

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. VIKAS AWASTHY, JUDICIAL MEMBER
AND
SH. NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No. 1948/Del/2025
(Assessment Year : 2022-23)**

Mitsubishi Electric Europe B.V. 34, Capronilaan Schiphol Rijk 1119 NS, Schiphol - Rijk, Netherlands - 999999	Vs.	ACIT Circle - International Tax 2(2)(1), Del, Civic Centre Minto Road, New Delhi -02
PAN No. AAMCM 5848 F (ASSESSEE)		(RESPONDENT)

Assessee by	Ms. Ananya Kapoor, Adv.
Revenue by	Dr. Shalini Verma, CIT-D.R.

Date of hearing:	08.07.2026
Date of Pronouncement:	30.09.2026

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER :

The above captioned appeal is preferred by the assessee against the assessment order dated 28.01.2025, passed by Income Tax Department, Office of the Assistant Commissioner of Income Tax, Circle International Taxation - 2(2)(1), Delhi (hereinafter referred to as 'Id. AO'), passed u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter 'the Act') in pursuance of directions of the Id. Dispute

Resolution Panel-2, New Delhi (in short 'ld. DRP') dated 19.12.2024
pertaining to Assessment Year 2022-23.

2. Assessee has raised following grounds of appeal :

1. *On the facts and circumstances of the case and in law, the impugned order is patently illegal, bad in law and beyond the jurisdiction of the Ed. Dispute Resolution Panel ('DRP') and as such is liable to be quashed in as much as the Ed. DRP has erred in violating the provisions of Section 144C(8) of the Act by setting aside additional evidence submitted by the Assessee for fresh consideration by the Ed. AO after issuance of directions by the Hon'ble DRP u/s 144C(5) of the Act, directing the Ed. AO to pass an appropriate speaking order thereafter.*
2. *On the facts and circumstances of the case and in law, the Ed. AO has erred in treating the amount received by the Assessee amounting to INR 2,96,41,107 being the referral fees received from Mitsubishi Electric India Private Limited as Tees for Technical Services' (TTS') under Section 9(1)(vii) of the Act on irrelevant consideration. The amount received by the Assessee was in the nature of 'commission', for the referral of customers as is evident from the memorandum of understanding, invoices, fixed rate of commission on sales etc. furnished before the Ed. AO and Ed. DRP.*
3. *On the facts and circumstances of the case and in law, the Ed. AO has failed to appreciate that amount received by the Assessee amounting to INR 2,96,41,107 does not tantamount to 'Fees for Technical Services' under Article 12 of the India-Netherlands Tax Treaty as well, as the Assessee only performs the activity of referring identified customers to its associated enterprise, which is not in the nature of any 'technical or consultancy services' as envisaged under Article 12 of the India-Netherlands Tax Treaty.*
- 3.1 *On the facts and circumstances of the case and in law, the Ld. AO has erred in ignoring the beneficial provisions of Article 12(5)(b) of the India-Netherlands Tax Treaty, which apply to the facts of the Assessee's case as the performance of activities did not lead to any services being "made available" to the recipient, due to which sums of INR 2,96,41,107 earned by the Assessee are not liable to be taxed as 'Fee for Technical Services' under Article 12(5)(b) of the India Netherlands Tax Treaty.*
4. *Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld. AO has grossly erred in not giving the effect of beneficial provisions of the India-Netherlands Tax Treaty even*

though the Tax Residency Certificate furnished by the Assessee during the assessment proceedings.

5. *On the facts and circumstances of the case and in law, the Ld. AO has erred in computing the tax liability of the Assessee whereby an incorrect additional interest of INR 3,85,333 has been computed and withholding tax credit on interest on Income-tax refund amounting to INR 49,323 has been added in the tax liability, ignoring the fact that such withholding tax credit has been claimed in the immediately succeeding year 6. On the facts and circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings in the case of the Assessee under the Act.”*

3. Brief facts are that the Assessee is incorporated and is a tax resident of the Netherlands and the provisions of India-Netherlands Tax Treaty ('Netherland Treaty) applies. The Assessee is mainly engaged in the business of sale of industrial, electrical and electronic equipment. The Assessee also earns commission/referral fees for referring potential customers to Mitsubishi Electric India Private Limited ('MEI'), the group company in India. The assessee receives commission/referral fees from MEI, at certain percentage of gross sale amount for sale made by MEI to its customer which was referred by the Assessee.

4. The Assessee filed its return of income for AY 2022-23 on 23 November 2022 declaring NIL income and in the return of income, the amount of commission received INR 2,96,41,107/- from MEI, was disclosed as "income not chargeable to tax as per DTAA" in view of Article 5 read with Article 7 of the Netherlands Treaty. Thereafter, the return of income was selected for scrutiny and draft assessment order under

section 144C of the Act was issued on 29 March 2024 wherein the said commission earned by the Assessee from MEI was treated as fees for technical services ('FTS') under the Act as well as the Netherlands Treaty, taxable in India. The Assessee filed Objections against the Draft Assessment Order before the Dispute Resolution Panel ('Hon'ble DRP'), which upheld the draft order in treating the commission as FTS under the Act as well as Netherlands Treaty. The Ld. AO passed the final assessment order dated 28 January 2025 wherein an addition of commission amounting to INR 2,96,41,107/- was made to the income as FTS.

5. Ground No. 1 with regard to validity of Ld. DRP action in setting aside additional evidence submitted by the Assessee for fresh consideration by the Ld. AO was not seriously argued, hence the same is not adjudicated.

6. With respect to **ground No. 2 and 3** regarding Commission received on referral of potential customers being not in the nature of managerial/technical/consultancy services and hence not liable to be taxed as 'Fee for Technical Services' under Article 12(5)(b) of the India Netherlands Tax Treaty, it is submitted that the Assessee has earned commission from MEI on referral of potential customers at certain percentage of gross sales value of sale made by MEI to the said customers

and it did not provide any services relating to design/technical or otherwise to MEI. The said amount is clearly in the nature of commission income which is in the nature of business income in the hands of the Assessee and is not taxable as per Article 7 of Netherlands Treaty in the absence of any PE in India.

7. The Assessee has submitted the following evidence before the lower authorities to show that the amount accrued/received from MEI is in the nature of commission on referral of the customers: -

- a) Copies of commission invoices showing the rate and the amount of commission receivable (please refer Page 128 to 131 of the PB)
- b) Copies of Memorandum of Understanding ('MOU') between the Assessee and MEI, giving details of customer, rate of commission and the duration of sales (please refer Page 132 to 137 of the PB)
- c) Copies of Sales reports submitted by MEI to the Assessee (please refer Page 124 to 127 of the PB)
- d) Copies of sample e-mail communication between MEI and the Assessee (please refer Page 63 to 123 of the PB)

It is submitted that the copies of commission invoices raised on MEI, give details of customers' name, rate of commission and the commission amount. Further, the sales report at page 124 to page 127 of the PB gives customer-wise breakup of sales made by MEI, rate of commission and the amount of commission due to the Assessee. It may be seen that the amount of commission as per the sales report tallies with the corresponding commission invoices raised on MEI.

8. It is submitted that the Assessee has entered into MOU with MEI for commission payment by MEI for sales made by it to various customers (please refer Page 132 to 137 of the PB). The MOU clearly shows the details of the customers and rate of commission on gross sales (excluding Goods and Services Tax). The details of MOUs giving rate of commission for different customers is as under :

S. No.	Name of the Customer	Tenure of the MOU	Rate of Commission
1	Wipro GE Healthcare Pvt. Ltd.	1 March 2016 to 28 February 2021	5.1%
2	BARCO Electronics Systems Pvt. Ltd.	1 September 2018 to 30 August 2023	3.6%
3	Alstom Transport India Limited	1 April 2019 to 31 March 2024	3.6%
4.	Schneider Electric IT Business India Pvt. Ltd.	1 September 2016 to 31 August 2021	3.7%
5	Siemens Limited	1 February 2019 to 31 January 2024	5.1%
6	Titagarh Wagons Limited	1 July 2020 to 30 June 2025	3.6%

The MOU provides the basis for computation of gross sales/fees as net-off GST. It is submitted that the AO/DRP have erred in assuming and interpreting the words design win fees/service fees appearing in some of the MOUs as design fees instead of commission to hold it as FTS. It is seen that the MOUs entered, expressly state that it is for payment of commission and the column "Service Fees Ratio" gives the rate of commission and computation of sales / design win fees/service fees as

net-off GST, for the sole purpose of computing the amount of commission. The term 'design approval charges' as used in the MOU appears alongside terms such as 'service fee' which has been ignored by the AO. It is submitted that the Ld. DRP has grossly erred in upholding the draft assessment order on assumption and conjectures which are contrary to the facts as MOU read in totality clearly establish that the Assessee receives commission and no design/technical service was provided to MEI.

9. Further, the term 'design approval charges' appearing in the computation of income is also accompanied by the term 'sales support fee, which has been used by the Assessee. The term 'design win fees' refers to the successful winning of the Purchase Order. The Assessee looks for clients/creates sales opportunities and understands the requirements and assists in trying to identify clients who would be keen to purchase products/goods from MEI. The Assessee subsequently refers the client to MEI for the execution of the final sale in India. Accordingly, the term 'design win fees' does not represent consideration received by the Assessee for the sale or transfer of any design to MEI. Rather, it represents consideration in relation to business opportunities generated by the Assessee through securing client/successful Purchase Orders and

referring such opportunities to MEI for subsequent sales on which commission is charged.

10. From the above facts, the Id AR argued that it is evident that a fixed rate of commission is charged by the Assessee on the sales made by MEI to each customer by the Assessee. The periodical sales reports in this respect were provided by MEI to the Assessee. The intention between the parties is also discernable from sample mail communication (refer page 76 and 77 of PB). The Id AR relied on the decision of the following:

- Cushman & Wakefield (S) Pte. Ltd. [2008] 305 ITR 208 (AAR)
- HSBCBankPlcvs.DCIT(IT)2(2)(2),Mumbai[2019]109taxmann.com434 (Mumbai)
- Edenred Pte. Ltd. vs. DDIT(IT) [2020] 118 taxmann.com 2 (Mumbai - Trib.)
- Knight Frank (India) (P.) Ltd. vs. ACIT[2019] 107 taxmann.com 363 (Mumbai)
- CLSA Ltd. vs. ITO(IT))-2(1), Mumbai [2013] 31 taxmann.com 5 (Mumbai)

11. The Id AR further argued that the Commission receivable for referral of customers does not meet the 'make available' conditions referred in Article 12(5) of the Netherlands treaty and hence cannot be considered as FTS. In light of the above definition and judicial pronouncements of various courts, for any payment to qualify as FTS under the DTAA, the following criteria are essential:

- The services need to be of technical or consultancy nature; and
- The services need to make available technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design.

12. The Id AR argued that a technical or consultancy service' is taxable only if the services 'make available' technical knowledge, experience, skill, know-how, or processes, or consist of development and transfer of a technical plan or technical design. In view of the above, by contrast, if no technical knowledge, etc is 'made available' to a purchaser, any fees generated would not be FTS under Article 12(5) of the DTAA. The Id AR stated that assessee has not enabled the service recipient to apply the technology (if any) contained therein, in an independent manner, in future and there is no transfer of a technical plan etc. The Id AR relied on the following:

- AECOM Intercontinental Holdings UK Ltd. [2025] 175 taxmann.com 351 (Refer Page No. 363 to 376 of the PB)
- Tungsten Automation England Ltd. [2025] 176 taxmann.com 497 (Refer Page No. 377 to 402 of the PB)
- International Management Group (UK) Ltd. vs. Commissioner of Income-tax [2024] 164 taxmann.com 225 (Delhi) (Refer Page No. 420 to 490 of the PB)
- Commissioner of Income-tax (International Taxation)-1 vs. Bio-Rad Laboratories (Singapore) Pte. Ltd. [2023] 155 taxmann.com 646 (Delhi) (Refer Page No. 491 to 494 of the PB)
- Income Tax Officer, TDS Ward-2(1), International Taxation, New Delhi vs. Nokia India (P.) Ltd. [2015] 42 ITR(T) 708 (Delhi - Trib.) (Refer Page No. 495 to 509 of the PB)
- Perfetti Van Melle Holding. B.V vs. Authority of Advance Ruling [2014] 52 taxmann.com 161 (Delhi) (Refer Page No. 361 to 362 of the PB)
- Commissioner of Income-tax, Central Circle vs. De Beers India Minerals (P) Ltd [2012] 346 ITR 467 (Kar.) (Refer Page No. 403 to 419 of the PB)

13. Per contra, the Id DR argued that there was no agreement between the assessee and MEI which was furnished to the AO. The Id DR further

stated that the services were made available to MEI and relied on the orders of AO/DRP.

14. We have heard the rival submissions and have perused the materials on record. The issue for our determination is whether the revenue earned by way of commission is FTS in terms of 12(5)(b) of the India-Netherland DTAA. At this juncture it would be appropriate to reproduce the relevant provisions of the DTAA as under:

¹[ARTICLE 12

ROYALTIES AND FEES FOR TECHNICAL SERVICES

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.]

²[2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or the fees for technical services.]

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

¹[4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.]

5. For purposes of this Article, "fees for technical services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :

(a)	are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 4 of this Article is received; or
(b)	make available technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design.
² [6. Notwithstanding paragraph 5, "fees for technical services" does not include amounts paid :	
(a)	for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property;

(b)	for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;
(c)	for teaching in or by educational institutions;
(d)	for services for the personal use of the individual or individuals, making the payment; or
(e)	to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 14 (Independent Personal Services) of this Convention.]

7. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of one of the States, carries on business in the other State, in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for technical services are effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

8. Royalties or fees for technical services shall be deemed to arise in one of the States when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties or fees for technical services are paid was concluded, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties or fees for technical services, having regard to the royalties fees for technical services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payment shall remain taxable, according to the laws of each State, due regard being had to the other provisions of this Convention.]

15. In the light of provisions of Article 12(5) of DTAA above, we have to adjudicate whether the commission earned by the assessee on referral made to MEI are Technical Services and if yes whether the technical knowledge is made available to MEI. From the perusal of the Article 12 of the DTAA, it is apparent that there are mandatory

conditions for treating the consideration received as FTS i.e., rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) and if such services **makes available** technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design.

16. In the instant case, we find that the assessee is earning commission income for referring potential customers which is calculated at a fixed 3.6% to 5.1% percentage of gross sales value of sale made by MEI to the said customers. We do not find that the assessee is providing any services relating to design/technical or otherwise to MEI. From the perusal of commission invoices raised on MEI, we find that it gives details of customers' name, rate of commission and the commission amount and the same tallies with the sales report which gives customer-wise breakup of sales made by MEI, rate of commission and the amount of commission due to the Assessee.

17. We further find that the AO has nowhere established the essential condition to term a technical service as FTS, i.e., the fulfilment of the clause “make available”. We find that there is no transfer of technology or the services rendered by the assessee has enabled the recipient of the service i.e., MEI to apply the technology independently. Ultimately,

we find that the assessee does not "make available" any technical knowledge, skill or know-how to MEI such that MEI can apply the technology on its own without recourse to the assessee in future. In view of the above factual matrix of the instant case, we follow the judicial precedent of the Hon'ble Delhi High Court decisions in the case of *DIT vs Guy Carpenter and co Ltd*; *CIT vs Bio-Rad Laboratories (Singapore) Pte Ltd* and *Tungsten Automation England Ltd vs DCIT*, (supra) and hold that since the assessee does not "make available" any technical knowledge, skill or know-how to MEI such that it can apply the technology on its own without recourse to the assessee in future, the consideration received by the assessee for provision of such referral services does not qualify as FTS under Article 12(5)(b) of the India-Netherlands DTAA as well as the provisions of section 9(1)(vii) of the Act. We are of the considered view therefore that the commission income earned by the assessee is in the nature of business income in its hands and is not taxable as per Article 7 of Netherlands Treaty in the absence of any PE in India. The ground 2 to 3 is allowed.

18. Ground 4 and 5 regarding beneficial treatment under DTAA and TDS credit, the AO is directed to give effect of the beneficial provision of DTAA and grant TDS as per law.

19. In the result, the appeal in ITA 1948/Del/2025 are allowed.

Order pronounced in the open court on 30.09.2026

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Date:- 30.09.2026

*Priti Yadav, Sr. Ps**

Copy forwarded to:

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4. CIT(Appeals)
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ASSISTANT REGISTRAR
ITAT NEW DELHI