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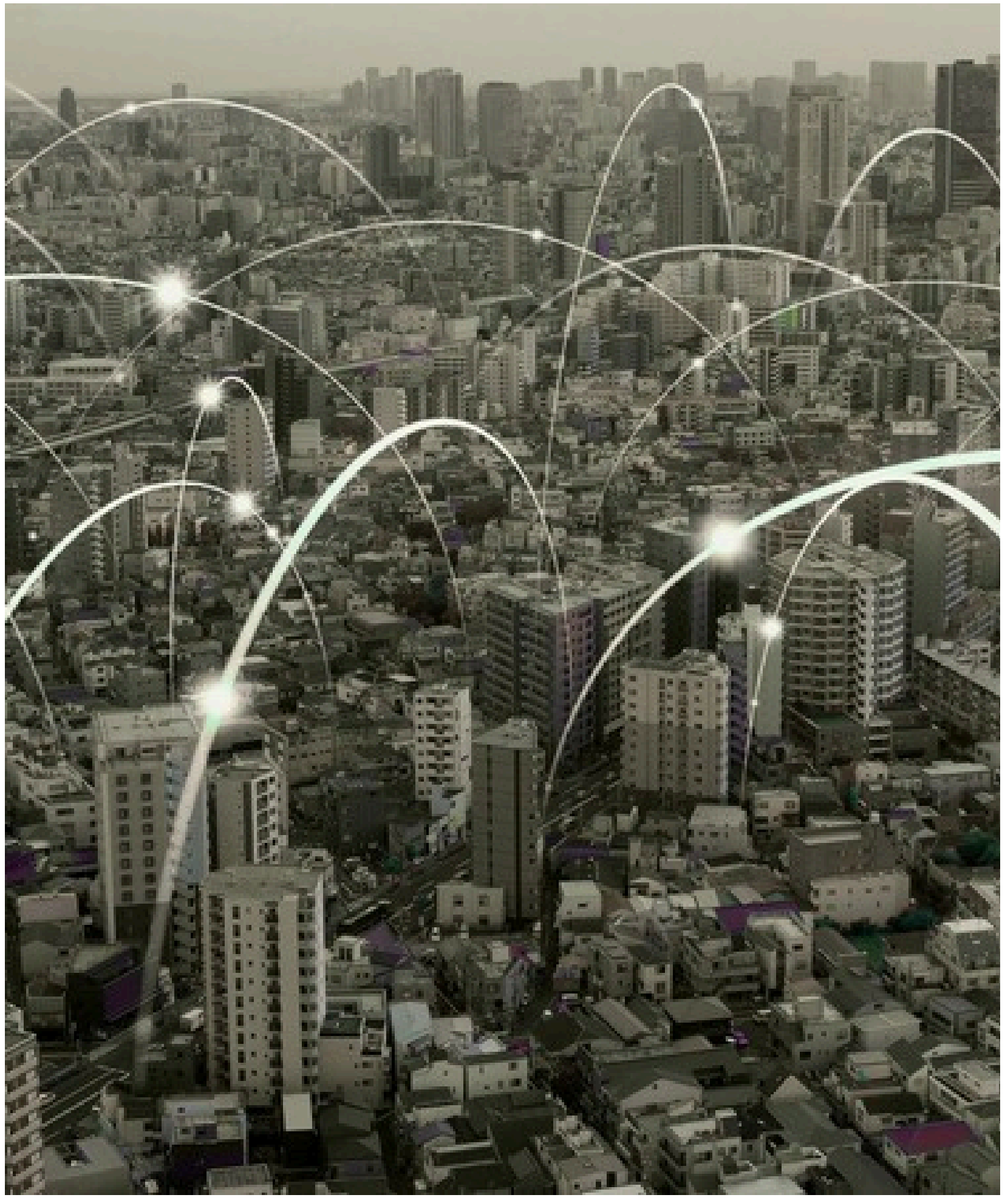

International Tax
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No Virtual PE Without Clear DTAA Language; Emphasizes Strict Interpretational Constraints

Facts

The respondent-assessee is a non-resident company engaged in providing legal advisory services. For Assessment Years 2020–21 and 2021–22, it filed its returns on 29.12.2020 and 07.03.2022 respectively, declaring NIL income for both years. Subsequently, the Assessing Officer issued draft assessment orders dated 30.09.2022 (for AY 2020–21) and 29.12.2022 (for AY 2021–22), proposing additions of INR 15,55,45,693 and INR 7,97,64,414. The assessee challenged these before the Dispute Resolution Panel (DRP), but the DRP dismissed its objections. Thereafter, the AO passed final assessment orders under Section 143(3) read with Section 144C(13) on 28.07.2023 and 29.10.2023, assessing total incomes equal to the proposed additions for the respective years. Aggrieved, the assessee approached the Income Tax Appellate Tribunal (ITAT), which deleted the additions and allowed the appeals. The Revenue has now appealed against the Tribunal's decision, and while admitting the appeals, the following questions of law have been framed: (A) whether the Tribunal erred in holding that the assessee does not have a service permanent establishment in India; and (B) whether the Tribunal erred in holding that the assessee does not have a virtual service permanent establishment in India.

Rulings

In the present case, the Revenue argued that the UK law firm Clifford Chance had a Service PE or a Virtual PE in India. The Delhi High Court rejected all these arguments and agreed with the ITAT's decision in favour of the law firm. The Revenue pointed to two Clifford Chance employees who stayed in India for 120 days, but the ITAT had excluded 71 of those days because they were spent on vacation or on general business-development activities, not on providing services to Indian clients. The High Court agreed, stating that days when no services were actually provided in India cannot be counted for determining a PE.

The Court also examined the Revenue's argument that, due to digitalization, services can now be provided virtually, and therefore Clifford Chance should be considered to have a Virtual PE in India. The Court looked closely at Article 5(6)(a) of the India–Singapore DTAA, which uses the phrase "furnishes services… within a Contracting State." The Court held that the word "within" implies physical presence, and without personnel physically performing services in India, services cannot be said to be furnished "within" India. While the Court acknowledged the Revenue's concern that digitalization allows foreign companies to operate virtually across borders, it emphasized that the

DTAA does not mention the concept of a “virtual service PE.” Therefore, courts cannot insert concepts into the treaty that the treaty itself does not contain. The Court also noted that although the Revenue relied heavily on the OECD Model, the Significant Economic Presence (SEP) rules, and global trends that move away from the physical-presence requirement, such developments do not change the interpretation of the DTAA unless the treaty is amended.

Therefore, the Court rejected the Revenue’s reliance on various judicial decisions, including the Supreme Court’s ruling in Hyatt, stating that those cases were based on different facts. And the Delhi High Court ruled in favour of Clifford Chance.

Source: HC, Delhi in the case of CIT. Vs Clifford Chance PTE Ltd vide [TS-1603-HC-2025(DEL)] on December 04, 2025

AO Directed to Allow Relief u/s 90/91 as Form 67 and Revised Return Filed Within Time

Facts

The assessee filed his return of income for Assessment Year 2017–18 declaring a total taxable income of INR 26,80,79,640 and paying tax of INR 9,50,54,813. His income consisted of salary, house property income, capital gains, and income from other sources. The income of his three minor daughters was also clubbed with his income under Section 64(1A) of the Income Tax Act. The case was selected for Limited Scrutiny on the grounds that the assessee had claimed Double Taxation Relief under Sections 90/91 and owned foreign assets. A notice under Section 143(2) dated 28.08.2018 was issued accordingly. During the assessment proceedings, the Assessing Officer observed that the assessee had invested, on behalf of his minor daughters Nanaki Parvinder Singh and Nandini Parvinder Singh, in shares of Clonberg Holding Ltd., amounting to INR 1,64,61,100 and INR 1,66,78,642 respectively. He also noted that the assessee had claimed relief under Sections 90/91. Ultimately, the Assessing Officer passed an order dated 06.12.2019 making an addition of INR 3,31,42,742 under Section 69 for unexplained investments in the names of the two minor daughters. The AO further denied credit for tax of INR 23,02,920 paid in Singapore and invoked Section 115BBE. Aggrieved, the assessee appealed before the CIT(A), who granted relief on both issues. The Revenue has now challenged this relief before ITAT.

Rulings

The Hon'ble bench have considered the submissions and noted that both Form 67 and the revised return were filed within the time permitted under Rule 128 for claiming Foreign Tax Credit, and therefore the assessee's claim could not be denied. It also held that the assessee was eligible for deduction under Section 80-IAC.

The ITAT observed that the assessee is a high-income taxpayer, having declared INR 26.80 crores for the relevant year, which included the income of his minor daughters. The investments made in the names of his two daughters were properly disclosed in the original return, and the corresponding bank accounts in India reflecting these investments were also provided. Given the substantial income reported, the Tribunal found no basis to doubt the source of the INR 3.31-crore investment. It further noted that the assessee had furnished complete details of all foreign assets and bank accounts—both his own and those of his minor daughters—in India and abroad. On the issue of foreign tax credit, the ITAT highlighted that the assessee had submitted full details of tax paid in Singapore and the corresponding tax payable in India on income taxable in both countries. These details were included in the return and and submitted to the AO. The Tribunal relied on the CIT(A)'s finding that

Form 67 and the revised return were both filed within the prescribed timelines and that the same income cannot be taxed twice. Accordingly, the AO was rightly directed to allow the assessee's claim and delete the disallowance and the Revenue's appeal stands dismissed.

Source: ITAT, Delhi in the case of DCIT vs Malvinder Mohan Singh vide [TS-1637-ITAT-2025(DEL)] on December 10, 2025

Manpower Support Not FTS Under DTAA Due to Absence of 'Make Available' Element

Facts

The assessee is a U.S. based company that provided manpower support services to Flipkart during the relevant year under a service agreement effective from 1 April 2020. The scope of work involved development-related activities such as deep learning, chatbots, and creating intellectual property, but did not involve transferring any technical knowledge or "making available" any skills or know-how to Flipkart. The assessee argued that payments received could not be treated as FTS under Article 12 of the India–US DTAA. It also clarified that the AO had incorrectly assumed that it provided commercial strategy advice or shared consumer-behaviour insights, whereas it only supplied data which Flipkart analysed on its own. Regarding PhonePe, the assessee explained that reimbursements were only for salaries of employees working in the U.S. under a cost-reimbursement agreement, with no secondment involved and no markup charged. The assessee maintained that pure reimbursements cannot be treated as FTS.

Rulings

In the present case, the Hon'ble Tribunal partly allowed the appeal of Myntra Inc., holding that the INR 24.72 crore received from Flipkart for manpower support services was not taxable as Fees for Technical Services (FTS) under Section 9(1)(vii) or Article 12(4)(b) of the India–US DTAA, since the services did not "make available" any technical knowledge, skill, experience, know-how, or technical designs. The Tribunal found the AO's conclusion on the "make available" clause to be incorrect, as neither the AO nor the DRP had shown that any technology or know-how was transferred to Flipkart. Relying on the Delhi High Court's ruling in International Management Group (UK) Ltd., the ITAT observed that simply collaborating with U.S. academic institutions does not imply that technical knowledge is being made available. Further, regarding the reimbursement of INR 5.22 crore from PhonePe, treated by the AO as FTS, the ITAT noted inconsistencies in the assessee's submissions before lower authorities and the Tribunal. Since the assessee only produced the cost-reimbursement agreement and failed to provide evidence supporting its claim of salary compliance under Section 192, the issue was sent back to the AO for fresh examination based on complete documentation.

Source: ITAT, Delhi in the case of Myntra Inc. vs ACIT, vide [TS-1654-ITAT-2025(DEL)] on December 12, 2025

Scientific Test-Report Receipts Taxable as Royalty; IT Support Reimbursements Not FTS

Facts

The brief facts are that the assessee, is a company incorporated in the Netherlands, engaged in collaborating with partners to develop improved vegetable varieties and related solutions for customers and consumers worldwide. During the relevant assessment year, the assessee received INR 3,58,03,283 for testing services provided to Nunhems India Pvt. Ltd. for the purpose of enhancing plant varieties, and a further INR 10,66,76,030 as reimbursement for IT support services from the same Indian entity. The assessee filed its return of income for AY 2021-22 on 15 March 2022, declaring NIL taxable income and claiming both receipts as non-taxable. The return was selected for scrutiny, and the Assessing Officer, through an order dated 28 September 2023 passed under Section 143(3) read with Section 144C(13), rejected the assessee's claim and assessed total income at INR 14,24,79,310. Aggrieved, the assessee approached the DRP, which by a majority decision held that the testing service receipts constituted royalty taxable under the India–Netherlands DTAA read with Section 9(1)(vi), and that the IT support reimbursements were in the nature of FTS taxable under Section 9(1) (vii) and the treaty. The assessee, still dissatisfied, has now filed the present appeal.

Rulings

The Hon'ble Tribunal held that the payments received by the assessee from its Indian affiliate, Nunhems India, for providing testing services used in breeding programs—such as marker analysis and production of doubled haploids—are taxable in India as royalty under Article 12(4) of the India–Netherlands DTAA. The Tribunal observed that the assessee had shared detailed scientific information and specialised knowledge developed from its technological and scientific experience, and this exchange of scientific know-how squarely met the definition of royalty under the treaty. The bench noted that the test reports supplied were not routine certificates but contained valuable commercial and scientific insights enabling Nunhems India to improve plant varieties and make breeding advances, including assessments of traits, disease resistance, yield, and seed quality. The scientific process from converting seed into a double haploid plant to extracting seeds was reflected in the reports shared with the Indian AE. Thus, the Tribunal held that the transfer of such scientific experience and knowledge constituted royalty, irrespective of the "make available" condition. However, regarding the

reimbursements for IT support services, the ITAT ruled that these receipts could not be taxed as FTS under Section 9(1)(vii) or Article 12(5) of the DTAA.

After reviewing the Master Service Agreement with TCS Netherlands BV, the Tribunal found that the sums received were only pure reimbursements, as whatever TCS charged the assessee was recovered from the Indian affiliate without any markup. Since the IT support services did not “make available” any technical knowledge or skill, the FTS definition under the treaty was not satisfied. Relying on Delhi High Court decisions in Bio-Rad Laboratories and Relx, the ITAT deleted the addition made on this account.

Source: ITAT, Delhi in the case of Nunhems Netherlands B.V. vs ACIT, vide [TS-1639-ITAT-2025(DEL)] on December 8, 2025

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