INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCHES, MUMBAI

BENCH: I
BEFORE HON'BLE BEENA PILLAI, JUDICIAL MEMBER
AND HON'BLE ARUN KHODPIA, ACCOUNTANT MEMBER

ITA 1290/MUM/2025 निर्धारण वर्ष/Assmt. Year: **2016-17**)		
GEMOLOGICAL INSTITUTE INTERNATIONAL, INC. 5345, THE ROBERT MOUAWAD CAMPUS, ARMADA DRIVE, CARLSBAD, CALIFORNIA - 092008, CALIFORINA-999999, NOT LISTED	**Vs.**	**THE DEPUTY COMMISSIONER OF INCOME-TAX (INTERNATIONAL TAXATION), CIRCLE 2(3)(2) - MUMBAI** THE DEPUTY COMMISSIONER OF INCOME-TAX (INTERNATIONAL TAXATION), CIRCLE 2(3)(2) - MUMBAI, ROOM NO. 610, 6TH FLOOR, KAUTILYA BHAVAN, C-41 TO C-43, G BLOCK, BANDRA KURLA COMPLEX, BANDRA (EAST), MUMBAI - 400051 MUMBAI-400051, MAHARASHTRA
(अपीलार्थी **Appellant)**		**(**प्रत्यर्थी **Respondent)**
Permanent Account Number of Assessee**:**		**AADCG6758M**
निर्धारिती द्वारा/Assessee represented by:		**Shri J.D.Mistry Sr. Adv./Niraj Sheth, AR**
राजस्व द्वारा/Revenue represented by:		**shri Rajendra Jaypal-Sr. DR**

सुनवाई की तारीख / Date of conclusion of hearing:	**05-May-2026**
घोषणा की तारीख / Date of pronouncement:	**19/06/2026**

आदेश / ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

Present appeal arises out of the final assessment order dated 24/12/2024 passed u/s 143(3) r.w.s. 144C(13) r.w.s. 254 of the Act, on the following grounds of appeal:-

*"**1:0 Re.: Incorrect tax rate applied:***

1: 1 The Assessing Officer/ the Dispute Resolution Panel has erred in considering that the fees for technical services are taxable at 15% in terms of Article 12 of the India USA Double Tax Avoidance Agreement instead of 10% in terms of section 115A of the Income-tax Act, 1961.

1:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the 'fees for technical services' ought to be taxed at the rate of 10% plus applicable surcharge and cess in terms of section 115A of the Income-tax Act, 1961 and the stand taken by the Assessing Officer/Dispute Resolution Panel in this regard is misconceived, illegal, erroneous and incorrect.

1:3 The Appellant submits that the Assessing Officer be directed to tax at the rate of 10% and to re-compute it tax liability accordingly.

Without prejudice to the foregoing,

***2:0 Re.: Erroneous levy of education cess**:*

2:1 The Assessing Officer has erred in charging Health and Education Cess at the rate of

3%, over and above the tax-rate of 15% specified in the India-USA Double Taxation Avoidance Agreement while calculating the net tax liability payable by the Appellant.

2:2 The Appellant submits that considering the law prevailing on the subject, the tax rate specified in the India-USA Double Taxation Avoidance Agreement is inclusive and maximum rate of tax that can be charged to the appellant and hence, the education cess calculated by the Assessing Officer is illegal, erroneous and incorrect.

2: 3 The Appellant submits that the Assessing Officer be directed to delete the education cess charged at the rate of 3% and re-compute its tax liability accordingly.

3: 0 Re.: Excess levy of interest u/s. 234B of the Income-tax Act, 1961:

3:1 The Assessing Officer has erred in levying excess interest us. 234B of the Income ax Act, 1961 on the Appellant.

3:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject interest u/s. 234B ought to be levied

in terms of provisions of the Act and the excess levy of interest by the Assessing Officer is correct, erroneous and illegal.

3: 3 The Appellant submits that the Assessing Officer be directed to delete the excess levy of interest u/s. 234B so levied on it and to re-compute its tax liability accordingly.

4:0 Re.: General:

4:1 The Appellant craves leave to add, alter, amend, substitute and /or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal."

2. Brief facts of the case are as under:-

The assessee is a company incorporated in the United States of America (USA) and is a tax resident of that country. Assessee is engaged in the business of providing gem trading services and other allied and technical services. For the assessment year under consideration, assessee filed its return of income on 26-07-2016 declaring total income of Rs.41,44,650/-.

2.1. During the course of assessment proceedings, upon examination of the return of income filed by the assessee, the Ld.AO noted that the assessee had not offered to tax ₹10,61,365/- representing travel costs. The details of receipts disclosed by the assessee and the corresponding notes, as reproduced in the assessment order dated 30.09.2019, are set out below:

PARTICULARS	**GROSS**	**TDS**
INCOME FROM THE FOLLOWING TRANSACTIONS:		
1. Training and Technical Fees (Service Charges)-Refer Note 2	41,44,650	4,46,691
2. Travel Costs	10,61,365	
Less: Amounts not chargeable to tax under the Income-Tax Act, 1961, (Refer Note 3)	10,61,365	
INCOME CHARGEABLE TO TAX	**41,44,650**	**4,46,691**

The Ld.AO accordingly issued a show cause as to why, the travel costs amounting to ₹10,61,365/- did not constitute part of the receipts arising from the services rendered by the assessee and, why it should not be included in the taxable income of the assessee.

2.2 It was submitted by the assessee that the travel cost not being in the nature of fees for technical services (FTS) and purely reimbursement of expenditure incurred, is not taxable either under the provisions of the Act or under the India-USA Double Taxation Avoidance Agreement (DTAA). Further, the assessee submitted that this *Tribunal* has decided the issue in favour of the assessee in the preceding assessment years.

2.3. However, the Ld.AO, not being convinced with the submissions made by the assessee, held that the payment towards travel expenses was intrinsically connected with and incidental to the rendering of training and technical services and, therefore, was liable to be regarded as Fees for Technical Services (FTS). While arriving at the said conclusion, the Ld.AO placed reliance on the observations made by the DRP and Ld.CIT(A) in the assessee's own case for the assessment years 2009-10, 2010-11 and 2011-12. Accordingly, the travel cost amounting to ₹10,61,365/- was treated as FTS and brought to tax in the hands of the assessee.

Aggrieved by the aforesaid addition, the assessee raised objections before the learned DRP.

2.4. However, the DRP upheld the addition made by the Ld.AO. Thereafter, the assessee preferred appeal before this *Tribunal*. This *Tribunal*, following the consistent view taken on the identical issue in the assessee's own case for the earlier assessment years, allowed

the appeal of the assessee and deleted the addition made by the Ld.AO.

2.4.1. In respect of the income offered to tax in the return of income, the assessee computed tax at the rate of 10% in terms of section 115A(b) of the Income-tax Act, 1961, as the said provision was more beneficial to the assessee as compared to the tax rate of 15% prescribed under the applicable Tax Treaty.

2.4.2. During the course of assessment proceedings, the then Ld.AO, referring to Note 2 appended to the return of income, observed that the applicable tax rate for Fees for Technical Services (FTS) under section 115A of the Act was 26.265%, whereas the rate prescribed under the Tax Treaty was 15%. Accordingly, the Ld.AO proceeded to compute tax on the FTS income at the rate of 15% in terms of the Tax Treaty.

2.4.3. Before the DRP, the assessee contended that the Ld.AO incorrectly referred to Note 2 appended to the return of income and failed to appreciate the applicability of section 115A(b) of the Act. It was submitted that the applicable tax rate under section 115A(b) was 10% and not 26.265% as assumed by the Ld.AO.

2.4.4. After considering the submissions of the assessee, the DRP observed that the provisions of section 115A(1)(b) would be applicable only where the foreign company had entered into an agreement with an Indian concern and such agreement had been approved by the Central Government, or where the agreement related to a matter covered under the industrial policy and was in accordance with such policy. The DRP further observed that, since the assessee failed to establish fulfilment of the conditions

prescribed under section 115A(1)(b), the benefit of the said provision could not be extended to the assessee. Accordingly, the DRP upheld the action of the Ld.AO in applying the tax rate of 15% as per the Tax Treaty. Consequently, the final assessment order was passed by adopting the tax rate of 15%.

Aggrieved by the aforesaid decision, the assessee preferred an appeal before this *Tribunal*.

2.5. Vide order dated 12.10.2021, this *Tribunal* once again restored the issue raised in Ground No.2 of the appeal to the file of the Ld.AO for fresh adjudication. The Ld.AO was directed to examine the applicability of the Master Directions issued by the Reserve Bank of India and any other rules/regulations framed by the RBI/Central Government, and also to consider the judicial precedents relied upon by the assessee.

2.5.1. In the proceedings pursuant to the remand order of the *Tribunal*, the Ld.AO called upon the assessee to furnish details and substantiate that the remittances made towards Fees for Technical Services were covered under the automatic route of approval by the Reserve Bank of India. In response, the assessee submitted that since the remittances were permitted under the automatic route prescribed by the Reserve Bank of India, such permission ought to be regarded as approval granted by the Central Government for the purposes of section 115A(1)(b) of the Act.

2.5.2. The assessee furnished copy of the Master Direction on Other Remittance Facilities issued by the Reserve Bank of India dated 01.01.2016 (updated as on 06.11.2018), and submitted that prior approval of the RBI is required only in respect of remittances

exceeding USD 1 million per project towards consultancy services procured from outside India.

2.5.3. The assessee also submitted that, in the present case, the total amount of technical fees received by it was ₹41.44 lakhs, which was equivalent to approximately USD 62,562. Therefore, in terms of the aforesaid Master Direction, no further approval was required from the RBI/Central Government for such remittance.

2.5.4. It was submitted that, in terms of the proviso to section 5 of the Foreign Exchange Management Act, 1999 (FEMA), the Central Government, in consultation with the Reserve Bank of India, is empowered to impose reasonable restrictions on current account transactions. It was contended that the Master Direction/Circular issued by the RBI had been issued in exercise of such statutory powers and in consultation with the Central Government. Therefore, compliance with the conditions prescribed under the said Master Direction would amount to compliance with the requirement of approval contemplated under section 115A(1)(b) of the Act.

2.5.5. The assessee thus contended that, all conditions prescribed under section 115A(1)(b) stood duly satisfied and, therefore, the income received towards technical fees was eligible to be taxed at the rate of 10% as provided under the said provision.

2.5.6. However, the Ld.AO did not accept the submissions of the assessee and held that the conditions prescribed under section 115A(1)(b) were not satisfied. Accordingly, he rejected the claim of the assessee and held that the receipts were liable to be taxed at the rate of 15% in terms of the Tax Treaty.

Aggrieved by the draft assessment order dated 30.03.2024, the assessee preferred objections before the DRP.

3. The DRP, vide its directions dated 26.11.2024, following the view taken by it in the first round of proceedings, upheld the findings recorded by the Ld.AO in the draft assessment order.

3.1. Pursuant to the directions issued by the DRP, the Ld.AO passed the impugned final assessment order, wherein the receipts in question were brought to tax at the rate of 15%.

Aggrieved by the final assessment order passed by the Ld.AO, the assessee is in appeal before this Tribunal.

4. The only issue that arises for consideration is whether the receipts earned by the assessee are liable to be taxed at the rate of 15% in terms of the DTAA entered into between India and the USA, or at the rate of 10% in terms of section 115A(1) of the Income-tax Act, 1961, as claimed by the assessee.

4.1. In this regard, the Ld.Sr.Counsel appearing on behalf of the assessee submitted that, in the first round of assessment proceedings, this *Tribunal*, while considering the identical issue, had observed as under:–

> *"12. In rejoinder, learned counsel for the assessee submitted, the tax rate of 10% under section 115(1)(b)(B) has been made applicable from 01-04-2016. Hence, it would apply to assessment year 2016-17. Further, he submitted, while the assessing officer has applied the tax rate of 15% by incorrectly mentioning note 2 to the return of income, learned DRP, while considering the issue of applicability of section 115A(1) has never allowed any opportunity to the assessee to have its say on the fulfillment of conditions of the said provision.*
>
> *13. We have considered rival submissions and perused materials on record. The short issue arising for consideration is whether, the tax rate of 10% provided u/s 115A(1)(b)(B) would be applicable to the payments*

received by the assessee towards FTS. Apparently, the assessing officer has referred to note 2 to the note appended by the assessee to the return of income to conclude that the tax rate under the Act being 26.265% is more than the tax rate of 15% under the tax treaty; hence, the treaty provision being more beneficial would be applicable to the assessee. However, on a perusal of note 2 of the note appended to the return of income, a copy of which is at page 44 of the paper book, we find, the note reads as follows:-

> *"2. Training and Technical Fees are in nature of 'fees for technical services' as defined under section 9(1)(vii) of the Income-tax Act, 1961 and taxable at the rate of 10% (plus surcharge and education cess) in terms of section 115A. As per Article 12 of the Double Tax Avoidance Agreement ('DTAA') entered into and subsisting between India and the United States of America, royalty received is taxable at the rate of 15%. Accordingly, the tax rate considered for computation is @10% taking benefit of sec 115A of Income-tax Act, 1961."*

14. On a reading of the aforesaid, we do not find any reference to the tax rate of 26.265% as suggested by the assessing officer. Thus, it is manifest, the assessing officer proceeded to apply the tax rate of 15% under a complete factual misconception. When the aforesaid error committed by the assessing officer was brought to the notice of learned DRP, it is observed, learned DRP has not made any observation on the same. On the contrary, learned DRP proceeded to examine whether the conditions of section 115A(1) have been fulfilled or not. Therefore, assessee's contention that learned DRP never provided an opportunity to the assessee to offer its submissions regarding fulfillment of conditions of section 115A(1) appears to be correct. Thus, in our view, to that extent, there is lack of opportunity being provided to the assessee to establish its position.

Proceeding further, we find section 115A(1)(b) provides that subject to fulfillment of certain conditions, the rate of tax in respect of income received by a non-resident company by way of royalty or FTS would be taxable @10%. The conditions are as under:-

> *I. The royalty or FTS received from the Indian concern must be in pursuance to an agreement entered between the parties and such agreement must have been approved by the Central Government; or*
>
> *II. Where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement should be in accordance with such policy.*

15. In this regard, assessee's contention is – the amount by way of FTS received by the assessee is little more than Rs.41 lakhs. Therefore, there is no need for any specific approval from the Central Government. On a perusal of paragraph 4.3 of the master direction dated 01-01-2016

(updated from time to time) issued by the RBI, a copy of which is at page 54 of the paper book, we find that prior approval of RBI would be necessary, if remittances exceed USD 10,00,000 per project for 'other consultancy services' procured from outside India. As per Foreign Exchange Management (Current Account Transaction) Rules, 2000, remittances in certain instances are prohibited as per Schedule 2 and Schedule 3. Prima facie, it appears, the amount received by way of FTS by the assessee does not come within the prohibited items. Though, there are certain conditions set out in section 115A(1); however, it has to be considered whether such conditions are mandatorily required to be fulfilled, even, in a case where specific approval is neither required nor contemplated as per the extant rules/regulations/guidelines of RBI or Central Government. In case, the Government has not laid down any guidelines or procedure for approval for the subject transaction, the assessee cannot be expected perform an impossible task. In our view, if strict and literal interpretation of a statutory provision leads to undesirable consequences and not only renders it unworkable but also causes harassment to the taxpayer, then, it has to be avoided and the provision has to be construed harmoniously to make it workable. However, it is a fact on record that all these aspects have not been examined either by the assessing officer or by learned DRP while deciding the disputed issue.

16. As regards the contention of learned departmental representative that the 10% rate would be applicable from assessment year 2017-18, we do not find any merit in such submission. Undisputedly, by way of Finance Act, 2015, the applicable tax rate of 10% in place of 15% has been brought to the statute w.e.f. 01-04-2016. Therefore, in our view, the tax rate of 10% would be applicable from assessment year 2016-17 onwards. As regards the contention of learned Departmental Representative that the master direction of RBI speaks of consultancy services, hence, would not be applicable, we find such argument thoroughly misconceived. A reading of Explanation (a) to section 115A(1)(b)(B) makes it clear that FTS would have the same meaning as in Explanation 2 section 9(1)(vii) of the Act. As per Explanation 2 to section 9(1)(vii) of the Act, FTS would include consideration for managerial, technical or consultancy services. Thus, consultancy services would also come within the definition of FTS. It is relevant to observe, in course of hearing, learned counsel for the assessee submitted that in all other assessment years, similar payment received by the assessee has been taxed @10% as per section 115A(1)(b) of the Act. If that is so, applicability of rule of consistency also needs to be examined."

4.2. From the aforesaid observations of the *Tribunal*, the Ld.Sr.Counsel submitted that this *Tribunal* already held that the receipts earned by the assessee towards training and technical fees are in the nature of "Fees for Technical Services" (FTS) and are liable to be considered under the provisions of section 115A(1)(b)

of the Act. It was further submitted that this *Tribunal* also noted that, in the assessee's own case for other assessment years, similar receipts had consistently been offered to tax at the rate of 10% under section 115A(1)(b) of the Act, and such treatment had been accepted by the Revenue.

4.3. The Ld.Sr.Counsel submitted that, in view of the findings recorded by this *Tribunal* in the first round of proceedings, the issue regarding the applicability of the tax rate of 10% under section 115A(1)(b) of the Act stands settled. It was submitted that, pursuant to the remand directions issued by the Tribunal, the limited scope of examination before the Ld.AO was only to verify whether the conditions prescribed under section 115A(1)(b) of the Act stood satisfied in the facts of the assessee's case, particularly in the context of the approval requirement contemplated under the said provision.

4.4. The Ld.Sr.Counsel submitted that, for the purpose of applicability of section 115A(1)(b) of the Act, the relevant conditions requiring examination are as under:

> (i) the income by way of royalty or Fees for Technical Services received from the Government or an Indian concern should be pursuant to an agreement entered into by the foreign company with the Government or the Indian concern after 31.03.1976, and where such agreement is with an Indian concern, the same should have been approved by the Central Government; or
>
> (ii) where such agreement relates to a matter included in the industrial policy, for the time being in force, of the

Government of India, the agreement should be in accordance with such policy.

4.5. The Ld.Sr.Counsel submitted that, in the facts of the present case, the assessee is required to satisfy either of the aforesaid conditions to avail the benefit of the concessional rate of tax provided under section 115A(1)(b) of the Act. He submitted that the assessee, being a foreign company, had received income towards Fees for Technical Services from an Indian concern, namely, GIA India Laboratory Pvt. Ltd. It was submitted that the said receipts were earned pursuant to an agreement dated 01.11.2008 entered into between the assessee and GIA India Laboratory Pvt. Ltd., which was subsequently amended on 01.11.2012.

4.6. The Ld.Sr.Counsel submitted that the next requirement for applicability of section 115A(1)(b) is regarding approval by the Central Government. In this regard, he referred to the Master Direction on "Other Remittance Facilities" issued by the Reserve Bank of India dated 01.01.2016 (updated as on 06.11.2018), and submitted that the said Master Direction prescribes the circumstances in which prior approval is required for remittances made outside India. Referring to clause 4.3 of the aforesaid Master Direction, the learned Senior Counsel submitted that, in respect of remittances towards consultancy services procured from outside India, prior approval of the RBI is required only where the remittance exceeds USD 1 million per project. It was further submitted that the aforesaid Master Direction has been issued under the provisions of the Foreign Exchange Management Act, 1999 and the Foreign Exchange Management (Current Account Transactions) Rules, 2000, and identifies the categories of

transactions requiring prior approval of the RBI or the Government of India. According to the learned Senior Counsel, the remittances received by the assessee do not fall within any such category requiring prior approval.

4.7. The Ld.Sr.Counsel submitted that the total amount of technical fees/consultancy fees received by the assessee during the relevant previous year was only USD 62,562 as on 31.03.2016, which was substantially below the threshold limit of USD 1 million prescribed under the Master Direction. Therefore, no prior approval was required in the present case and the remittance was permissible under the automatic route.

4.8. The Ld.Sr.Counsel further referred to the Statement on Industrial Policy dated 24.07.1991 and submitted that the said policy provided for automatic approval in respect of specified payments, including lump-sum payments and royalty payments within the prescribed limits. It was contended that separate approval was not required for foreign technology arrangements or payments covered under the general permissions granted in accordance with RBI guidelines.

4.9. Accordingly, the Ld.Sr.Counsel submitted that the agreement entered into between the assessee and the Indian concern was in accordance with the industrial policy of the Government of India and the remittances made pursuant thereto were covered under the automatic approval mechanism prescribed under the applicable FEMA provisions and RBI regulations.

4.10. The Ld.Sr.Counsel also placed reliance on the decision of *Co-ordinate Bench of this Tribunal* in the case of *Kaiser Aluminium*

Technical Services Inc. reported in *(2008) 20 SOT 226*, wherein this *Tribunal* examined the concept of automatic approval in respect of foreign technology agreements in the context of the Statement on Industrial Policy dated 24.07.1991. The learned Senior Counsel thus submitted that the conditions prescribed under section 115A(1)(b) of the Act stand duly satisfied in the present case. Accordingly, the Fees for Technical Services received by the assessee is liable to be taxed at the rate of 10% together with applicable surcharge and cess, being the beneficial rate prescribed under section 115A(1)(b) of the Act.

4.11. The Ld.Sr.Counsel further drew our attention to the treatment accorded to identical receipts in the preceding assessment years. It was submitted that for the assessment years 2009-10 to 2011-12 and 2015-16, the Revenue had consistently accepted the taxation of Fees for Technical Services at the rate of 10% together with applicable surcharge and cess under section 115A(1)(b) of the Act. It was further submitted that, for the assessment years 2012-13 to 2014-15, the assessee had itself offered the Fees for Technical Services to tax at the rate of 10% under section 115A(1)(b) of the Act and the returns of income filed for those years were not subjected to scrutiny.

4.12. In view of the aforesaid facts, the Ld.Sr.Counsel submitted that the Revenue has consistently accepted the applicability of section 115A(1)(b) of the Act to the assessee's receipts and there is no basis to take a contrary view in the impugned assessment year. Accordingly, it was submitted that the conditions prescribed under section 115A(1)(b) stand satisfied and the benefit of the

concessional rate of tax provided therein cannot be denied to the assessee.

4.13. *Per contra*, the Ld.DR relied upon the orders passed by the authorities below and submitted that the assessee had failed to establish that the agreement entered into with the Indian concern had obtained the requisite approval contemplated under section 115A(1)(b) of the Act. It was submitted that, in the absence of such approval, the assessee was not eligible to claim the benefit of the concessional rate of tax provided under the said provision. Accordingly, the Ld.DR supported the findings of the Ld.AO and the DRP.

We have perused the submission advanced by both sides in light of records placed before us.

5. In the present case, we note that this *Tribunal*, in the first round of proceedings, has already held that the receipts earned by the assessee are in the nature of Fees for Technical Services and that the rate of tax prescribed under section 115A(1)(b) of the Act, i.e., 10%, is applicable with effect from 01.04.2016.

5.1. The Revenue, however, disputs the applicability of the said concessional rate on the ground that the agreement entered into by the assessee with the Indian concern was not approved by the Central Government and that the arrangement was merely an internal arrangement between group entities pursuant to the group policy.

5.2. In our considered view, the aforesaid objection raised by the Revenue already stands addressed by this *Tribunal* in the first round of proceedings, wherein it was observed as under:–

> *"15.....*
>
> *Though, there are certain condisition set out in section 115A(1); however, it has to be considered whether such conditions are mandatorily required to be fulfilled, even, in a case where specific approval is neither required nor contemplated as per the extant rules/regulations/guidelines of RBI or Central Government. In case, the Government has not laid down any guidelines or procedure for approval for the subject transactions, the assessee cannot be expected perform and impossible task."*

5.3. On perusal of the guidelines prescribed under the Master Direction dated 01.01.2016 issued by the RBI, we find that prior approval is required only in respect of remittances exceeding USD 1 million per project towards consultancy services procured from outside India. Admittedly, in the facts of the present case, the total receipts earned by the assessee towards Fees for Technical Services are only USD 62,562, which is substantially below the prescribed threshold limit.

5.4. Therefore, in the absence of any requirement under the applicable FEMA provisions or RBI guidelines for obtaining prior approval in respect of such remittance, the assessee cannot be expected to obtain an approval which is not contemplated under the governing regulations. The expression "approved by the Central Government" occurring in section 115A(1)(b) has to be interpreted in a practical and reasonable manner so as to give effect to the legislative intent and cannot be construed in a manner which makes the provision impossible to comply with.

5.5. Further, the RBI Master Directions are issued in exercise of powers conferred under the Foreign Exchange Management Act,

1999 and the Foreign Exchange Management (Current Account Transactions) Rules, 2000, which regulate and permit cross-border remittances. Where the regulatory framework itself permits a transaction under the automatic route, the same evidences approval of the transaction mechanism by the competent authority. Therefore, insisting upon a separate approval from the Central Government, where none is prescribed under the applicable regulations, would result in reading an additional condition into the provision.

5.6. We also note that the remittances in question have been made pursuant to an agreement entered into between the assessee and the Indian concern and are admittedly towards Fees for Technical Services. The Revenue has not disputed the genuineness of the agreement, the nature of services rendered, or the fact that similar receipts have been accepted to be taxable under section 115A(1)(b) of the Act in the preceding assessment years.

5.7. In view of the above, we hold that the assessee has substantially complied with the conditions prescribed under section 115A(1)(b) of the Act. The mere absence of a separate approval letter from the Central Government cannot be a ground to deny the concessional rate of tax, particularly when the transaction is permitted under the automatic route prescribed by the RBI.

5.8. We further note that section 90(2) of the Act provides that where the Central Government has entered into an agreement with the Government of another country for granting relief of tax or avoidance of double taxation, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. Therefore,

the assessee is entitled to avail the benefit of the more favourable provision available either under the DTAA or under the domestic law.

5.9. In the present case, while Article 12 of the India–USA DTAA provides for taxation of Fees for Technical Services at the rate of 15%, the domestic law, by virtue of section 115A(1)(b) of the Act, provides for a lower rate of tax of 10%, subject to fulfilment of the prescribed conditions. As held above, the conditions contemplated under section 115A(1)(b) stand satisfied in the facts of the present case, since the remittance was permitted under the applicable RBI framework and no separate approval was required.

5.10. Accordingly, applying the beneficial provision contained in section 90(2) of the Act, the assessee is entitled to opt for the lower rate of tax prescribed under section 115A(1)(b) of the Act. The action of the Assessing Officer in applying the tax rate of 15% under the DTAA is therefore not sustainable.

Accordingly, Ground No. 1 raised by the assessee stands allowed.

6. Ground No. 2 relates to the erroneous levy of Education Cess.

This issue is no longer *res integra* and has to be decided against the assessee.

Accordingly Ground no.2 raised by the assessee stands dismissed.

7. Ground No. 3 becomes consequential and, therefore, does not require any adjudication.

In the result, appeal filed by assessee stands allowed as indicated hereinabove.

Order pronounced in the open court on 19/06/2026.

Sd/-	***Sd/-***
ARUN KHODPIA	**BEENA PILLAI**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai
Dated: 19/06/2026
Sc. P.S.

Copy to:

1	**GEMOLOGICAL INSTITUTE INTERNATIONAL, INC., 5345, THE ROBERT MOUAWAD CAMPUS, ARMADA DRIVE, CARLSBAD, CALIFORNIA - 092008, CALIFORINA-999999, NOT LISTED**
2	**THE DEPUTY COMMISSIONER OF INCOME-TAX (INTERNATIONAL TAXATION), CIRCLE 2(3)(2) - MUMBAI, THE DEPUTY COMMISSIONER OF INCOME-TAX (INTERNATIONAL TAXATION), CIRCLE 2(3)(2) - MUMBAI, ROOM NO. 610, 6TH FLOOR, KAUTILYA BHAVAN, C-41 TO C-43, G BLOCK, BANDRA KURLA COMPLEX, BANDRA (EAST), MUMBAI - 400051, MUMBAI-400051, MAHARASHTRA**
3	THE PCIT / CIT,
4	THE D.R., ITAT, MUMBAI BENCH
5	GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR /
SR. PRIVATE SECRETARY
I.T.A.T., MUMBAI