VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

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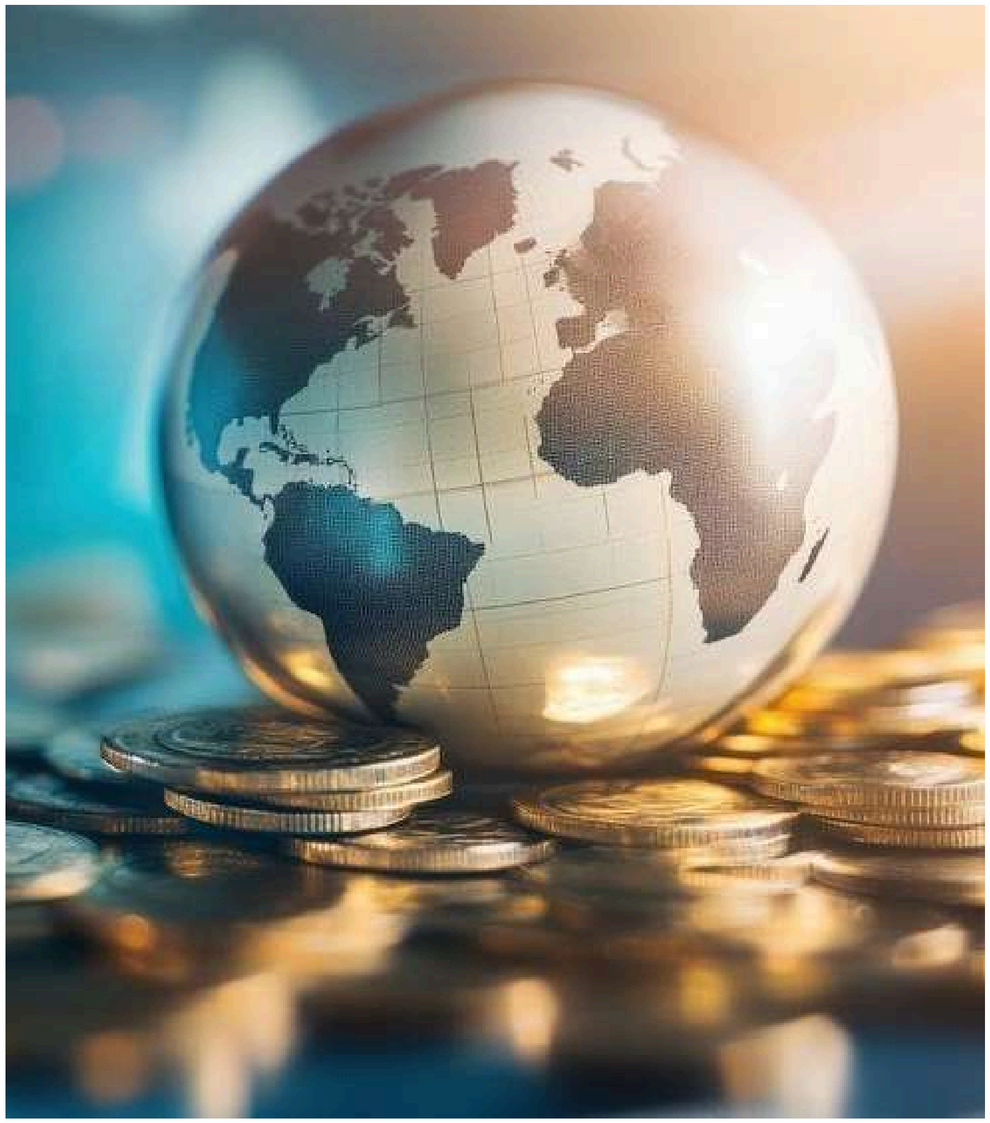

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Subscription fee on e-magazines with standardized content doesn't partake character of 'FTS'

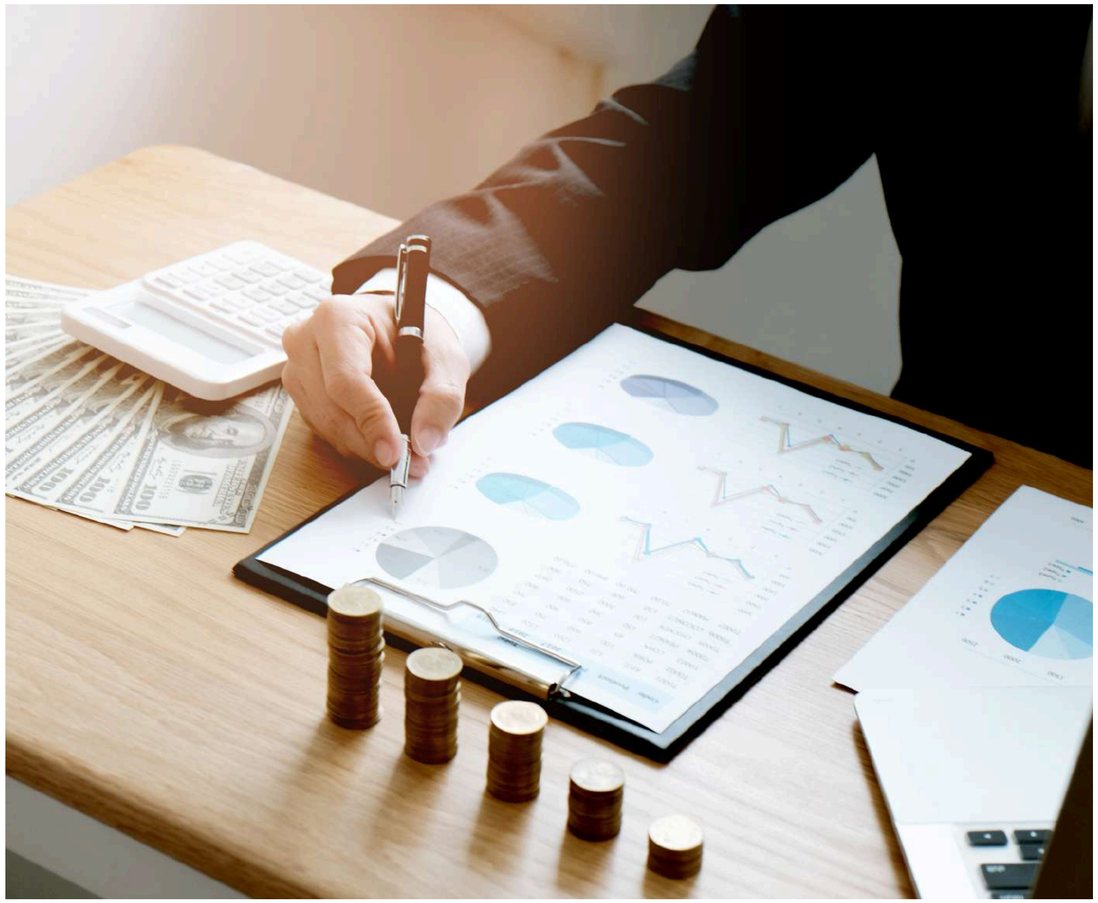
Facts

The Assessee is a company incorporated under the German laws and is a tax resident of Germany. The Assessee is a part of Springer Nature Group which is a publisher of books, journals and content relating to science and technology. It is stated that Springer Nature Group has a leading global scientific, technical, and medical portfolio. The Assessee has entered into a Commissionaire Agreement dated 01.01.2014 with Springer Nature India Pvt. Ltd. [SNIPL] –by virtue of which the assessee was appointed as a non-exclusive sales representative to promote, sell and distribute printed products (books and journals) and e-products (online books, journals and their archives). The Assessee earned commission income amounting to Rs. 5,31,86,587/- during FY 2019-20 and Rs. 6,05,11,416/- during FY 2020-21. The Assessee also collected subscription fees amounting to Rs. 58,39,62,432/- and Rs. 63,14,43,357/- during FYs 2019-20 and 2020-21 respectively. The AO treated the said receipts as FTS chargeable to tax under the Act as well as DTAA and passed the final assessment orders on 27-06-2023 and 27-09-2023 for AY 2020-21 and AY 2021-22. The assessee appealed the final assessment orders before the learned ITAT. The learned ITAT referred to the decision in case of CIT, International Taxation vs. Springer Nature Customers Services Centre GMBH: [2023] 458 ITR 728] and set aside the assessment orders.

Ruling

In the present case, the Hon'ble court placed reliance on the decision taken by the learned ITAT in case of CIT, International Taxation vs. Springer Nature Customers Services Centre GMBH wherein it was held that the issue of whether the commission income or subscription fee received by the Assessee was taxable under the Act and the India-Germany Double Taxation Avoidance Agreement (DTAA) had already been settled in favour of the Assessee, and there were no material changes in the facts for the AY 2020-21 and AY 2021-22. Further, for any receipt to fall within the ambit of the expression "fees for technical services," it is essential that it be received as consideration for the rendering of services that are technical in nature. The phrase "rendering of managerial, technical or consultancy services" must be interpreted narrowly to refer to specialized services provided by the service provider, tailored to the specific needs of the service recipient. Typically, such services require human intervention. Mere access to a technical database or technical literature does not amount to the provision of technical services. Similarly, the sale of technical texts, information, or research material compiled through extensive research does not constitute the rendering of technical services within the scope of Section 9(1)(vii) of the Act. In the present case, the subscription fee received by the assessee from various third parties is for access to e-magazines and standardized content, which is neither customized nor specifically created for any particular entity. Accordingly, such subscription fees do not qualify as "fees for technical services" within the meaning of Explanation 2 to Section 9(1)(vii) of the Act. In view of the above, the court held that it is unnecessary to examine the provisions of the applicable DTAA, as the question of applicability would arise only if the subscription fee were taxable under the regular provisions of the Act. Therefore, the appeal of the revenue is dismissed.

Source : HC, Delhi in the case of CIT(A) Vs Springer Nature Customer Service Centre GMBH vide [TS-473-HC-2025(DEL)] on April 16, 2025



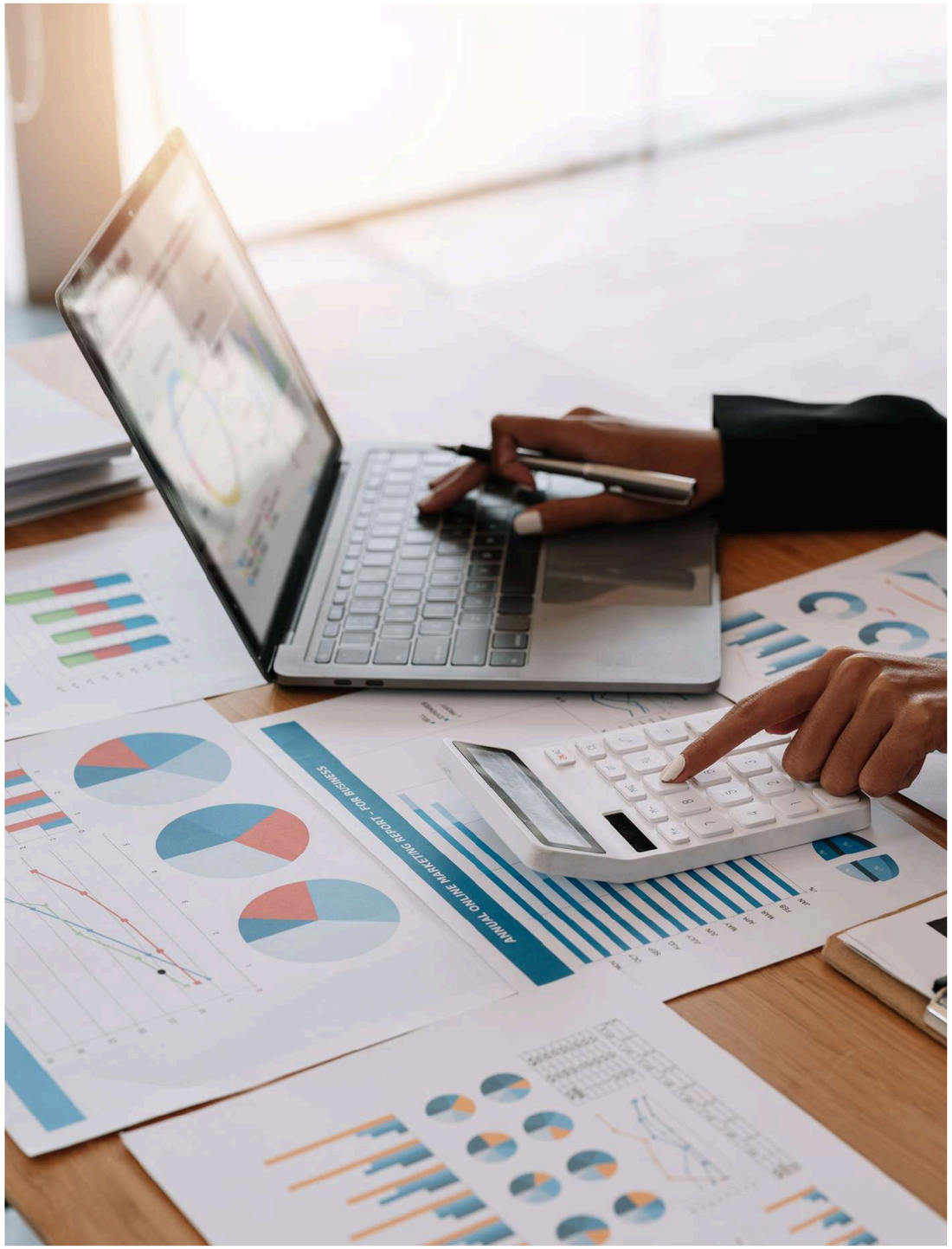
STCG arising from sale of debt & equity MFs exempt under Article 13(5) of India-Singapore DTAA

Facts

The assessee is a non-resident Indian and filed return declaring income of Rs. 4,53,768/- on 27.06.2022. The case was selected for scrutiny. The assessee had shown income from short-term capital gain on debt funds of Rs. 88,75,230/- and short-term capital gain on equity funds of Rs. 46,91,140/- in respect of which deduction was claimed under the DTAA. The assessee had claimed that capital gains earned on the transfer of equity shares cannot be charged as she, is a tax resident of Singapore and the provisions of Article 13 of DTAA are. However, Ld. AO did not accept the contentions of the assessee and proposed to tax on the entire amount in the draft assessment. The assessee filed objections before the Ld. DRP. However, the action of the Ld. AO was endorsed by Ld. DRP which held that the capital gains arising from the units of mutual funds that derived substantial value from assets located in India are taxable in India. Accordingly, Ld. AO proceeded to tax the short-term capital gain of Rs. 1,35,66,368/- vide assessment order u/s 143(3) r.w.s. 144C(13) on 21.12.2024.

Ruling

The Hon’ble Tribunal took the decision by placing reliance in case of DCIT v/s K. E. Faizal wherein the facts are similar, and it was held that- under



Article 13(5) of the India-UAE Tax Treaty, capital gains earned by a UAE resident from the transfer of property other than shares in an Indian company are taxable only in the UAE. Article 13(4) allows India to tax gains from the transfer of shares in Indian companies, but this applies only if the asset qualifies as a "share." Since mutual fund units are not considered "shares" under Indian law — being issued by trusts and not companies — they do not fall under Article 13(4). Instead, they are classified as distinct securities under Indian regulations. Therefore, capital gains from the sale of mutual fund units by a UAE resident fall under Article 13(5) and are not taxable in India. Therefore, the bench was of the view that the assessee is entitled to deduction in respect of short-term capital gains of Rs. 1,35,66368/- under the DTAA between India and Singapore is allowable and the appeal of the assesse is allowed.

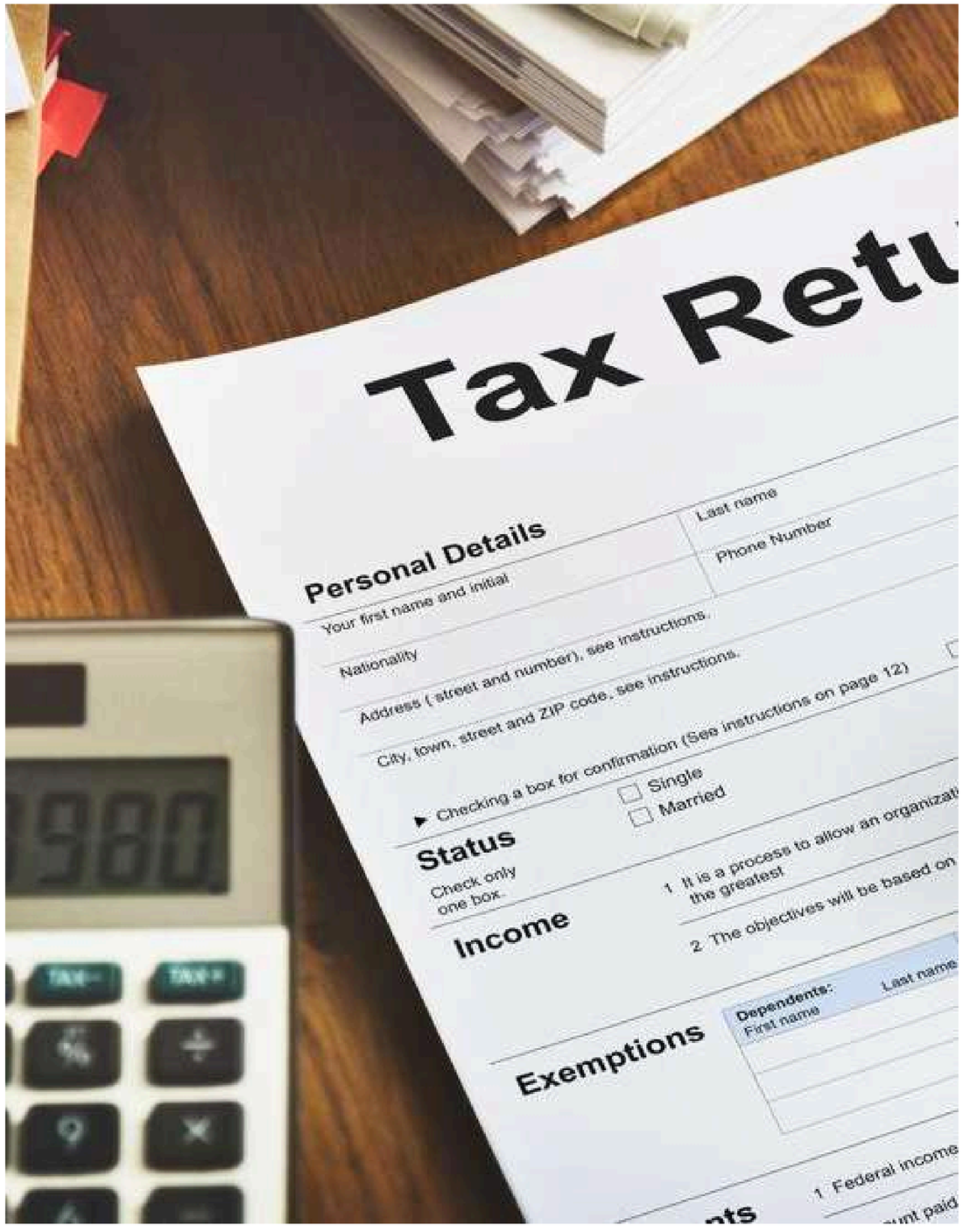
Source : ITAT, Mumbai in the case of Anushka Sanjay Shah vs ITO vide [TS-393-ITAT-2025(Mum)] on March 26, 2025

LTCG grandfathered as per Article 13(4) of India-Mauritius DTAA not adjustable against STCL or LTCL

Facts

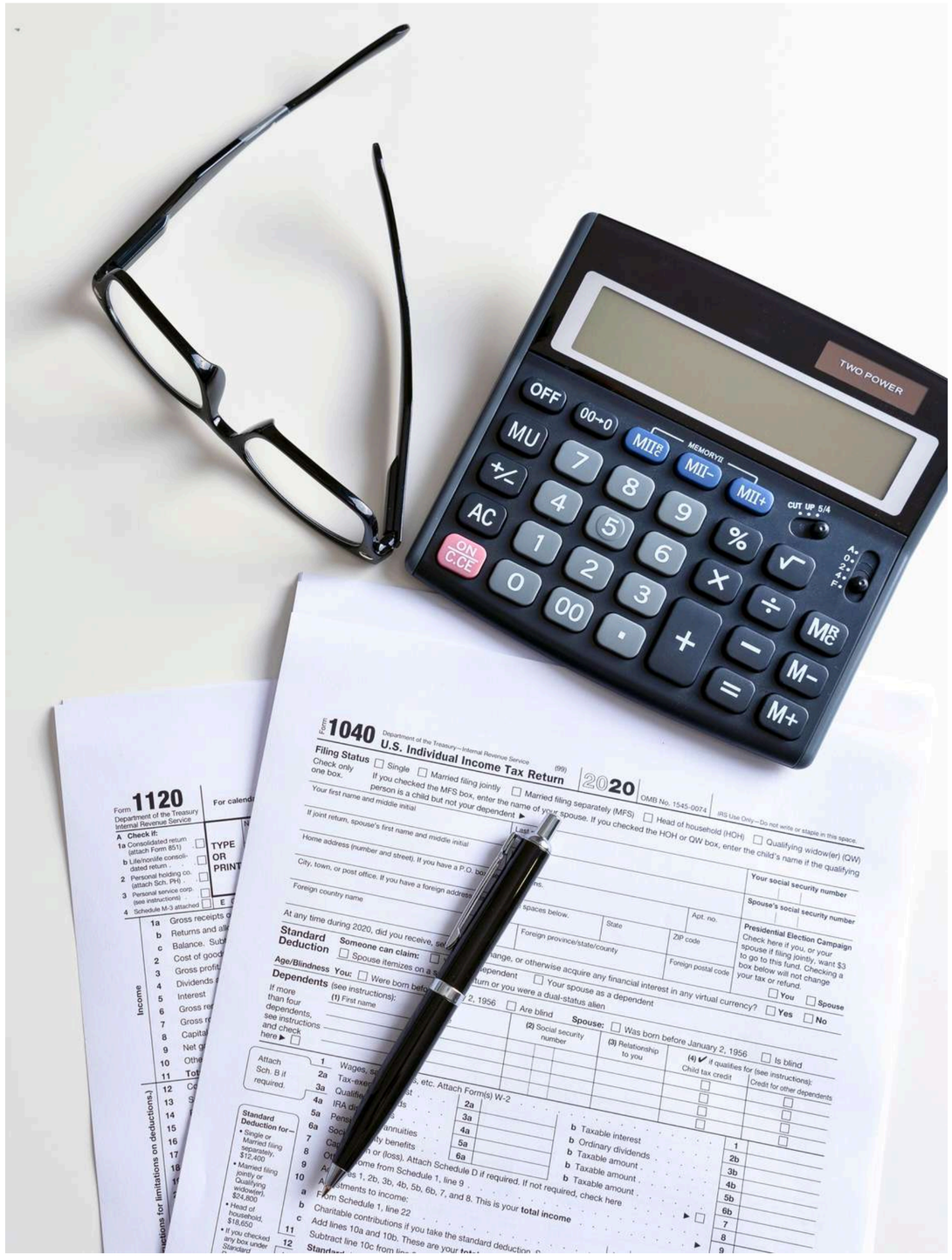
The assessee is a company incorporated in Mauritius and licensed by the Financial Services Commission of Mauritius as Collective Investment Schemes and holds a tax residency certificate issued by the Mauritius Revenue Authority. For the year under consideration, the assessee filed its

return of income on 23.09.2019, declaring a total income of Rs. Nil and carried forward current year short-term and long-term capital losses, total amounting to Rs.3,59,84,420/-. In its return of income, the assessee claimed exemption of long-term capital gains amounting to Rs.38,48,55,851/- earned on sale of listed equity shares in India on the basis that the same are not taxable under section 195 read with Article 13(4) of the India-Mauritius DTAA, since these shares were acquired before 01.04.2017 (grandfathered sale). The return filed by the assessee was processed vide intimation dated 10.05.2020 issued under section 143(1) of the Act, whereby the long-term and short-term capital losses, total amounting to Rs.3,59,84,420/-, incurred on the sale of equity shares which were acquired after 01.04.2017 (grandfathered sale) was set off against the long-term capital gains amounting to Rs.38,48,55,851/-. Accordingly, as per the intimation issued under section 143(1) of the Act, the net long-term capital gains of Rs.34,88,71,461/- was calculated (after the aforesaid adjustment) and taxed at the special rate. The assesse filed appeal before CIT(A) against the order wherein learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee. Being aggrieved, the assessee filed appeal before ITAT bench.



Ruling

The Hon'ble Tribunal place reliance in the case of Matrix Partners India Investment Holdings, LLC vs DCIT (ITA No. 3097/Mum/2023, AY 2020–21),



wherein the Tribunal held that capital gains exempt under the India-Mauritius DTAA cannot be included in the computation of total income in India. Consequently, losses from the sale of non-grandfathered shares cannot be set off against such exempt gains. However, the taxpayer is entitled to carry forward the loss to subsequent years. Further, relying on Patni Computers Systems Ltd. and settled legal principles, section 90(2) ensures that treaty provisions apply only if more beneficial to the assessee. Treaties cannot be used to the detriment of the taxpayer, and in any assessment year, the assessee can opt for either the Act or the DTAA, depending on which is more favorable. Therefore, the assessee cannot be compelled to apply the treaty if doing so results in a disadvantage, such as denial of loss set-off. Following the decisions of the Co-ordinate Bench, it was held that long-term capital gains from grandfathered transactions under Article 13(4) of the India-Mauritius DTAA cannot be set off against capital losses. The Assessing Officer is directed to exempt the full amount of Rs. 38.49 crore in long-term capital gains and allow the carry forward of both long-term and short-term capital losses as per the Income-tax Act. Therefore, the impugned order is set aside, and the assessee's appeal is allowed.

Source : ITAT, Mumbai in the case of Bay Capital India Fund Limited vs ADIT, CPC vide [TS-382-ITAT-2025(Mum)] on April 4, 2025

Consultancy fees to UK-firm not FTS under India-UK DTAA sans ‘make available’ condition

Facts

The brief facts are that the assessee a UK-based engineering and consulting company, rendered structural and MEP services in India, earning Rs. 5,76,02,441/- as management fees/common cost recharge and ₹1,73,68,588/- from consulting engineering services, all from Buro Happold Engineering Pvt. Ltd. The assessee claimed this income was not taxable under the India-UK DTAA. However, the Assessing Officer treated the income as "Fees for Technical Services" under Section 9(1)(vi) of the Income-tax Act and Article 13 of the DTAA, and proposed taxation in India at 15%. The assessee has now challenged the order before the Tribunal.

Ruling

The Hon’ble Tribunal held that it is evident that the assessee’s case is squarely covered by earlier decisions of the ITAT, Mumbai Bench, in its own case for preceding assessment years. The income received by assesse for consulting engineering services and management fees does not qualify as "fees for technical services" (FTS) under the India–UK DTAA, as the services did not involve "making available" technical knowledge or skill. Instead, such income constitutes business income under Article 7 of the DTAA, and since the assessee has no Permanent Establishment (PE) in India, it is not taxable in India. The Tribunal emphasized that prior consistent ITAT rulings should be followed in the absence of any contrary decision from higher courts, which the revenue failed to provide. In result, the appeal of the assesse is allowed.

Source : ITAT, Mumbai in the case of Buro Happold Limited vs DCIT (International Taxation) vide [TS-485-ITAT-2025(Mum)] on April 23, 2025

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