

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI. MAKARAND VASANT MAHADEOKAR, AM**

ITA No.7531/Mum/2025
(Assessment Year: 2016-17)

ACIT – 6(1)(2), Mumbai Room No. 506, 5th Floor, Aaykar Bhavan, MK Road, Churchgate, Mumbai – 400020.	Vs.	Forum Homes Private Limited 1 st Floor, Serendipity G Block, BKC, Near ONGC Colony, Patthar Nagar, Bandra (East), Mumbai – 400051.
PAN/GIR No. AACCF1005F		
(Assessee)	:	(Respondent)

Assessee by	:	Shri Shriram S
Respondent by	:	Shri Nayanjyoti Nath (SR. AR)

Date of Hearing	:	09.03.2026
Date of Pronouncement	:	30.03.2026

ORDER

PER SAKTIJIT DEY, VICE PRESIDENT:

Captioned appeal by the revenue arises out of the order dated 04.09.2025 of learned ADDL/JCIT (A) Prayagraj ('ld. Addl. CIT(A)' for short), passed u/s. 250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2016-17.

2. The short issue arising for consideration in the present appeal is, whether the payments made by the assessee to two Singapore based entities towards consultancy and architectural and structural design are in the nature of Fees for Technical Services (FTS) u/s. 91(vii) of the Act read with Article 12(4) of the India-Singapore Double Taxation Avoidance Agreement (DTAA) and whether the alleged failure on the part of the



assessee to deduct tax u/s. 195 of the Act, while making such payment, would entail disallowance u/s. 40(a)(i) of the Act.

3. Brief facts relating to this issue are, the assessee is a resident corporate entity stated to be engaged in the business of development of real estate. In the financial year 2014-15 corresponding to assessment year 2015-16, the assessee had undertaken a project of developing a residential complex viz. 'Serendipity' at Bandra Kurla Complex (BKC). For developing the project, the assessee availed services relating to consultancy including architectural drawing/design, GFC drawing/design from two Singapore based entities viz. Arc Studio Architecture + Urbanism Pte. Ltd. and Web Structures Pte. Ltd. For availing services, the assessee made the following payments during the year:

- a. Arc Studio Architecture +Urbanism – Rs. 1,15,07,834/- towards architectural drawing and design.
- b. Web Structures Pte Ltd. – Rs. 69,63,663/- GFC drawings/designs.

4. The total amount paid aggregated to Rs. 1,84,71,497/-. In course of assessment proceeding, the Assessing Officer noticed that the assessee had made the aforesaid payments to the Singapore based entities without deducting tax at source. Whereas according to the Assessing Officer, the payments are in the nature of FTS, hence, subject to deduction of tax u/s. 195 of the Act. Therefore, we called upon the assessee to explain why the amount paid should not be disallowed u/s. 40(a)(i) of the Act on account of failure to deduct tax at source. In response to the show cause notice issued by the Assessing Officer, the assessee submitted that the payments made do not fall within the ambit of FTS in terms of Article 12(4) of the India-Singapore DTAA as the



services rendered are not in the nature of managerial, technical or consultancy. The assessee further submitted that even assuming that the services rendered fall within any of the aforesaid three categories, still the payment made cannot be regarded as FTS as in course of rendition of such services, the payees have not made available any technical knowledge, knowhow skills, etc. to the assessee, thereby, enabling the assessee to use such technical knowhow knowledge, skill, etc. independently without the aid and assistance of the service providers. The assessee further submitted that the consultancy services relating to architectural design and drawing are project specific and will not be of any use once the project is complete as they cannot be used for any other project.

5. The Assessing Officer however, did not find the explanation furnished by the assessee acceptable. He concluded that the payments made by the assessee to the overseas entities come in the category of consultancy services. Hence, payment made for availing such services would be in the nature of FTS, hence, taxable in India. The assessee having failed to deduct tax at source, the entire payment has to be disallowed u/s. 40(a)(i) of the Act. Accordingly, the Assessing Officer disallowed the amount of Rs. 1,84,71,497/-.
6. The assessee contested the aforesaid disallowance before learned First Appellate Authority. After considering the submissions of the assessee in the context of facts and materials on record, learned First Appellate Authority agreed with the assessee that the consultancy services including architectural design/drawings, etc., are project specific and cannot be utilized for any other project in future. He observed, in course of rendition of such services, the overseas entities have not transferred any technical knowledge,



knowhow, skill, etc., to the assessee, so as to enable the assessee to utilize such technical knowledge, knowhow, skill, etc., independently without requiring the help of the service providers. Thus, he ultimately held that the payments made do not fall within the category of FTS as defined under Article 12(4) of the India-Singapore DTAA. Accordingly, he deleted the disallowance made u/s. 40(a)(i) of the Act.

7. Before us, at the very outset, learned Counsel appearing for the assessee submitted that the issue is squarely covered by the decision of the coordinate bench in assessee's case in A.Y. 2015-16. In this context, he placed a copy of the order dated 04.10.2021 passed in ITA No. 5804/Mum/2018. The learned Departmental Representative could not controvert the aforesaid submission made by learned Counsel for the assessee. However, he relied upon the observations of the Assessing Officer.
8. We have considered rival submissions and perused the materials available on record. Undisputedly, in the preceding assessment year, the assessee had undertaken development of the residential project viz. Serendipity. Facts on record reveal that construction of the project started in F.Y. 2014-15 and continued in subsequent years. For developing the project, the assessee has availed the services of consultancy in the nature of architectural design/drawings, etc., from two Singapore based entities viz. Arc Studio Architecture + Urbanism Pte. Ltd. and Web Structures Pte. Ltd. These two entities had provided similar services to the assessee in the immediately preceding assessment year i.e., A.Y. 2015-16 and received payments of Rs. 3,66,17,075/-. In the scrutiny assessment made in A.Y. 2015-16, the Assessing Officer disallowed the payments invoking the provisions of Section 40(a)(i) of the Act on identical reasoning.



In fact, reading of the impugned assessment order reveals that taking a cue from the decision taken in A.Y. 2015-16, the Assessing Officer has proceeded to make the disallowance in the impugned assessment year as well. While dealing with identical issue in A.Y. 2015-16, the Coordinate Bench in the order referred to above has upheld the decision of learned First Appellate Authority, holding as under:

“8. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. Undisputedly, the assessee, at the relevant point of time, was developing a residential project at BKC. In connection with the development of such project, the assessee had availed certain technical/consultancy services from three non-resident entities located in Singapore. For availing such services, the assessee has paid certain amount to the non-resident entities. The short issue arising for consideration before us is, whether the payment made by the non-resident entities can be termed as FTS under Article 12(4) of India Singapore Tax Treaty. For better appreciation, Article 12(4) of the tax treaty is reproduced hereunder:-

“4. "The term fees for technical services as used in this Article means payments of any kind to any person in consideration for services of a managerial, technical or consultancy nature (including the provision of such services through technical or other personnel) if such services: (a) are ancillary..... (b) make available technical knowledge, experience, skill, know-how or processes, which enables the person acquiring the services to apply the technology contained therein ; or (c) consist of the development and transfer of a technical plan or technical design, but excludes any service that does not enable the person acquiring the service to apply the technology contained therein.”

9. A reading of Article 12(4) of the tax treaty would make it clear that payment made to a resident of one of the contracting state can be regarded as FTS, if, in course of providing managerial/technical or consultancy services, technical knowledge, experience, skill, know-how or processes is made available which enables the person acquiring such services to apply the technology contained therein. It further provides, if the services consist of development and transfer of a technical plan or technical design, but excludes any services that does not enable the person acquiring the service to apply the technology contained therein would not qualify as FTS. In the facts of the present appeal, the payments made and the nature of services rendered are as under:-

<i>Sr.No.</i>	<i>Name of the party</i>	<i>Country</i>	<i>Amount (Rs.)</i>	<i>Nature of services</i>
<i>1</i>	<i>Arc Studio Architecture + Urbanism Pte Ltd</i>	<i>Singapore</i>	<i>2,85,35,269/-</i>	<i>Architectural drawing / design in relation to BKC project.</i>



2	Web Structures Pte Ltd	Singapore	68,57,342/-	GFC drawing / design in relation to BKC project
3	RMR Engineers Pte Ltd	Singapore	12,24,464/-	MEP drawing / design in relation to BKC project
	Total		3,66,17,075/-	

10. Thus, as could be seen, the scope of work is limited to various types of drawings and designs for the residential project being developed at BKC. On further verification of facts on record, it is evident that insofar as Arc Studio Architecture + Urbanism Pte Ltd is concerned, it will provide an illustrative site/roof plan showing all the components of the project, general landscape, recommendation and overall infrastructure elements, such as, entry driveways and service circulation, Diagram showing each of the major public at 1:200 scale, image board to describe the architectural character of the project etc. The scope of work also requires the entity to prepare schematic design drawings, approved by the client, in case of minor adjustment. The terms of the agreement make it clear that the design, drawing, rendering, model, specification, electronic files including database and spreadsheets and other derivation that are part of the project will remain the intellectual property of the service provider and are intended for use solely with respect to the project. It further restrains the assessee from utilizing such intellectual property for any other project or for addition to the subject project or for completion of the project by any other entity. Similar is the scope of work and terms and conditions in respect of Web Structures Pte Ltd, another non-resident entity.

11. Thus, from the nature of services provided by the non-resident entities and the terms and conditions under which it was provided, it is clear that whatever services were provided are project specific and cannot be used for any other project by the assessee. Further, while providing such services neither any technical knowledge, skill, etc is made available to the assessee for utilizing them in future, independently nor any developed drawing or design have been provided to the assessee which can be applied by the assessee independently. Thus, it is very much clear, the conditions of Article 12(4) of the tax treaty are not fulfilled.

12. Though, the assessing officer has generally observed that in course of providing services to the assessee, the non-resident entities have made available technical knowledge, know-how, processes to the assessee. However, no substantive material has been brought on record by him to back such conclusion. Even, before us, learned departmental representative has not brought any material to demonstrate that conditions of Article 12(4) have been fulfilled in the facts of the present case. In view of the aforesaid we do not find any valid reasons to interfere with the decision of learned Commissioner (Appeals). Accordingly, we uphold the order of learned Commissioner (Appeals) on the issue by dismissing ground raised.”



9. On going through the observations of the Coordinate Bench reproduced above, we find complete parity of facts with impugned assessment year. In fact, in course of hearing, nothing contrary has been brought to our notice by learned Departmental Representative, which could have compelled us to take a contrary view in the impugned assessment year. In view of the aforesaid, respectfully following the decision of the Coordinate Bench in assessee's case, as noted above, we uphold the decision of learned First Appellate Authority on the issue. Grounds are dismissed.
10. In the result, the appeal is dismissed.

Order pronounced on 30.03.2026

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Mumbai; Dated: 30.03.2026
Karishma J. Pawar (SR. PS)

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai