Korea	v.	The DCIT International Taxation 1(1), Income Tax Office, 4 th Floor,BSNL Building, 16, Greams Road, Chennai-600 006
<p>[PAN: AADCD 5479 L]</p>		
<p>(अपीलार्थी/ Appellant)</p>		<p>(प्रत्यर्थी/ Respondent)</p>
अपीलार्थी की ओर से/ Appellant by	: 	Mr. Sharath Rao, CA, Mr. Dhiraj Advocate & Ms G. Vaidehi, CA
प्रत्यर्थी की ओर से /Respondent by	: 	Mr. ARV Srinivasan, CIT
सुनवाईकीतारीख/Date of Hearing	: 	09.12.2025
घोषणाकीतारीख /Date of Pronouncement	: 	09.02.2026

आदेश / O R D E R

PER MANU KUMAR GIRI, JM:

This appeal filed by the assessee is directed against the final assessment order dated 10.07.2023 passed by the Deputy Commissioner of Income Tax, International Taxation-1(1), Chennai for the assessment year 2020-21 u/s.143(3) read with section 144C(13) of the Income-tax Act, 1961 ("the Act"), in pursuance of the directions issued by the Dispute Resolution Panel-2, Bengaluru dated 28.06.2023.



2. The assessee has raised multiple grounds. At the time of hearing, the learned Authorised Representative ("Id. AR") did not press Ground No.3 relating to limitation u/s.153 of the Act. Accordingly, the same is dismissed as not pressed.

3. The only surviving issue for adjudication is Ground No.2 (Grounds 2.1 to 2.8), relating to taxability of guarantee fee amounting to RS. 2,22,34,322 received by the assessee from its Indian subsidiary.

4. Brief facts of the case are that the assessee is a foreign company incorporated under the laws of the Republic of Korea and is engaged in the business of manufacturing and marketing of automotive parts, including transmission products and reduction gear boxes. For the assessment year 2020-21, the assessee filed its original return of income on 13.02.2021 declaring a total income of Rs.58,46,57,170/- which was subsequently revised on 12.03.2021 declaring total income of Rs.65,60,93,470/-. The case was selected for scrutiny and notices u/s.143(2) and 142(1) of the Act were issued and duly complied with. During the course of assessment proceedings, the Assessing Officer noted that the assessee had received guarantee fee of Rs.2,22,34,322/- from its Indian subsidiary, Hyundai Transys India Private Limited, for providing corporate guarantees to foreign banks in respect of loans availed by the said subsidiary. The Assessing Officer passed a Draft Assessment Order dated 15.09.2022 u/s.143(3) read with section 144C(1) of the Act proposing addition of the said guarantee fee to the total income of the assessee.



5. Aggrieved, the assessee filed objections before the Dispute Resolution Panel ("DRP"). The DRP, vide directions dated 28.06.2023, confirmed the proposed addition. Pursuant thereto, the Assessing Officer passed the impugned final assessment order dated 10.07.2023, making addition of Rs.2,22,34,322/- on account of guarantee fee and raised consequential demand.

6. Now the assessee is in appeal before this Tribunal.

7. Before us, the Id.AR argued and filed written submissions as under:

Guarantee fee amounting to INR 22,234,322 cannot be assessed as income in the hands of the Appellant.

The Appellant wishes to submit that during the year under consideration, it had received guarantee fees from its Indian subsidiary in relation to guarantee provided with respect to loans availed by Hyundai Transys India Private Limited (Hyundai Transys India') from various banks.

In this regard, it had entered into a Guarantee Fee Agreement with Hyundai Transys India. Pursuant to the same, the Company had provided guarantee in relation to the loans availed by Hyundai Transys India by banks outside India. Further, it was mutually agreed that in consideration for the Appellant assuming the guarantee obligations set forth in the agreement, Hyundai Transys



India shall pay a guarantee fee to the Appellant as determined and set forth in the agreement. A copy of the guarantee agreement has been enclosed as Enclosure 1 to this submission.

In this regard, we have provided our submissions on the taxability of guarantee fees as 'Other Income under the provisions of the Act and under India-Korea Double Taxation Avoidance Agreement (DTAA)' in the ensuing paragraphs:

Taxability under the provisions of the Act and the DTAA

- *As per Section 90 of the Act, a non-resident being a foreign company has the option to be governed by the provisions of the applicable DTAA, if they are more beneficial when compared to the provisions of the Act. Accordingly, the Company (being a tax resident of Korea) is entitled to the benefits of the India-Korea DTAA.*
- *In this regard, to avail the beneficial provisions of the India-Korea DTAA, the Company had obtained a certificate of its residence in Korea. A copy of Tax Residency Certificate and form 10F filed for the subject AY has been enclosed as **Enclosure 2**.*
- *At the outset, we wish to highlight that the guarantee fees would not be liable to tax in India for the following reasons:*
 - *The guarantee fees would not fall under the definition of Interest as per section 2(28A) of the Act*



and Article 11 of the India-Korea DTAA and the same has been confirmed by your goodself in the DAO;

- *The guarantee fees would not fall under Fees for Technical Service' as per section 9(1)(vii) of the Act and Article 12 of the India-Korea DTAA and the same has been confirmed by your goodself in the DAO;*

- *The guarantee fees would fall within the residuary head ie, 'Other Income' under Article 22 of the India-Korea DTAA and would be taxable in the state where the Company is resident i e, Korea.*

- *In this regard, the relevant extracts of the India-Korea DTAA have been enclosed as **Enclosure 3** for your good self's reference.*
- *The aforementioned points are elucidated in detail for your good self's reference as under*

- **Taxability of Guarantee Fees as 'Interest'**

- *Section 2(28A) of the Act defines Interest as below: "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized".*

(Emphasis supplied)

- *On a plain reading of above, it can be inferred that the definition of "interest" under the Act is wide enough to cover any service fees or other charge in*



respect of moneys borrowed or debt incurred and accordingly, any payments made (including service fees) in relation to moneys borrowed or debt incurred (including a deposit, claim or similar other right or obligation) can be considered as 'interest'.

- *Further, Article 11 of the India-Korea DTAA defines 'Interest' as*

"income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures."

(Emphasis supplied)

- *Based on reading of the above, it may be inferred that the term 'interest under India-Korea DTAA includes only **Income from debt-claims**.*
- *In the instant case, the Appellant has provided guarantee to foreign banks for the loans taken by Hyundai Transys India and it has not provided any loans directly to Hyundai Transys India*
- *In light of the above provisions and facts of the case, it can be said that the guarantee fees are not in the nature of income from debt claim and hence, it would not be classified as "Interest" under Article 11 of India-Korea DTAA.*



- *It is pertinent to note that in the impugned DAO, your goodself has agreed upon the Appellants contention that the guarantee fees would not be chargeable to tax as 'Interest since the Appellant was not a party to the loan agreement between the lender and the Indian subsidiary.*

➤ **Taxability of Guarantee Fees as 'Fees for Technical Services.**

- *The Company submits that explanation to Section 9(1)(vii) of the Act defines "Fees for Technical Services as: "Fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction assembly, mining or ake project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".*

(Emphasis supplied)

- *The terms technical, consultancy and managerial have been explained by various judicial precedents as below*
 - ❖ *Technical services which require expertise in technology and special skills or knowledge related to applied and industrial science are required for provision of such services*
 - ❖ *Consultancy rendered services where professional advice or services in a specialized field are*



- ❖ *Managerial-executive or supervisory functions which pertains to or has the characteristic of a manager*
- *In the present case, as there is no technical, consultancy or managerial service, guarantee fees would not be classified as 'Fees for technical service' as per provisions of the Act and accordingly, the guarantee fees would not be taxable as fees for technical services under the provisions of the Act.*
- *Further, Article 12 of the India-Korea DTAA defines Fees for Technical Services' as under:
The term "fees for technical services" as used in this Article means payments of any kind, other than those mentioned in Articles 14 and 15 of this Agreement as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.*
- *In the instant case, the guarantee provided by the Appellant cannot be classified as provision of managerial or technical or consultancy services given that no services are rendered by the Appellant to Hyundai Transys India and mere guarantee is provided to the bankers for the purposes of availing loan by Hyundai Transys India. Accordingly, the guarantee fees received would not be taxable as Fees for Technical Services under Article 12 of India-Korea DTAA*
- *The Appellant wishes to highlight that the Ld. AO has acknowledged that guarantee fees would not be taxable as 'Fees for Technical Services'.*
- *It may be noted that your goodself has further stated that the guarantee fee is not in the nature of business income since the Company was predominantly engaged in the manufacturing*



business and not in the business of providing corporate/ bank guarantee to earn income on a regular basis Accordingly, the guarantee fee cannot be treated as business income which, in the absence of a permanent establishment in India, is not taxable in India under Article 7 of India-Korea DTAA.

➤ **Taxability of Guarantee Fees as 'Other Income**

- *In light of the above submissions, guarantee fees would not fall under any other heads of income ie Fees for Technical Services and Interest, the same may be classified under the residuary head, "Other Income' as per Article 22 of the India-Korea DTAA.*
- *As per various interpretations including Dr Klaus Vogel's, the Article discussing Other Income clause is to be interpreted so as to include only residuary items whose nature is not classifiable under any of the other Articles.*
- *The extract of Article 22 of the India-Korea DTAA has been reproduced below:*

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base



situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

- *On the reading of the above, Para 1 states that the income arising in India to a resident of Korea. which is not covered under other foregoing articles of the treaty shall be taxable only in Korea ie.. country of residence.*
- *However, Para 2 states that para 1 shall not apply to the following income ie., in the following cases the income will be taxable in India.*
 - ❖ *Income from immovable property, or*
 - ❖ *Carries on business through a permanent establishment situated therein, or*
 - ❖ *Independent personal services from a fixed base situated therein.*
- *It is pertinent to note that the income earned by the Company does not fall under any of the clauses mentioned in Para 2 of the Article 22 of the India-Korea DTAA.*
- *However, the Ld. AO, in Para 10 of the assessment order has erred in concluding that the Appellant's case would be covered under para 2 of Article 22 and the guarantee fee income would be taxable in India. The relevant observation under 10 of the assessment order has been reproduced below for your goodself's reference.*



"The assessee has submitted that the "Article 22 of the India-Korea Tax Treaty states that any income not dealt with in the foregoing Articles of the Treaty shall be taxable only in the state of residence. The attention of assessee is drawn to para 2 of the very same Article 22 "Other income" of the India-Korea DTAA where in it is envisaged that the provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6. if the recipient Which is not the case of the assessee as per the above discussions."

- *In light of the above, the taxing right for 'other income' is given to the country of residence and not the country of source of income as per Article 22 of India-Korea DTAA. In the instant case, given that the Appellant, being the recipient of the guarantee fees, is a tax resident of Korea, it is submitted that the guarantee fee is taxable only in Korea and not in India.*
- *In this regard, the Company would like to bring into your kind attention the below judicial precedents wherein the facts are similar to the present case and the authorities upheld such issue in favour of the assessee.*
 - ❖ *The Hon'ble Mumbai Tribunal in case of Capgemini SA vs DCIT (Mumbai ITAT) ITA No-888 (MUM) OF 2016 had discussed Article 23(3) of the India-France treaty which states that "items of income of a resident of a Contracting State not dealt with in the foregoing articles of this convention and arising in the other Contracting State may be taxed in that of the Contracting State ie Article 23(3) has applicability only when income accrues / arises in India. In*



light of the above, it was held that the corporate guarantee commission received by the taxpayer does not arise/deem to arise in India as the French Company has given guarantee to a French bank in France (outside India). Hence, no income arise or deemed to arise in India. Thus, Clause 3 of Article 22 'Other Income' has no applicability (as income itself does not arise in India) Accordingly, the same should not be taxed in India

- ❖ *The Hon'ble Bangalore tribunal in case of KIA Corporation vs ACIT International Taxation -1(2) Bangalore, [2025] 176 taxmann.com 246 had reiterated the fact that in the case of guarantee fees received by a foreign company domiciled in Korea, the provisions of residual clause, Article 22 to India Korea tax treaty shall apply. Placing reliance on Daechang Seat Co Ltd v. DCIT (International Taxation) [2023] 152 taxmann.com 163 (Chennai-Trib.), the tribunal held that "the guarantee fees received by the assessee, a resident of South Korea, is covered under Article 22 of the India-Korea DTAA and is not taxable in India. Hence, the addition made by the AO is liable to be deleted"*

Further, reliance is also placed on the following judicial precedents.

- ❖ *Lease Plan India (P.) Ltd. v. DCIT (2020) 117 taxmann com 343 (Delhi ITAT)*
- ❖ *ABC International Inc. USA, [2011] (11 Taxmann.com 146) (New Delhi)*



➤ **Covered case ruling passed by the Hon'ble Income Tax Appellate Tribunal presiding jurisdiction over the Appellant**

- *Without prejudice to above, the Appellant wishes to humbly submit before your goodself that the Ld. AO and Ld. DRP have erred in law by disregarding the binding judicial precedent laid down by the Hon'ble Income Tax Appellate Tribunal within the jurisdiction of the Appellant.*
- *The Hon'ble Chennai Tribunal in the case of Daechang Seat Co. Ltd v. DCIT (International Taxation) [2023] 152 taxmann com 163 (Chennai-Trib) held that by virtue of Article 22 of DTAA between India and Korea, guarantee fee received from Indian subsidiaries being other income had to be taxed in contracting State ie., Korea and not India in a case of a Korean company who had entered into guarantee agreement with its subsidiaries to provide guarantee to foreign banks to grant loan to the said subsidiary companies. The synopsis of the ruling has been tabulated below for your goodself's ease of reference:*

<i>Facts of the case</i>	<i>The assessee is a foreign company incorporated in Korea and engaged in manufacture of automobile and auto parts During the relevant year, the assessee entered into a guarantee agreement with its subsidiaries DISPL and KMSIPL to provide guarantee to foreign bank namely Standard Chartered Bank to provide loan to above subsidiary companies Pursuant to guarantee agreements, the assessee received a sum from its subsidiaries after deducting TDS at rate of 10 per cent.</i>
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<p>Contentions of AO</p>	<p>The AO contended that since the loans were availed in India, the income accrued from the guarantee fee has arisen in India. Further the AO alleged that the guarantee fee is not in the nature of business income since:</p> <p>The assessee company was predominantly engaged in the manufacturing business and not in the business of providing corporate bank guarantee to earn income on regular basis.</p> <p>The guarantee agreement was entered into for the limited purpose of enabling its subsidiaries to secure loans and hence, the guarantee income was incidental in nature; and</p> <p>The assessee did not have a PE in India as per Article 7 of the India Korea DTAA.</p> <p>Accordingly, the AO held that the same would fall within the head "Income from Other Sources" and would be covered with the purview of Article 22 of the India Korea DTAA and assessed the same at 40% (plus applicable surcharge and cess) in its draft assessment order.</p> <p>Aggrieved by the above draft order, the assessee filed its objections before the DRP and the DRP upheld the draft order passed by the AD and directed the AD to assess the above income at 40% (plus applicable surcharge and cess).</p>
<p>Contentions of the Assessee</p>	<p>The assessee strongly contended that the same is not taxable in India as the income received by it would be taxable in Korea by virtue of Article 22 of the India-Korea DTAA.</p> <p>The assessee further contended that the AO having concluded that the same would fall within the head Income from Other Sources failed to comply with the provisions of Article 22 of the India-Korea DTAA.</p>



<i>Decision of the Tribunal</i>	<i>The Hon'ble Chennai Tribunal relied on the decision of Capgemini SA vs DCIT (Mumbai ITAT) ITA No-888 (MUM.) OF 2016 and in light of Article 22 of the India-Korea DTAA held that the guarantee fee received by the assessee would not be chargeable to tax in India.</i>
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- *Given the binding judicial precedents laid down by the Jurisdictional Hon'ble Income Tax Appellate Tribunal in the cases of Daechang Seat Co. Ltd, the Appellant respectfully submits that the impugned addition made by the Ld. AO is contrary to settled legal position and merits deletion.*

In light of the above submissions, it is humbly submitted that the guarantee fee income would be chargeable to tax in Korea as per Article 22 of the India-Korea DTAA.

8. The Id. Departmental Representative ('Ld.DR') supported the orders of the Assessing Officer and the DRP and contended that the guarantee fee is closely connected with the Indian subsidiary and therefore taxable in India.

9. We have considered the rival submissions and perused the material available on record. It is an admitted fact that the assessee is a tax resident of Korea. The guarantees were provided to foreign banks outside India. The assessee does not have a Permanent Establishment in India. The Assessing Officer himself has accepted that the guarantee fee is neither interest nor fees for technical services nor business income. Once the income does not fall under Articles 7, 11, or 12 of the DTAA, the same is required to be examined under Article 22 (Other Income). Article 22(1) of



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the India-Korea DTAA clearly provides that items of income not dealt with in the foregoing Articles shall be taxable only in the State of residence of the assessee. Article 22(2) carves out an exception only where the recipient carries on business in the other State through a Permanent Establishment and the income is effectively connected with such PE. In the present case, it is undisputed that the assessee does not have a PE in India. Identical issue has been examined by the jurisdictional Chennai Tribunal in Daechang Seat Co. Ltd. v. DCIT [2023] 152 taxmann.com 163, wherein it was held that guarantee fee received by a Korean company from its Indian subsidiaries is taxable only in Korea under Article 22 of the DTAA. Similar view has been taken in KIA Corporation v. ACIT [2025] 176 taxmann.com 246 and Capgemini SA v. DCIT (Mumbai ITAT). Respectfully following the binding precedent of the jurisdictional Tribunal, we hold that the guarantee fee of Rs.2,22,34,322/- is not chargeable to tax in India. Since the addition itself is deleted, the levy of interest under section 234B is consequential and does not survive.

10. In the result, the appeal filed by the assessee is allowed.
Order pronounced in open court 09th day of February, 2026 in Chennai.

Sd/-
(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)
न्यायिक सदस्य/**JUDICIAL MEMBER**



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चेन्नई/Chennai,

दिनांक/Dated: 09th February, 2026

SNDP, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF