

आयकर अपीलीय अधिकरण, मुंबई पीठे, मुंबई
INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, MUMBAI

BENCH: I

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

ITA 1027/MUM/2023		
(निर्धारण वर्ष/Assessment Year: 2020-21)		
NOVARTIS AG C/O. SRBC AND ASSOCIATES LLP, 14TH FLOOR, RUBY TOWER, SENAPATI BAPAT MARG, DADAR(W), -400028, MAHARASHTRA	Vs.	ACIT, (IT), CIR-3(3)(1) ROOM NO.1603, 16TH FLOOR, AIR INDIA BUILDING, NARIMAN POINT, -400021, MAHARASHTRA
अपीलार्थी Appellant		प्रत्यर्थी Respondent
Permanent Account Number of Assessee:		AAACN4932F
अपीलार्थी द्वारा/Appellant represented by:		Shri J.D.Mistry- Sr.Adv./Madhur Agarwal, AR
प्रत्यर्थी द्वारा/Respondent represented by:		Ms. Arju Garodia-CIT (DR)
सुनवाई की तारीख / Date of conclusion of hearing:		22-Jul-2026
घोषणा की तारीख / Date of pronouncement:		12-10-2026

आदेश / ORDER

PER SMT. BEENA PILLAI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the final assessment order dated 30/01/2023 passed u/s. 143(3) r.w.s. 144C(13) of the Act, for A.Y. 2020-21 on following grounds of appeal:

“On the facts and circumstances of the case and in law, the:

Ground 1 – Final assessment order dated 30th January, 2023 is invalid and bad in law

On the facts, in circumstances of the case and in law, the final assessment order dated 30th January, 2023 is invalid and bad in law in the absence of a valid notice under section 143(2) of the Income-tax Act, 1961 ('Act'). The Appellant submits that the notice dated 29th June 2021 issued under section 143(2) of the Act by the National Faceless Assessment Center ['NaFAC'] is not in accordance with the provisions of the Act as the NaFac is not the appropriate authority for issuing notice to the Appellant.

Ground 2 – Directions dated 28th December, 2022 issued by the DRP are invalid and bad in law

On the facts and circumstances of the case and in law, the purported directions dated 28th December, 2022 issued by the DRP have not been passed in accordance with the provisions of the Act, and are, therefore, invalid, bad in law and deserve to be quashed.

Ground 3 – Final assessment order passed by the Ld. AO is time barred

Without prejudice to the above, the Ld. AO erred in passing the Final Assessment Order under section 143(3) read with section 144C(13) of the Act on 30th January 2023 which was barred by limitation as per the provisions of section 153(1) of the Act. Hence, the Final Assessment Order is null and void.

Ground 4 - Sale of trademarks are neither taxable in India under the provisions of the Act nor under the provisions of the India – Switzerland Double Taxation Avoidance Agreement ('India – Switzerland tax treaty')]

4(a). The Ld. AO erred in holding that the sales consideration of INR 433,14,76,894 received by the Appellant from purchasers upon the sale of trademark(s) are chargeable to tax as royalty under section 9(1)(vi) of the Act and Article 12 of the India – Switzerland tax treaty;

4(b). The Ld. AO erred in not appreciating that trademarks are 'Capital Assets' of the Appellant and the sale of the trademarks results in capital gains, which is not taxable in India by virtue of Article 13(6) of the India – Switzerland tax treaty.

4(c). The Ld. AO erred in not appreciating that trademarks are 'Capital Assets' of the Appellant and the sale of the trademarks results in capital gains, which is not taxable in India under the provisions of the Act.

Ground 5 – Not applying tax rate as per India-Switzerland tax treaty

5(a). Without prejudice that the receipt is not in the nature of Royalty under section 9(1)(vi) of the Act and Article 12 of the India – Switzerland tax treaty, the Ld. AO erred in taxing receipts in the nature of royalty on gross basis at 10.05% as against 10% prescribed in the India-Switzerland tax treaty; and

5(b). The Ld. AO erred in further levying Surcharge and Education Cess thereon, which is not leviable as per the India-Switzerland tax treaty.

Ground 6 - Penalty proceedings ought to be quashed

6. The Ld. AO erred in holding that the Appellant has under reported its income, thereby initiating penalty proceedings under section 270A of the Act.

All the above grounds are without prejudice to each other/ one another.

The Appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves to leave or add, alter, delete or modify all or any of the above grounds of appeal.”

Brief facts of the case are as under:-

2. Assessee is a company incorporated in Switzerland and engaged in the pharmaceutical business. During the previous year relevant to the assessment year under consideration, the assessee entered into transactions for assignment of trademarks in favour of USV Pvt. Ltd., Cipla Ltd. and Eris Lifesciences Ltd. The transactions concerned the JALRA/JALRA-M, VYSOV/VYSOV-M and ZOMELIS/ZOMELIS-M marks, respectively. The assessee claimed that the consideration aggregating to Rs.433,14,76,894/- represented proceeds from outright sale of its trademarks and was not taxable in India under Article 13(6) of the India-Switzerland DTAA.

2.1. During the assessment proceedings, the Ld.AO called upon the assessee to furnish its financial statements showing the trademarks as assets and their cost of acquisition or generation. By letter dated 25/03/2022, the assessee submitted that the trademarks were self-generated assets and, therefore, no cost was recorded in its financial statements. The Ld.AO held that, in the absence of the financial statements and particulars sought, the assessee had not established its claim that the trademarks constituted capital assets.

2.2. The Ld.AO thereafter examined the assignment deeds, particularly the restrictions concerning territory, specified pharmaceutical preparations, trade dress, packaging and protection of the marks outside India. According to the Ld.AO, these restrictions showed that the assignment was not absolute and that, although the trademarks had been assigned, the brands continued to belong to the assessee. He also referred to the earlier commercial association of the Indian purchasers with the Novartis group and treated the consideration as payment for continued use of the marks in India. In the draft assessment order dated 31/03/2022, the aggregate amount of Rs.433,14,76,894/- was accordingly proposed to be brought to tax as royalty u/s. 9(1)(vi) read with Article 12 of the India-Switzerland DTAA.

On receipt of the Draft assessment order, the assessee filed objections before the DRP.

3. Before the DRP assessee furnished additional evidence concerning registration and ownership of the trademarks. The DRP called for a remand report, which was furnished by the Ld. AO on 16/11/2022, and the assessee filed its rejoinder dated 25/11/2022. The assessee maintained that the assignment deeds transferred ownership in perpetuity, that the purchasers acquired the rights previously held by the assessee in India, and that the earlier co-marketing arrangements were distinct transactions involving Indian group entities. The DRP admitted the additional evidence and considered the remand report and rejoinder. However, in paras 5.6.1 to 5.6.5 of its directions, it upheld the Ld.AO's view that the transactions were restricted assignments rather than outright sales.

3.1. The DRP endorsed the distinction drawn in the remand report between transfer of a word mark and transfer of the brand. The DRP thus upheld the payments made to assessee by USV Pvt.Ltd and Eris Lifescience Ltd to be income in the hands of the assessee of the nature “royalty” under section 9(1)(vi) of the Act r.w. Article 12(2)&12(3) of India Swiss DTAA.

4. On receipt of the DRP direction, the Ld.AO passed the final assessment order by making addition of Rs.433,14,76,894/- in the hands of the assessee.

Aggrieved by the order of the Ld.AO the assessee is in appeal before this *Tribunal*.

5. At the outset, the Ld.Sr.Counsel submitted that the assessee do not wish to press the issue raised in **Ground No. 1**.

Accordingly, Ground No.1 dismissed as not pressed.

6. Ground No.4 raised by the assessee is against the addition of Rs.433,14,76,894/- made by the Ld.AO by treating the consideration received by the assessee towards transfer of trademarks as royalty.

The Ld.Sr.Counsel submitted that the subject matter of the transactions was the ownership of registered trademarks in India, together with the embedded goodwill, and not merely a grant of permission or right to use trademarks belonging to the assessee. The Ld.Sr.Counsel submitted that the assessee had transferred/assigned three registered trademarks in India to three independent purchasers, namely, USV Ltd., Cipla Ltd. and Eris, under separate agreements, for lump-sum consideration. According to him, the consideration was paid for the outright

sale/assignment of the trademarks and the associated rights, and not for permitting the purchasers to use trademarks owned by the assessee.

6.1. Referring to the Deed of Assignment dated 30.11.2019 executed with USV Pvt. Ltd., placed at pages 159–170 of the paper book, he drew our attention to Clauses 1.1, 1.2, 1.3, 3.2.1, 4 and 7.1 thereof. It was submitted that these provisions transferred the entire right, title, interest and property in the trademarks to the purchaser, vested the purchaser with the status of the absolute, sole and exclusive owner in India, and prohibited the assessee from thereafter using those marks or claiming any right, title or interest therein in India. The invoice at page 171 and the corresponding stamp-duty receipt were also relied upon.

6.2. It was submitted that the trademarks were registered in India and that the rights transferred under the respective agreements were rights of ownership in India. In this regard, reference was made to Clause 1.4.2, under which the buyer was required to have an independent trademark. Reference was also made to Clauses 2 and 2.2.3, which, according to the Ld.Sr.Counsel, further evidenced that the transaction was one of assignment of trademark rights and not a mere licence.

6.3. The Ld.Sr.Counsel further referred to Clause 5.2.3 of the agreement and submitted that although the name of the medicine was required to remain the same, the purchaser was required to adopt a look and appearance different from that of Novartis. It was submitted that the continuation of the same word/name of the medicine outside India did not signify retention of ownership of the trademark by the assessee. Similarly, the restrictions requiring the

composition/ingredients and purpose of the medicine to remain unchanged were stated to be regulatory and contractual conditions governing the product and were not indicative of any retained ownership or right to use the trademark in India.

6.4. The Ld.Sr.Counsel submitted that the restrictions contained in the agreements, including those referred to in Clauses 5.2.5 and 5.2.6, were protective covenants defining and safeguarding the rights of the parties and did not convert an otherwise absolute assignment into a licence. In particular, he pointed out that the Ld.AO himself had proceeded on the basis that the consideration represented payment for an assignment, albeit subject to certain restrictions.

6.5. It was further submitted that the assignment was territorially confined to India and that the assessee continued to own the trademark outside India. According to the Ld. Sr. Counsel, such territorial limitation was a feature of the property transferred and did not detract from the fact that ownership of the trademark in India had been completely transferred to the respective purchasers. The purchasers became the proprietors of the trademarks in India, while the trademark continued to remain with Novartis outside India, where the brand continued to identify the medicine with Novartis.

6.6. The Ld.Sr.Counsel relied on the records of the Trade Marks Registry. Referring to the original registration certificates at pages 359–361 and the subsequent Trade Marks Registry record at page 366, he submitted that USV Pvt. Ltd. was recorded as the proprietor of JALRA and JALRA-M. According to him, the recognition of the purchaser as proprietor by the Trade Marks

Registry constituted contemporaneous evidence of an actual transfer of ownership and was inconsistent with the transaction being merely a grant of a right to use the trademark.

6.7. The Ld.Sr.Counsel further referred to the photographs of the product packaging before and after the assignment. It was submitted that the same word mark could continue to identify the medicine even though the purchaser adopted a different trade dress/look and appearance. According to him, the distinction between the trademark/name of the medicine and the trade dress demonstrated that the purchaser had acquired ownership of the trademark in India, while the contractual restrictions merely regulated the manner in which the product was to be marketed.

6.8. It was submitted that the fact that a self-generated trademark was not recognised at an acquisition cost in the assessee's financial statements could not, by itself, establish that no capital asset existed or that the trademark was incapable of being transferred. The Ld.Sr.Counsel submitted that the relevant agreements, registration records and conduct of the parties had to be examined for determining the true nature of the transaction.

6.9. The Ld.Sr.Counsel submitted that the details of the agreements and the relevant clauses had been furnished before the Ld.AO, including the material placed at page 13 of the assessee's submissions. It was contended that the agreements executed with the other two purchasers contained substantially similar terms and conditions and, therefore, the same factual position applied to all three transactions.

7. The Ld.Sr.Counsel submitted that Article 12(3) of the India–Switzerland DTAA contemplates consideration for the use of, or the right to use, specified intellectual property, whereas consideration for an alienation of ownership of the intellectual property is distinct in character. He relied upon Article 13(6) and the relevant Protocol to the India–Switzerland DTAA, as well as paragraph 8.2 of the Commentary on Article 12 of the OECD Model Tax Convention, 2017, in support of the distinction between a transfer of ownership and a grant of the right to use intellectual property.

7.1. According to the Ld.Sr.Counsel, the consideration received by the assessee was attributable to the alienation of ownership of the trademark rights in India, albeit with the geographical limitation that the ownership transferred was confined to India. It was therefore submitted that the consideration could not be regarded as consideration for the use of, or the right to use, the trademark and consequently could not constitute royalty under section 9(1)(vi) of the Act or Article 12 of the India–Switzerland DTAA.

7.2. The Ld.Sr.Counsel submitted that the consideration received was, at the highest, consideration arising from the transfer of a capital asset, namely, the trademark rights in India. He contended that the same could not be brought to tax as royalty merely because the assignment agreement contained protective covenants or restrictions concerning the use of the mark, the product, its composition or its presentation.

7.3. Ld. Sr. Counsel relied on the Tax Residency Certificates placed at pages 90–91, and submitted that, the assessee was entitled to invoke the beneficial provisions of the India–Switzerland DTAA. He contended that the consideration received for the assignment of the

trademarks could not be taxed in India as royalty and, having regard to the applicable treaty provisions governing gains from alienation of property, the amount was not taxable in India.

7.4. On behalf of the Revenue, the case for taxation of the receipts as royalty rests on the reasoning of the Ld. AO and the DRP. The Revenue's stand is that the purchasers could use the marks only within India, could not export products bearing the marks, and remained bound by restrictions concerning the products, trade dress and brand protection. The assessee retained rights in the corresponding marks outside India and could enforce the restrictive covenants. According to the Revenue, these features, read with the earlier co-marketing arrangements, indicated that the purchasers acquired a restricted right to use the trademarks rather than the brands themselves. The inclusion of lump-sum consideration and transfer of rights in the domestic definition of royalty was also relied upon.

We have perused the submissions advanced by both sides in light of the record placed before us.

8. The controversy is whether the consideration received under the assignment transactions is for alienation of the trademarks owned by the assessee in India or for the use of, or the right to use, those trademarks. The description of an instrument as an assignment or sale is not conclusive by itself. Equally, the existence of contractual restrictions does not, without examining their nature and the operative provisions, establish that the transaction is a licence. The deeds must be read as a whole to ascertain the rights transferred and the rights retained.

8.1. The certificates issued by the Basel-Stadt tax authorities for calendar years 2019 and 2020, placed at pages 90–91, confirm the assessee's seat in Basel and liability to tax in Switzerland. The certificate for calendar year 2020 expressly records its residence in Switzerland under the India–Switzerland DTAA. The material thus supports the assessee's claim of Swiss residence for the period relevant to the present appeal. The nature and taxability of the disputed receipt must accordingly be examined under the Treaty, read with section 90(2) of the Act.

8.2. Article 12(3) defines royalty by reference to consideration for the use of, or the right to use, the specified intellectual property, which includes a trademark. This requires a distinction between permission to exploit property belonging to another person and acquisition of ownership of the property itself. Paragraph 6 of the Protocol, with reference to Article 12, recognises that gains from alienation of a right or property mentioned in Article 12(3) may be taxed under Article 7 or Article 13. It separately provides for taxation under Article 12 where the gains from such alienation are contingent on the profits, productivity or use of that right or property. Thus, the Treaty itself contemplates alienation of intellectual property as distinct from royalty and requires examination of the terms on which the consideration becomes payable. Neither payment in a lump sum nor geographical limitation is, by itself, determinative.

8.3. We first examine the transaction with USV Pvt. Ltd., for which the complete deed and supporting material have been placed before us. The deed dated 30/11/2019 identifies the assessee as owner and proprietor of the trademarks registered in India and records its agreement to sell, transfer and assign its rights in them,

together with embedded goodwill, for the territory of India. Clause 1.1 provides for a fixed consideration and states that the assignor sells, grants, assigns, conveys and transfers the specified rights to the assignee. The relevant operative provisions at page 163 read as follows:

“1.1.1 the entire benefits, rights, title, claim, property and interest whatsoever in and to the Trade Marks;

1.1.2 all benefits which Assignor had hitherto enjoyed including the right to apply/register and use the Trade Marks and right to file actions for trade mark infringement based on the Trade Marks;

1.1.3 the embedded goodwill in the goods for which the Trade Marks have been registered and/or used in connection therewith TO HAVE AND TO HOLD the same unto the Assignee absolutely forever; and”

8.4. Clause 1.2 further provides that, on the effective date and receipt of the entire consideration, the trademarks shall become the absolute, sole and exclusive property of the assignee within the territory. It expressly prohibits the assignor from further use of the trademarks or a confusingly similar mark within India and states that the assignor shall not own any right, title or interest in the trademarks within that territory. Clause 1.3 prevents the assignor from challenging the assignee's rights to exploit the marks in accordance with the deed. Clause 3.2.1 warrants the assignor's good and marketable title and its right to transfer the trademarks absolutely. Clause 4 requires the assignor to take further steps to perfect the purchaser's title, while clause 7.1 records that the sole, absolute and exclusive right, title, interest and property in the

Indian trademarks vest in the assignee from the effective date and in no other person. Clause 8.2 describes the transaction as a sale/purchase on a principal-to-principal basis. These provisions, read together, transfer proprietorship of the defined Indian trademark rights and are inconsistent with the proposition that the assessee continued as their owner in India while merely permitting USV to use them.

8.5. The territorial covenants do not warrant a different conclusion. Clauses 1.4.1 and 2.3 prohibit export of goods bearing the marks and their use or registration outside India. The property assigned comprises the rights in the Indian territory; corresponding rights in other jurisdictions are excluded. Retention of those separate territorial rights cannot be equated with retention of the rights sold in India. In determining whether the transfer is absolute, the relevant enquiry is whether the assignor has divested itself of ownership of the property forming the subject matter of the sale, rather than whether it has transferred every corresponding right held anywhere in the world. Here, clause 1.2 expressly extinguishes the assignor's ownership and further use within the assigned territory.

8.6. The restrictions concerning trade dress require similar consideration. Clause 1.4.2 excludes the assignor's pre-existing trade dress, including artistic works, packaging material, embossment and imprinting on tablets, and requires the assignee to independently develop a new and original trade dress. This identifies material excluded from the sale. It does not qualify the vesting of ownership in the trademarks that are expressly assigned. The Revenue's reasoning treats exclusion of one category of intellectual property as retention of another category which the

deed transfers. Such an inference does not follow from the operative clauses.

8.7. We also find support in the photographs depicting packaging before and after the assignment. The pre-assignment material identifies the trademark with Novartis AG and shows USV as marketer. The post-assignment material continues to display JALRA with a changed presentation and identifies USV as manufacturer. These photographs corroborate the explanation that the word mark continued while the purchaser adopted its own trade dress. They are not, by themselves, proof of legal title; that conclusion follows from the deed read with the Registry material. Nevertheless, they demonstrate why continued use of the same pharmaceutical name does not contradict sale of the mark. Continued use is consistent with acquisition of the mark, and a change in packaging is consistent with exclusion of the old trade dress.

8.8. Clauses 2.1 to 2.4 restrict use of the marks to the specified pharmaceutical preparations, require protection of their image and reputation outside India, and provide remedies for breach. These are enforceable covenants, but the right to enforce them is not itself a reservation of proprietorship in the Indian marks. Clause 2.4 provides for specific performance and injunctive or other equitable relief. Read with the express divestment in clause 1.2 and vesting in clause 7.1, these remedies protect the agreed territorial and product boundaries; they do not establish that the consideration is for continued permission to use an asset owned by the assignor in India. Further, clause 1.4.4 places post-effective-date obligations and liabilities relating to the trademarks and products upon the assignee, including regulatory responsibilities, recalls and

reporting of adverse drug events. This also supports the transfer of the defined rights and responsibilities to the purchaser.

8.9. The Trademark Registry material supplies independent corroboration. The registration certificates at pages 359–361 record the original proprietorship of Novartis AG in the relevant JALRA marks. The subsequent Registry record at page 366 identifies USV Pvt. Ltd. as proprietor of JALRA and JALRA-M. The description of a mark as a word mark concerns the form of the registered mark; it does not reduce proprietorship to a licence or permission to use it. A word mark can itself be the subject matter of ownership and assignment. Sections 37 and 38 of the Trade Marks Act, 1999 recognise assignment by the registered proprietor, including assignment with or without goodwill and in respect of all or some of the registered goods or services. Section 45 provides for registration of the assignee's title. The change of proprietor in the Registry, read with the deed, therefore answers the Revenue's objection that only a restricted right to use the word mark was transferred. Sale of that registered property does not require sale of the assignor's entire corporate identity, house marks or every element of packaging.

8.10. The Ld.Sr.Counsel further submitted that the agreement for transfer of the trademarks was duly executed between the parties and the requisite stamp duty was paid under Article 25(a), relating to conveyance of movable property, which, according to him, was consistent with the transaction being one of transfer of the trademarks. The invoice at page 171 likewise describes sale of the JALRA trademark under the agreement dated 30/11/2019. While the stamp-duty treatment and invoice description are not conclusive of income-tax characterisation, they are consistent with

the operative transfer and the subsequent change of proprietorship. The fixed consideration stipulated in clause 1.1 is not linked to the purchaser's future turnover, profits, productivity or extent of use. No such contingency has been identified by the Ld.AO or the DRP in characterising the disputed receipts. The exception in the Protocol for gains contingent on profits, productivity or use consequently does not support their treatment as royalty on the facts examined.

8.11. The absence of an acquisition cost or carrying value in the financial statements does not establish absence of the underlying property. The assessee explained that the marks were self-generated, and the registration certificates and assignment deed establish the rights held and transferred. Their legal character cannot be determined solely by their presentation in the financial statements. An enforceable trademark held by an assessee can constitute property notwithstanding that no purchase cost is recorded. The question of its cost for computation of capital gains is separate from the question whether ownership of it was alienated. Nor does an earlier co-marketing relationship, by itself, establish the character of a subsequent payment under a sale deed. The assessee's rejoinder distinguishes those earlier arrangements involving Indian group entities from the present transfers by Novartis AG. The present receipt must be tested against the rights transferred under the transaction giving rise to it. The Ld. AO's reference to an earlier commercial association does not displace the express transfer of ownership documented in the deed and Registry record.

9. The Commentary on Article 12 of the OECD Model Tax Convention on Income and on Capital, 2017, relied by the assessee,

is consistent with this distinction. Para 8.2 explains that consideration for transfer of full ownership is distinguishable from payment for use of, or the right to use, the property. It also recognises that alienation of rights constituting distinct property within a limited geographical area must be examined in light of the relevant intellectual property law and the actual transaction.

9.1. As regards the other two transactions, the draft assessment order itself reproduces the material assignment provisions concerning Cipla Ltd. At page 18, the recital records transfer of the rights in perpetuity with embedded goodwill, and clause 1.1.1 provides for the assignee to hold the assigned property absolutely forever, including renewals, subject to the brand-protection covenants. Clause 1.1.2 transfers the benefits previously enjoyed by the assignor, including registration, use and enforcement rights.

9.2. At page 22, the Ld.AO records that the deed dated 22/11/2019 relating to ZOMELIS contains clauses similar to those in the USV and Cipla assignments, and applies the same findings to Eris Lifesciences Ltd. The DRP likewise adjudicates the three transactions on the common premise that territorial and protective restrictions prevent an outright sale. We therefore apply the foregoing reasoning to the common features recorded by the Ld. AO and the DRP in those transactions. The presence of the restrictions relied upon does not override the transfer of ownership reflected in the recorded assignment provisions. This conclusion does not depend on extending the USV Registry entry or packaging evidence to the other purchasers.

9.3. The consideration in question is accordingly for alienation of the trademark rights and not for use of, or the right to use, property continuing to belong to the assessee in India. The wider reference

in Explanation 2 to section 9(1)(vi) to transfer of rights and lump-sum consideration cannot substitute the terms of the applicable Treaty. Moreover, the domestic definition itself excludes consideration which would be income chargeable under the head 'Capital gains'. For the present appeal, the Treaty distinction, read with its express Protocol concerning alienation, is sufficient to reject the characterisation adopted by the Ld. AO and the DRP.

9.4. Article 13(6) allocates taxation of gains from alienation of property, other than property falling within paragraphs 1 to 5, to the Contracting State of which the alienator is resident. The property transferred here consists of the assessee's intangible trademark rights. The Ld. AO and the DRP have not made out a case that these marks formed part of the business property of a permanent establishment of the assessee in India, or that the gains fall within any other category in paragraphs 1 to 5 of Article 13. Their case is that the consideration is royalty because the assignments contain restrictions. Having rejected that characterisation for the reasons discussed above, we find that the alienation of the capital assets in question falls for consideration under Article 13(6). The assessee being a resident of Switzerland, the resulting gains are taxable only in Switzerland under that provision. Accordingly, the addition of Rs. 433,14,76,894/- made by treating the sale consideration as royalty is deleted.

Accordingly, Ground Nos. 4(a) and 4(b) raised by the assessee stands allowed.

10. In view of this conclusion under the Treaty, the alternative contention concerning non-taxability under the domestic provisions in **Ground No. 4(c)** does not require separate adjudication and is left open.

11. Ground Nos. 5(a) and 5(b) challenge, without prejudice, the rate applied to the disputed royalty receipt and the levy of surcharge and cess. Since the consideration is held not taxable in India in the manner adopted in the impugned order and the addition stands deleted, these grounds have become academic and do not require separate adjudication.

12. In view of the relief granted on the substantive addition, the legal grounds challenging the validity of the DRP directions and limitation of the final assessment order, being **Ground Nos. 2 and 3, are dismissed as infructuous.**

13. Ground No. 6 challenges initiation of penalty proceedings u/s. 270A. This being consequential in nature, no independent finding concerning liability to penalty is rendered in this appeal.

In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 12-10-2026.

Sd/-
ARUN KHODPIA
ACCOUNTANT MEMBER

Sd/-
BEENA PILLAI
JUDICIAL MEMBER

Mumbai
Dated: **12-10-2026**
Shamik Sr. P.S.

Copy to:

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3	THE PCIT / CIT,
4	THE D.R., ITAT, MUMBAI BENCH
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SR. PRIVATE SECRETARY
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