आयकर अपीलीय अधिकरण, दिल्ली पीठें, नई दिल्ली
INCOME TAX APPELLATE TRIBUNAL, DELHI BENCHES, NEW DELHI

BENCH: D

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA 3421/DEL/2023 निर्धारण वर्ष/Assessment Year: **2021-22**)		
DENSO INTERNATIONAL ASIA CO. LTD. 888, MOO 1, BANGNA-TRAD ROAD KM 27 5 BANGBO SUBDISTRICT, SAMUTPRAKARN PROVINCE, THAILAND, THAILAND-10560, NOT LISTED	**Vs.**	**THE ASSISTANT COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION** THE ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE INTERNATIONAL TAX 1(2)(2), CIVIC CENTRE, MINTO ROAD, NEW DELHI NEW DELHI-110002, DELHI
(अपीलार्थी Appellant)		**(प्रत्यर्थी Respondent)**
Permanent Account Number of Assessee:		**AADCD4652K**
अपीलार्थी द्वारा/Assessee represented by:		**S/Shri Vishal Kalra & Ankit Sahni, Advovates** **Ms. Taranjeet Kaur, Chartered Accountant**
प्रत्यर्थी द्वारा/Revenue represented by:		**Sh. M.S. Nethrapal, CIT DR**

सुनवाई की तारीख / Date of conclusion of hearing:	**02-Mar-2026**
घोषणा की तारीख / Date of pronouncement:	**29-May-2026**

आदेश / ORDER

PER VIKAS AWASTHY, JUDICIAL MEMBER:

This appeal by the assessee is directed against the Assessment Order passed u/s. 143(3) r.w.s 144C(13) of the Income Tax Act,1961 (hereinafter referred to as 'the Act') dated 19.09.2023, for Assessment Year 2021-22.

2. Shri Vishal Kalra, appearing on behalf of the assessee at the outset submitted that he is not pressing ground no. 2 and sub grounds 2.1 to 2.4 of appeal challenging validity of the assessment order.

In light of the statement made by ld. Counsel for the assessee at Bar, ground no. 2 including the sub grounds i.e. 2.1 to 2.4 of appeal are dismissed as not pressed.

3. The ld. Counsel for the assessee submits that in ground no. 3 to 7 of appeal, the assessee has assailed the assessment order in taxing amount received as Fee for Technical Services (FTS) Rs.17,28,18,072/- under Article 22 of the India-Thailand DTAA and accordingly taxed FTS @10% as per the provisions of section 9(1)(vii) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3.1. The ld. Counsel narrating facts of the case submits that the assessee company is incorporated under the laws of Thailand and is a tax resident of Thailand. The assessee is a regional service center of the Denso Group for Asia and Oceanic undertaking business administration, material engineering services, design and development services, testing and technical services of automotive components for the group. The assessee does not have any Permanent Establishment (PE) in India. During the period relevant to assessment year under appeal, the assessee earned following incomes in the nature of FTS, on account of services provided to its Indian Group Companies:

S. No.	Name of party	Nature of transaction	Amount (INR)
1	Denso Subros Thermal Engineering Centre India Private Limited	Management Fee	15,38,772
2	Denso Kirloskar Industries Private Ltd	Application Cost	18,24,294
		Management Fee	1,54,92,866
3	Denso Haryana Private Limited	Management Service fee	4,86,26,721
		General fees and related Expenses	2,388
4	Denso India Private Limited	Management Service fee	2,33,02,159
5	Denso International India Private Limited	Management service fees	1,76,60,195
Total (INR)			**10,84,47,395**

The assessee has claimed said receipts as non-taxable in the absence of FTS clause in India-Thailand Double Tax Avoidance Agreement (DTAA). The Assessing Officer (AO) held that in the absence of FTS clause in the DTAA, the income from FTS fall under Article 22 i.e. residuary clause of the DTAA i.e. 'Other Income' and accordingly taxed FTS @10% as per section 9(1)(vii) of the Act.

3.2. The ld. Counsel contended that the said receipts cannot be considered under Article 22 of DTAA merely for the reason that there is no clause to tax FTS in India-Thailand DTAA. The ld. Counsel submits that identical issue was considered by the Tribunal in assessee's own case in preceding assessment years i.e. in ITA No. 1985/Del/2023 for AY 2020-21 decided on 27.06.2024 and in immediate subsequent assessment year in ITA No.402/Del/2025 for AY 2022-23 decided on 08.10.2025. The ld. Counsel submitted that, the AO in the impugned assessment order admits that the issue is repetitive.

3.3. The ld. Counsel submits that since the assessee has not have any Permanent Establishment (PE) in India. Even, if the amount received by the assessee from Indian Group Companies is treated as business income it is not liable to be taxed in India.

3.4. The ld. Counsel submits that a perusal of the draft assessment order would show that the AO as per the information available on Insight portal held that the assessee has received total amount of Rs.17,28,68,072/-. The AO without providing opportunity of hearing to the assessee proposed to make addition of the aforesaid amount. The AO while concluding the draft assessment order made addition of Rs.17,28,68,072/- as FTS under section 9(1)(vii) of the Act. The assessee against the addition made by the AO in draft assessment order filed objections before the Dispute Resolution Panel (DRP). The DRP vide directions dated 22.08.2023 upheld the addition and rejected objections of the assessee. The ld. Counsel submits that in light of consistent view taken by Tribunal in assessee's case, the addition made in the impugned assessment year is liable to be deleted.

3.5. The ld. Counsel submits that in ground no. 9 of appeal, the assessee has assailed charging of interest u/s.234A and 234B of the Act. The ld. Counsel contended that

since, the assessee had filed return of income within time, no interest u/s.234A of the Act is leviable.

3.6. The ld. Counsel submits that in case, the assessee succeeds on ground no. 3 to 7 of appeal, ground no. 8 of appeal would become academic.

4. Per contra, Shri M.S. Nethrapal representing the department vehemently defending the impugned order prayed for dismissing appeal of the assessee. The ld. DR submits that merely for the reason that the India-Thailand DTAA does not specifically provide for FTS would not mean that the amount received by the assessee as FTS would automatically become business income. Where provisions of DTAA are silent, the provisions of Act would apply. The ld. DR placed reliance on the decision of Tribunal in the case of *DCIT vs. TVS Electronics Ltd. 22 taxmann.com 215 (Chennai)* to support of his arguments.

5. Controverting the argument raised by ld. DR, the ld. Counsel submits that the ratio laid down in the case of *DCIT vs. TVS Electronics Ltd. (supra)* has been overruled by Hon'ble Madras High Court in the case of *Bangkok Glass Industry Company Ltd. vs. Asst. CIT, 34 taxmann.com 77 (Madras)*. Further, to buttress his argument, the ld. Counsel referred to the decision of Coordinate Bench of Tribunal in the case of *DCIT vs. Campus Eai India P. Ltd. in ITA No. 355/Del/2021 for AY 2017-18 decided on 20.10.2023*.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the decision on which respective sides have placed reliance to support their arguments.

7. The assessee in ground no. 3 to 7 of appeal has assailed the addition made by AO in respect of amounts received on account of Management Service Fee from its Indian Group Companies. Undisputedly, in India-Thailand DTAA FTS clause is absent. The AO in order to bring FTS under taxnet has held that FTS receipts by the assessee fall under Article 22(3) of India-Thailand DTAA i.e. residual clause and held it as taxable u/s.9(1)(vii) of the Act. We find that this is a legacy issue, the Coordinate Bench in the immediate preceding assessment year i.e. AY 2020-21 in ITA No.

1985/Del/2023 (supra) has decided this issue in favour of the assessee holding as under:-

> *"13. As we appreciate the material before us and the submissions raised, it comes up that there is no dispute on the part of the Revenue that the disputed income of Rs. 16,60,43,718/- by its nature and characteristics is accepted to be Fee for Technical Services (FTS) only. There is also no dispute to the fact, that with regard to FTS, there is no specific provision for chargeability of tax under the India-Thailand DTAA. As we appreciate the India-Thailand DTAA it comes up that Article 22 is a residuary Article which is incorporated to make taxable items of income which are not otherwise dealt in the DTAA. At the same time Article 7, lays down taxability of profits of an enterprise.*
>
> *14. We will like to initiate the discussion keeping in mind the settled proposition of law, that where the business profits of the non-resident include items of income for which specific or separate provisions have been made in other articles of the tax treaty, then those provisions would apply to the items. However, in case it is found that those provisions are not applicable then the items of income would have to be considered in Article taxing business income. Reliance for this can be placed on Paradigm Geophysical Pty. Ltd. [2008] 25 SOT 94. Further, that where there is no FTS clause available in the treaty with a country, then the income in question would be assessable as business income and it can be taxed in India only if there is a permanent establishment in India and the income is attributable to activities or functions performed by such permanent establishment. Reliance for same can be placed on reliance is placed on the Hon'ble Delhi Tribunal ruling in the case of Bharti Airtel Ltd. [2016] 67 taxmann.com 223 and GE Precision Healthcare LLC v. Assistant Commissioner of Income Tax, Circle- International Tax -1(3)(1), New Delhi, ITA No.404/Del/2023 Assessment Year: 2020-21 order dated 14.08.2023.*
>
> *15. Thus, once the assessee raises a claim that the source of its revenue is out of "profits of an enterprise", under Artilce 7 of DTAA, then Article 22 would not be applicable. If at all AO wants to invoke any other provision of the Act or the DTAA, then the said activity, which gives rise to item of income should be examined to establish that same does not fall in any other Article and then only Article 22 may be invoked.*
>
> *16. Here in the case in hand AO has invoked Article 22 of DTAA by making an allegation that FTS is not the primary business activity of the assessee and as there is no specific Article to cover FTS, residuary Article 22 can be invoked. This conclusion about FTS not being primary business is drawn on the basis of the assessee's web portal information. The first thing is that it is the Memorandum of Association of an assessee which is actually relevant to give a finding about the nature and scope of the business activity which the enterprise can enter into and the web portal in no way is an evidence of the business activities of an assessee.*
>
> *17. Then, in the case in hand, apart from several pieces of evidence about services being rendered in normal course of its business, as referred above in Para 10, Assessee has come up with a specific plea that it was providing application work services to Indian AEs, wherein the assessee, as part of its operations, does following:¬*
>
> - *Application works for Products including, but not limited to, design of Products for meeting local automotive vehicle market;*
>
> - *Testing and evaluation of samples of Products, support of localization of parts and / or raw materials of Products;*
>
> - *Coordination with the Company's or Group Company's customers relating, but not limited to, technical presentation to and supports with such customers for fixing technical specifications;*

- Market research of automotive vehicles and parts thereof necessary for design of Products or review of technology trend;

18. Now Section 9 of the Act enumerates certain incomes to be deemed to accrue or arise in India and Section 9(1)(vii) of the Act provides under what conditions FTS income shall be considered to accrue or arise in India. Explanation 2 to Section 9(1)(vii) of the Act gives definition of FTS and which provides that any service falls within the definition of FTS are either be in the nature of managerial services, technical services or consultancy services. Thus FTS is a species of income with specific definition and components. ***Thus where a DTAA does not make a reference for taxability of FTS, as separate item, then Article 22, which vests residuary powers, cannot be invoked. The intention of having residuary powers of taxing an income vested in any of the contracting state is to deal with those incomes which due to lack of regularity, continuity and frequency do not form part of regular business activity of the entity. The residuary provisions of Article 22 will not apply to items of income, which can be classified under other provisions of the tax treaty, but their taxability is subject to fulfillment of conditions mentioned therein.*** *Thus we conclude the fee paid towards technical services can be brought under the item of business income, if there is no material to show that the same is not related to the business of the assessee. That onus lies on AO.*

19. In the case in hand AO without examining the business activity of the assessee has drawn an interference on the basis of information available on web portal of the assessee. However, on a perusal of the documentary evidences filed and taking into consideration the nature of services provided by Assessee, we would concluded that the services provided by the assessee to the Indian AEs are in the nature of technical, managerial or consultancy, which, themselves together as FTS, do not fall in any Article of the DTAA, can very well be part of business income. ***Thus for the applicability of Article 7 assessee had brought on record the evidence which establish that FTS, actually is part of business activity and assessee does not have a PE in India. So benefit of Article 7 is to be extended. AO had all the opportunities to examine the business activity and to give a conclusive finding as to what is primary business activity of assessee and why operations of the assessee in providing FTS, is not part of business income. That being not done, then by recourse to Article 22, FTS income could not have been brought to tax.***

20. In light of the aforesaid, we are inclined to allow the Grounds raised by the Assessee. The appeal is allowed and the impugned addition quashed."

[Emphasized by us]

8. The ld. DR has placed reliance on the decision rendered in the case of *DCIT vs. TVS Electronics Ltd.(supra)* to contend that where DTAA does not specifically provide for FTS such payment does not automatically become business income and has to be tested in light of provisions of the Act. The ld. Counsel for the assessee to counter the submissions of DR placed reliance on the decision of Coordinate Bench in the case *DCIT vs. Campus Eai India P. Ltd.(supra).* The Co-ordinate Bench in the said case has held that the ratio laid down in the case of *DCIT vs. TVS Electronics Ltd.(supra)* has been overturned by Hon'ble Madras High Court in the case of *Bangkok Glass Industry Company Ltd. vs. Asst. CIT (supra).* Here it would be imperative to refer to the judgment rendered in the case of *Bangkok Glass Industry*

Company Ltd. vs. Asst. CIT (supra). In the said case, one of the substantial question of law for consideration before the Hon'ble High Court was:

> *"(i) Whether the Tribunal was right in law in holding that the fees for technical services is taxable in India under section 9(1)(vii) and not exempt under DTAA."*

Before we refer to findings of the Hon'ble Court, it is necessary to refer to facts of the said case:

> *"4. The assessee herein is a non-resident company of Thailand. It entered into technical assistance know-how agreement on 19th March, 1990 with M/s Mohan Breweries & Distilleries Ltd. (MBDL). A reading of the agreement dt. 19th March, 1990 shows that M/s MBDL decided to establish a container glass plant in the Union Territory of Pondicherry in India, and accordingly MBDL entered into an agreement with the assessee herein for transfer of glass technology know-how. Thus, the agreement herein speaks about transfer of know-how relating to engineering, design equipment procurement, operating and manufacturing technology for facilities for the manufacture of glass packing materials and containers. Article I of the agreement states that the assessee agreed to transfer the know-how to the Indian company during the layout planning and erection stage and the assessee company will teach such know-how to MBDL in such manner so as to assist MBDL in successfully operating its future facilities in India in the field of glass packing materials and containers.*
>
> *xxxx*
>
> ***8.*** *In terms of the agreement thus entered into, the assessee was paid technical know-how fees for five years. The assessee contended that the technical know-how fees are not liable to tax as per art. 12 of the DTAA between India and Thailand. The Revenue, however, rejected the said contention and referred to the definition of "royalty" under art. 12 to take the view that the definition of "royalty" under art. 12 means the consideration for transferring the know-how. Since what had been transferred was sharing of knowledge, the consideration received was not covered by the definition of "royalty", as available under art. 12 of the DTAA. The assessing authority pointed out that the assessee is in the manufacture and trading of glass. Over a period of five years, it had developed technical know-how in the manufacture of glass containers. Consequently, the transfer of knowledge therein would, at best, fall for consideration under art. 7. Even herein, the officer took the view that the consideration received for transfer of technical know-how could not be treated as business profit for dealing with the same under art. 7, there being no direct nexus between the income and the activities of the business of the assessee and hence, the payment shall fall for consideration in the residual clause contained in art. 22 and could be taxed only in the Contracting State where the income arose. Thus the income received by the assessee in India was held to be taxable in India. In terms of section 9(1)(vii) and section 115(a)(iii), the receipts were held liable to tax at a flat rate of 40 per cent of the gross payments made."*

On appeal, the Commissioner (Appeals) held part amount to be taxable as royalty under article 12 and remaining amount representing additional attendance fee was held taxable under article 7, subject to the condition that assessee had a permanent establishment in India. The assessee carried the issue in appeal before the Tribunal. The Tribunal inter-alia held that the portion of FTS was not taxable under article 7 but under article 22, as per section 9(1)(vii) of the Act. Against Tribunal order both the

assessee and the Department filed appeal before the Hon'ble High Court. The Hon'ble Court examined the Tribunal order and observed:

> *"11. A perusal of the order of the Tribunal shows that it agreed with the findings of the CIT(A) that the agreement covered various stages for successfully transferring the know-how. Thus the payments contemplated under the agreement were rightly allocated between royalty and fee for technical services in India and abroad. Going by the various clauses in the agreement between the parties, the Tribunal held that there was no infirmity in the order of the CIT(A) and thus it confirmed the remand order of the CIT(A) to find out whether there was a PE. Having upheld the order of the CIT(A), the Tribunal also held that art. 22 had no relevance as far as the royalty and fee for technical services contemplated under the agreement were concerned and the said article would come into play only when the item of income did not fall for consideration under any of the express provisions of the DTAA. In other words, it held that art. 22 was concerned about miscellaneous income not covered under any of the provisions of DTAA. Thus holding that royalty and fee for technical services contemplated under the agreement were taxable under art. 12 and art. 7 respectively, the Tribunal held that art. 22 could not be invoked. Having stated so, surprisingly, in para 9 of the order, the Tribunal once again considered art. 22 only to hold that the portion of fee for technical services arising in India was to be taxed in accordance with section 115(1)(b). Referring to section 9(1)(vii)(b) of the Act, which deals with income by way of technical services payable by a person who is a resident in India, it held that the portion of fee for technical services arising in India has to be taxed de hors any business connection. In the result, dismissing the assessee's appeals on other issues and allowing the assessee's appeal on this issue alone, it allowed the Revenue's appeal in part. Aggrieved by this, both the Revenue as well as the assessee are on appeal before us.*
>
> *xxxx*
>
> *18. It must be pointed out herein that the consideration as to whether the receipt would fall for consideration as royalty or fees for technical services would depend on the clauses in the agreement between the assessee and MBDL. In a detailed discussion made on the various clauses under the agreement, read in the context of art. 12 of the DTAA, the CIT(A) pointed out that the word "royalty" under the agreement is a very comprehensive one and that the case on hand is distinguishable from the decision of the Karnataka High Court in Citizen Watch Co. Ltd. v. IAC [1984] 148 ITR 774/[1983] 15 Taxman 438 as well as the decision of the Tribunal which "was relied on by the assessee. Given the fact that the services rendered by the assessee covered transfer of know-how as well as giving, technical assistance and technical advise, learned counsel appearing for the assessee pointed out that what went in as by way of technical advice was with reference to the resolving of the day-to-day problems in the implementation of the transfer of technical know-how. The technical advice given related to resolving the issues in the actual working of the transferred knowledge and there was no transfer of technical know-how to fall for consideration under the head of "royalty", hence, the entire payment has to be treated as falling for consideration between payment of royalty and payment of rendering technical advice. On going through arts. 2 and 3 of the agreement between the assessee and the Indian company, we agree with the view of the CIT(A) that the entirety of the payment cannot be considered as one falling for consideration under art. 12. Further, taking note of the fact that the assessee company was also involved in training Indian personnel in India and abroad and taking note of the clauses in the agreement as regards the payment and the additional payment depending on the period of training, over and above what was to be paid under the agreement for the duration specified therein, the CIT(A) rightly came to the conclusion that the component of technical services in India included the extra months of training, so too the training abroad. In computing the said amount, rightly the CIT(A) arrived at a finding that a sum of 1,12,500 USD and 69,750 USD would be the amount which would be treated as received for technical services rendered by the assessee and the amount of 4,79,640 USD relates to royalty payment, assessable as per art. 12.*

19. Even though the Revenue canvassed this issue before the Tribunal, in the absence of any material to read the clauses otherwise, rightly, the Tribunal came to the conclusion that a sum of 4,79,640 USD alone would fall for consideration under art. 12 as royalty income and the other to be assessed as by way of technical services. As already pointed out even herein, with the finding of the assessing authority on the remand order that the assessee had no PE, the said amount cannot be brought under art. 7. In the light of the above, we have no hesitation in confirming the order of the Tribunal.

20. ***As far as the order in art. 22 is concerned, we do not find any justifiable ground to uphold this portion of the order after the discussion on the extent of income falling for consideration under royalty as defined under art. 12 and the amount paid as towards technical services falling for consideration under art. 7. Since the said income does not fall as miscellaneous income, the same cannot be brought under art. 22."***

[Emphasized by us]

Thus, the Hon'ble High Court in unequivocal terms has held that FTS cannot be taxed under residual Article 22 of India-Thailand Article 22 would get triggered only when DTAA item of income does not fall under any other express provision of DTAA. Therefore, reliance placed by the Department on the decision rendered in the case of *DCIT vs. TVS Electronics Ltd.(supra)* is unsustainable.

9. We find that similar controversy arose in assessee's own case in AY 2022-23 as well. The Co-ordinate Bench in ITA No. 402/Del/2025 (supra) following order of Tribunal for AY 2020-21 in assessee's case decided the issue in favour of assessee. In light of the fact that the issue raised in ground no. 3 to 7 of instant appeal has already been decided by the Tribunal in favour of the assessee in the immediate preceding and succeeding assessment year and in absence of any material to show that there is any distinction in facts in the impugned assessment year, we see no reason to deviate from consistant view in the impugned assessment year. Accordingly, ground no. 3 to 7 of appeal are allowed for parity of reasons.

10. In ground no. 9 of appeal, the assesse has assailed charging of interest u/s.234A and 234B of the Act. The ld. Counsel for the assessee has contended that the assessee has filed income tax return for the impugned assessment year within time, hence, interest u/s.234A has been wrongly charged. We deem it appropriate to restore this issue to the AO to examine the date of filing of return of income for impugned assessment year. if the return of income has been filed by the assessee within the time/extended time, (if any), no interest u/s.234A shall be chargeable

In so far as charging of interest u/s.234B of the Act, the same is consequential. The ground no. 9 of appeal is partly allowed for statistical purpose.

11. In ground no. 10 of appeal, the assessee has assailed initiation of penalty proceedings u/s.270A of the Act. Challenge to penalty proceedings at this stage is premature, hence, ground no. 10 of appeal is dismissed.

12. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on Friday the 29th day of May, 2026.

Sd/-	**Sd/-**
RENU JAUHRI	**VIKAS AWASTHY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Delhi
Dated: **29-May-2026**

Copy to:

1	**DENSO INTERNATIONAL ASIA CO. LTD.,** **888, MOO 1, BANGNA-TRAD ROAD KM 27 5** **BANGBO SUBDISTRICT, SAMUTPRAKARN** **PROVINCE, THAILAND,** **THAILAND-10560,** **NOT LISTED**
2	**THE ASSISTANT COMMISSIONER OF** **INCOME TAX, INTERNATIONAL** **TAXATION,** **THE ASSISTANT COMMISSIONER OF** **INCOME TAX CIRCLE INTERNATIONAL** **TAX 1(2)(2), CIVIC CENTRE, MINTO ROAD,** **NEW DELHI,** **NEW DELHI-110002, DELHI**
3	THE PCIT / CIT,
4	THE D.R., ITAT, DELHI BENCH
5	GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
I.T.A.T., DELHI