

आयकरअपीलीयअधिकरण, मुंबईपीठें, मुंबई
INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, MUMBAI
BENCH: I

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA 2195/MUM/2025 (निर्धारणवर्ष/AssessmentYear:2022-23)	
CORNELL UNIVERSITY NOT LISTED. 377 PINE TREE ROAD, ITHACA, NEW YORK, 14850, UNITED STATES OF AMERICA., MUMBAI-, MAHARASHTRA	DY CIT (INT. TAX) CIRCLE 2(1)(1) ROOM NO. 604, 6 TH FLOOR, KAUTILYA BHAVAN, C-41 TO C-43, G BLOCK, BANDRA KURLA COMPLEX, BANDRA EAST. MUMBAI-400051, MAHARASHTRA
अपीलार्थीAppellant	प्रत्यर्थी Respondent
Permanent Account Number of Assessee: AAEC0125B	
अपीलार्थीद्वारा/Appellant represented by:	Shri Dhanesh Bafna a/s Hardik Nirmal & Ms Nidhi Agarwal
प्रत्यर्थीद्वारा/Respondent represented by:	Shri Sridhar G. Menon (SR.DR)
सुनवाईकीतारीख/Date of conclusion of hearing: 20-Jul-2026	
घोषणाकीतारीख/Date of pronouncement: 12.10.2026	

आदेश / ORDER

PER SMT. BEENA PILLAI, JUDICIAL MEMBER:

Present appeal filed by the assessee arises out of the final assessment order dated 31/01/2025 passed by the Ld.AO u/s 143(3) r.w.s. 144C(13) of the Act for A.Y. 2022-23 on following grounds of appeal:

“1.General

1.1. On the facts and circumstances of the case and in law, the final assessment order dated 31 January 2025 ('Impugned Order') passed under section 143(3) read with section 144C(13) of the Act for the Impugned AY is void and invalid under the Act.

2. Assessment order barred by limitation

2.1. On the facts and in the circumstances of the case, and in law, the final assessment order dated 31 January 2025 having been passed beyond the limitations provided in terms of section 153 of the Act is barred by limitation and therefore liable to be quashed.

3. Educational receipts received from Indian parties for rendering educational courses treated as 'Fees for Technical Services' ('FTS')/Fees for Included Services ('FIS')

3.1. On the facts and in the circumstances of the case and in law, the Ld. AO/Ld. DRP erred in holding that the educational receipts amounting to INR 17,23,12,909 received from Indian parties for rendering educational courses is chargeable to tax in India as FTS/FIS under the Act read with Article 12 of the India-USA Double Taxation Avoidance Agreement ('Tax Treaty') and is not eligible for exemption under section 10(50) of the Act.

3.2. Without prejudice to the above, the Ld. AO/Ld. DRP erred in not granting the benefit of exclusion under Article 12(5)(c) of the India-USA Tax Treaty to the Appellant without appreciating the fact that the Appellant is an Educational Institution and hence the receipts are eligible for exclusion from the scope of FIS as per the provisions of Article 12(5)(c) of the India-USA Tax Treaty.

3.3. Without prejudice, the Ld. AO/Ld. DRP erred in holding that the educational receipts amounting to INR 17,23,12,909 received from Indian parties for rendering educational courses is chargeable to tax in India as FIS under Article 12(4) of the India-USA Tax Treaty without appreciating that the services do not make available specialized knowledge, technical skills and know-how to its customers.

4. Refund or set-off of Equalisation Levy not granted

4.1. The Ld. AO/Ld. DRP erred in not granting the refund or set-off of 2% Equalisation Levy already deposited by the Appellant amounting to INR 40,24,932 on the disputed income.

5. Income under the head 'Capital Gains' considered twice

5.1. The Ld. AO erred in considering the income under the head capital gains of INR 39,12,50,369 [i.e., long-term capital gain amounting to INR 26,94,43,072 (less set-off of brought forward losses of INR 67,25,337) plus short-term capital gain of INR 12,85,32,634] twice in the computation of income.

6. Erroneous computation of tax liability

6.1. The Ld. AO erred in computing a higher tax liability of INR 14,59,91,346.

7. Short credit of taxes deducted at source

7.1. The Ld. AO erred in granting a short credit for the taxes deducted at source ('TDS') during the impugned AY amounting to INR 17,408.

8. Incorrect adjustment of refund not received by the Appellant

8.1. *The Ld. AO erred in making an incorrect adjustment of INR 53,03,250 considering the same as refund already received by the Appellant for the impugned AY without verifying the fact that the refund has never been received by the Appellant.*

9. Incorrect levy of interest under section 234B of the Act

9.1. *The Ld. AO erred in imposing interest u/s 234B of the Act of INR 2,40,76,552.*

10. Additional interest of INR 3,44,708

10.1. *The Ld. AO erred in levying an additional interest of INR 3,44,708 without giving any reasons/reference of the section whatsoever in the computation sheet.*

11. Initiation of penalty proceedings

11.1. *The Ld. AO erred in initiation of penalty proceedings u/s 270A of the Act on account of alleged underreporting of income.”*

Brief facts of the case are as under:-

The assessee, Cornell University, is a not-for-profit research university incorporated in the year 1865 in New York, USA and is registered as a corporation under section 501(c)(3) of the Internal Revenue Code of the USA. It is an educational institution engaged in educational, research and public engagement activities and provides degree as well as non-degree courses. The assessee holds a valid Tax Residency Certificate and is eligible to invoke the provisions of the India-USA DTAA.

2.1. Apart from its regular educational activities, the assessee renders educational courses through its digital platform from USA to Indian students and/or employees of Indian corporate entities. The courses are stated to be certification, professional and executive education programmes covering, Data Science and Analytics, Human Resources, Law, Engineering, Leadership, Environmental Social Governance, Finance and Business, Marketing, Food and Plant Science, Entrepreneurship and Innovation, Healthcare, Nutrition, Project Management and

Hospitality. The duration of the courses varies from a few weeks to several months depending on the course selected.

2.2. During the year under consideration, the assessee earned receipts of Rs.17,23,12,909/- from Indian parties in respect of such educational courses. The assessee claimed that these receipts were not taxable in India as Fees for Included Services under Article 12 of the India-USA DTAA in view of the specific exclusion contained in Article 12(5)(c) for amounts paid for teaching in or by educational institutions. The assessee also submitted that it had discharged Equalisation Levy at 2% in respect of the impugned receipts. According to the assessee, the levy was deposited having regard to the widened scope of Equalisation Levy concerning e-commerce supply or services and to avoid prolonged litigation. The assessee contended that such payment could not determine the character of the receipt under Article 12 of the DTAA.

2.3. The Ld.AO observed that the assessee, in its State of residence, is an institution which offers education and that merely because it provides educational content online to residents of another Contracting State, its fundamental character as an educational institution would not change. The Ld.AO, however proceeded to hold that the courses offered to corporate entities were tailor-made with the object of enhancing particular skills of subscribers and were customised according to the requirements of such subscribers. According to the Ld.AO, such activities amounted to providing skills through customised designs or modelled material and, therefore, constituted technical services.

2.4 The Ld.AO also considered the payment of Equalisation Levy by the assessee as being inconsistent with its stand regarding non-taxability of the educational receipts. He accordingly treated Rs.17,23,12,909/- as FTS/FIS and denied the claim of the assessee while passing the draft assessment order.

Against the draft assessment order, the assessee filed objections before the DRP.

3. The DRP observed that the assessee had not furnished complete details of all customised or standard courses or the entire course contents and that, except for a Master Service Agreement and Statement of Work with Accenture Solutions Private Limited, agreements pertaining to all other clients had not been furnished.

3.1. The DRP observed that the courses were tailor-made and were directed at enhancing particular skills of subscribers. According to the DRP, the services made available specialised knowledge, technical skills and know-how to the participants, which remained with them after completion of the course, thereby satisfying the “make available” requirement under Article 12(4).

3.2. The DRP also drew distinction between the expressions “teaching” and “training”. The DRP held that teaching generally involved imparting knowledge in an academic or scholastic environment whereas training focused upon skill development, practical application and job-specific competence. Since the participants were largely professionals employed with corporate entities and the programmes were stated to be directed at professional development and skill enhancement, the DRP characterised the activity as “training” rather than “teaching” and

thus rejected the plea of assessee regarding specific exclusion under Article 12(5)(c). The DRP referring to Article 21 of the India-USA DTAA, observed that the said article uses expression “education or training”, and therefore the treaty itself recognises education and training as distinct concepts.

3.3. The DRP also referred to the Master Service Agreement, which states that certain classes, coursework, training, lectures or similar instruction forming part of the services were “not for credit”; would not result in earned credit at Cornell University; would not be recorded on a Cornell University transcript; and would not assure admission to Cornell University or any other university or institution. On this basis, the DRP observed that the services could not be regarded as teaching by an educational institution.

3.4. The DRP thus distinguished the decisions relied on by the assessee passed by Authority for Advance Ruling(AAR) in case of *Eruditus Education (P.) Ltd., In re*, reported in [2013] 37 *taxmann.com* 337 and *Regents of the University of California, UCLA Anderson School of Management Executive Education, USA, In re* reported in (2016) 73 *taxmann.com* 113 and ultimately upheld the action of the Ld.AO.

Aggrieved by the aforesaid findings, the assessee is in appeal before this *Tribunal*.

4. The Ld.AR submitted that there is no dispute whatsoever that Cornell University is an educational institution. He drew our attention to the categorical observation of the Ld.AO in para 5.4 of the draft assessment order accepting the educational character of the assessee. It was submitted that the impugned receipts arise

from organised educational courses offered by the assessee itself. Merely because some courses are directed towards working professionals and are certificate programmes which are customised for corporate participants or are described in commercial documentation as executive training programmes, the character of the underlying activity does not cease to be teaching.

4.1. The Ld.AR referring to Article 12(5)(c) of the India-USA DTAA submitted that the provision contains a specific exclusion for amounts paid for teaching in or by educational institutions. The Ld.AR emphasised on Examples 10 and 11 forming part of the Technical Explanation to Article 12 of the DTAA. It was submitted that Example 10 itself deals with technical education in aeronautical engineering imparted to employees of an Indian automobile manufacturer and expressly provides that the tuition fee would not constitute FIS by reason of Article 12(5)(c). It was further submitted that the example clarifies that it is irrelevant whether the teaching takes place at the campus of the educational institution or at some other location.

4.2. The Ld.AR drew our attention to the Statement of Work entered into with Accenture Solutions Private Limited. He submitted that the arrangement records that the assessee would provide executive and professional education services and refers to available courses, course enrolments, an HR Analytics certificate and purchase of private course cohorts. He relied the decision of AAR in case of *UC Berkeley Center for Executive Education, USA, In re* reported in (2016) 387 ITR 385, *Regents of the University of California, UCLA Anderson School of Management Executive Education, USA, In re* reported in (2016) 387 ITR

398and *Eruditus Education (P.) Ltd., In re* reported in (2013) 262 CTR 113 and submitted that professional and executive education programmes fall within the exclusion contained in Article 12(5)(c).

4.3. It was further submitted that similar receipts had been claimed as non-taxable in earlier years under Article 12(5)(c) and the said position was accepted in scrutiny proceedings by the tax authorities.

4.4. The Ld.DR on the contrary relied on the findings recorded by the Ld. AO and the directions of the DRP. It was submitted that the programmes were primarily intended for skill enhancement of working professionals; the courses were customised according to the requirements of corporate customers and the assessee had not furnished complete course contents or agreements in respect of every customer. The Ld.DR therefore submitted that Article 12(5)(c) would not apply.

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

5. The controversy before us is whether the receipts of Rs.17,23,12,909/- arising from the courses offered by the assessee to Indian students and/or employees of Indian corporate entities can be treated as FIS under Article 12 of the India-USA DTAA or whether the same fall within the exclusion contained in Article 12(5)(c).

It is relevant to reproduce Article 12 of the India-USA DTAA that reads as under:

“ARTICLE 12
ROYALTIES AND FEES FOR INCLUDED SERVICES

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

2. *However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed :*

(a) in the case of royalties referred to in sub-paragraph (a) of paragraph 3 and fees for included services as defined in this Article [other than services described in sub-paragraph (1) of this paragraph]:

(i) during the first five taxable years for which this Convention has effect,

(a) 15 per cent of the gross amount of the royalties or fees for included services as defined in this Article, where the payer of the royalties or fees is the Government of that Contracting State, a political sub-division or a public sector company; and

(b) 20 per cent of the gross amount of the royalties or fees for included services in all other cases; and

(ii) during the subsequent years, 15 per cent of the gross amount of royalties or fees for included services; and

(b) in the case of royalties referred to in sub-paragraph (b) of paragraph 3 and fees for included services as defined in this Article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 3(6) of this Article, 10 per cent of the gross amount of the royalties or fees for included services.

3. *The term "royalties" as used in this Article means:*

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and

(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8.

4. For purposes of this Article, "fees for included 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 3 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. 5.

5. Notwithstanding paragraph 4, "fees for included 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 other than a sale described in paragraph 3(a);

(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; (c)

(d) for services for the personal use of the individual or individuals making the payments; or

(e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 15 (Independent Personal Services).

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties or fees for included 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 included services are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be shall apply.

7. (a) *Royalties and fees for included services shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, or a resident of that State. Where, however, the person paying the royalties or fees for included services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for included services was incurred, and such royalties or fees for included services are borne by such permanent establishment or fixed base, then such royalties or fees for included services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.*

(b) *Where under sub-paragraph (a) royalties or fees for included services do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, or the fees for included services relate to services performed, in one of the Contracting States, the royalties or fees for included services shall be deemed to arise in that Contracting State.*

8. *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 the royalties or fees for included services paid exceeds the amount which would have been paid 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 payments shall remain taxable according to the laws of each contracting State, due regard being had to the other provisions of the Convention."*

5.1. Article 12(4), defines "fees for included services" to include consideration for technical or consultancy services where such services make available technical knowledge, experience, skill, know-how or processes.

Article 12(5), commences with the expression:

"Notwithstanding paragraph 4, 'fees for included services' does not include amounts paid..."

and clause (c) thereof excludes amounts paid:

"for teaching in or by educational institutions".

5.2. In our view, the phrase "notwithstanding paragraph 4" are of considerable significance. The exclusion in Article 12(5) operates even in respect of a service which may otherwise answer the description contained in Article 12(4). Therefore, primary question

is, whether the consideration before us is for teaching in or by an educational institution. If the answer is in affirmative, the fact that technical knowledge or skill may be imparted during the course does not bring the receipt within the ambit of Article 12(4).

5.3. There is no dispute that the assessee is an educational institution. The Ld.AO, in para 5.4 of the draft assessment order, himself records that the assessee is an institution which offers education and that merely because it provides content online in the other Contracting State, its character cannot change. The DRP proceeded on the basis that the assessee is an educational institution. Its objection is essentially that the impugned programmes constitute “training” and not “teaching”. Thus, the status of the assessee as an educational institution is not in dispute at all.

5.4. The programmes offered by the assessee cover identified fields of study including Data Science and Analytics, Human Resources, Law, Engineering, Leadership, Finance, Marketing, Healthcare, Nutrition and Project Management. The programmes have a stipulated course structure and duration which may range from a few weeks to several months. Even the findings of the Revenue repeatedly describe the impugned activities as “courses”, “certificate programmes”, “training programmes” and “customised courses”. There is no finding that the impugned receipts represent consideration for an independent consultancy assignment, preparation of a technical report, technical design or advisory deliverable unrelated to the educational programmes.

The actual dispute is therefore not whether knowledge was imparted through courses, but whether such imparting of

knowledge to corporate professionals can be regarded as “teaching” for the purposes of Article 12(5)(c).

5.6. The DRP proceeded on the premise that teaching and training are mutually exclusive concepts and that teaching must ordinarily take place in an academic environment and be directed towards students pursuing formal education. We are unable to read such restrictions into Article 12(5)(c). The Treaty does not state that the teaching must be part of a degree programme, credit-bearing, undertaken only for students formally admitted to a university, conducted on a university campus or of any prescribed minimum duration. The expression used is simply “teaching in or by educational institutions”. It would therefore not be appropriate to introduce into the Treaty conditions which the Contracting States have themselves not incorporated. The fact that the recipients are working professionals or that a course is intended to upgrade their professional knowledge does not by itself take the activity outside teaching. Teaching may equally take place in the field of professional or executive education.

5.7. We may also clarify that we are not laying down a general proposition that every form of corporate training constitutes teaching under Article 12(5)(c). The determination must depend upon the true nature of the activity. In the facts before us, however, the services comprise structured courses offered by an admitted educational institution in recognised academic/professional disciplines.

5.8. The Technical Explanation to the India-USA DTAA gives considerable guidance in this regard. Example 10 concerns an

Indian automobile manufacturer proposing to enter the manufacture of helicopters. The manufacturer sends engineers to the Massachusetts Institute of Technology for studying aeronautical engineering and pays the tuition fees. Though the course clearly equips the employees with technical knowledge useful to their employer, the example states that the tuition fee is not FIS because the payment is for teaching by an educational institution. Significantly, the example also clarifies that it is irrelevant whether MIT conducts the course on its campus or at some other location.

5.8.1. This example substantially answers two aspects relied on by the Revenue. Firstly, the subject of teaching itself may be technical. Secondly, the beneficiaries of such teaching may be employees of a commercial enterprise undertaking the course for professional purposes. Neither circumstance removes the payment from Article 12(5)(c).

5.9. Example 11 takes the matter further. It contemplates a course of study in aeronautical engineering established by an educational institution for the requirements of an Indian manufacturer and teaching being undertaken through a visiting professional. Even in such circumstances, the payment is treated as consideration for teaching in an educational institution and not as FIS. Therefore, a course designed having regard to the requirements of a corporate participant does not, by that fact alone, cease to constitute teaching.

5.10. The Statement of Work entered into with Accenture Solutions Private Limited is also relevant. It refers to the provision of executive and professional education services and contains a

specific section concerning “Block Courses”. It identifies “Available Courses”, provides for course enrolments and records that Accenture would purchase 40 eCornell course enrolments. The certificate identified under the Statement of Work is HR Analytics. Provision is also made for private course cohorts consisting of client employees. These clauses, in our view, support rather than negate the educational character of the transaction. Block enrolment of employees of a corporate customer or a private cohort does not transform the underlying course into a consultancy service. Similarly, customisation of a programme for a particular group of learners is not inconsistent with teaching.

5.11. The DRP has placed reliance on the clause stating that classes, coursework, training, lectures or similar instruction under the agreement would not earn Cornell University credit, would not be recorded on a Cornell transcript and would not assure admission to Cornell University. We do not consider these clauses to be determinative. Article 12(5)(c) does not restrict its operation to credit-bearing teaching or degree programmes. The fact that a course does not result in formal university credit may distinguish executive or continuing education from a regular degree programme, but it does not cease to be teaching on that account.

5.12. The DRP also referred to Article 21 of the Treaty, which uses the words “education or training”, and has inferred that the Treaty treats the two expressions as mutually exclusive. We note that Article 21, operates in a different context. It concerns payments received by students and business apprentices present

in the other Contracting State for the purpose of their education or training. It neither defines the expression “teaching” in Article 12(5)(c) nor restricts Article 12(5)(c) to teaching directed only towards students enrolled in formal education. The use of two expressions in Article 21 cannot justify importing an additional qualification into Article 12(5)(c), particularly when the Technical Explanation to Article 12 itself illustrates the exclusion by reference to technical and professional education of employees.

5.13. The Ld.AR had referred to paragraphs 70 and 71 of the UN Model Commentary. Without treating the Commentary as controlling the language of the Treaty, we find that the illustration therein fortifies the plain reading of Article 12(5)(c). Paragraph 70 contemplates an educational institution in one Contracting State receiving payment from an enterprise of the other Contracting State for teaching services provided to employees of such enterprise and recognises such payment as falling within the educational exclusion. Further, Paragraph 71 further recognises that if Contracting States wish to confine such exclusion to courses forming part of a degree-granting programme, they may expressly provide such restriction. There is no such limitation in Article 12(5)(c) of the India-USA DTAA.

5.14. In *UC Berkeley Center for Executive Education, USA (supra)*, relied by the Ld.AR, the applicant was a US non-profit entity formed for providing executive education to business executives. Its programmes were meant for professional development. The Authority accepted the applicant as an educational institution and held the programme receipts to be covered by the exclusion contemplated under Article 12(5)(c). The fact that the programmes

were executive/professional programmes did not deprive them of their educational character.

5.15. In *Regents of the University of California, UCLA Anderson School of Management Executive Education, USA, (supra)*, the programmes were undertaken for senior executives and comprised modules of relatively short duration. The programme fees were nonetheless treated as falling within the educational exclusion under Article 12(5)(c).

5.16. The DRP distinguished these said ruling on the ground that professors in that case were sent to India and modules were conducted for specific periods. In our view, those factual distinctions do not touch the principle for which the authority is relevant. The question before us is the character of the payment. Further, Example 10 of the Technical Explanation itself makes the location of the teaching immaterial.

5.17. In *Eruditus Education (P.) Ltd. (supra)*, the programmes were executive education programmes for Indian corporates and participants and involved specialised knowledge. The Authority held that even though the services could fall within the broad description of technical services, the specific exclusion relating to teaching by an educational institution applied.

The DRP has distinguished this ruling by observing that, in *Eruditus Education (P.) Ltd. (supra)*, there was no dispute regarding teaching whereas in the present case the activity has been characterised as training. In our view, nomenclature cannot itself decide the issue. The actual character of the services has to be examined, and for the reasons discussed hereinabove, the

programmes before us possess the attributes of teaching by an educational institution.

5.18. The decisions in *Marg Foundation v. ITO (Exemption)* and *IILM Foundation Academy v. CIT* referred to by the DRP arose in the context of the meaning of education under the domestic tax provisions. They do not interpret the specific exclusion contained in Article 12(5)(c) read with the Technical Explanation to the India-USA DTAA. The observations therein therefore cannot be applied divorced from the context in which they were rendered so as to restrict the scope of the Treaty provision.

5.19. We have also considered the observation of the DRP that complete course content and agreements relating to every corporate customer had not been furnished. In the present case, however, the Revenue's own conclusion is that the assessee was conducting courses designed for skill enhancement in identified subjects. The Revenue has not identified any specific receipt comprised in the alledged receipt as pertaining to a standalone technical consultancy assignment as distinct from an educational course. The assessee has placed on record the nature of its courses, the subjects in which such courses were offered, the representative Statement of Work and the manner of enrolment of corporate participants. Therefore, in the factual circumstances of the present case, the absence of the complete teaching material pertaining to each and every course does not justify converting the receipts from admittedly educational courses into consideration for technical consultancy services.

5.20. The DRP held that specialised knowledge and technical skills remained with the participants even after completion of the

courses and, therefore, the “make available” requirement under Article 12(4) stood satisfied. In our view, once the payment falls within Article 12(5)(c), this determination is not decisive. Article 12(5) expressly begins with “Notwithstanding paragraph 4”. Thus, even assuming for the sake of argument that knowledge or skill becomes available to a participant as a consequence of completing a course, the specific exclusion for teaching in or by educational institutions continues to operate. In fact, acquisition and retention of knowledge is an ordinary consequence of teaching itself. If every educational programme were to be treated as FIS merely because knowledge imparted therein remains with the student or participant, the specific exclusion in Article 12(5)(c) would be rendered substantially otiose. The Technical Explanation's in respect of aeronautical engineering example makes this particularly clear. The engineers unquestionably acquire technical knowledge which remains available to them, yet the consideration is specifically excluded from FIS because it is paid for teaching by an educational institution.

5.21. We also do not find merit in the reasoning that payment of Equalisation Levy by the assessee alters the character of the receipt under the DTAA. In our view, the question whether a receipt constitutes FIS under Article 12 has to be determined from the nature of the activity and the language of the Treaty. Payment made by the assessee under another fiscal regime, whether out of abundant caution or otherwise, cannot by itself create a charge under Article 12 where the receipt otherwise falls within a specific Treaty exclusion. It is relevant that the Ld.AO himself rejected the proposition that the assessee's basic

character had changed into that of an e-commerce operator and recognised that the assessee continues to be an educational institution.

5.21. The assessee has also demonstrated that a similar position was taken in preceding assessment years and that, for A.Y. 2018-19, the claim under Article 12(5)(c) was examined in scrutiny proceedings and accepted. We are conscious that the principle of *res judicata* does not strictly apply to income-tax proceedings. However, in the absence of any material change in the essential character of the educational activities, the earlier treatment lends support to the factual position canvassed by the assessee.

5.22. We therefore hold that the receipts of Rs.17,23,12,909/- fall within the exclusion provided under Article 12(5)(c) of the India-USA DTAA and cannot be taxed in India as Fees for Included Services under Article 12. The Ld.AO is directed to delete the addition made in respect of the aforesaid receipts.

Accordingly, Ground No.3 raised by the assessee stands allowed.

In view of the aforesaid conclusion, the alternative contention regarding the “make available” test under Article 12(4) and the separate controversy concerning exemption u/s 10(50) do not require independent adjudication.

6. Ground No.1 is general in nature and therefore does not require separate adjudication.

7. Ground No.2 challenges the final assessment order as being barred by limitation. In view of the substantive relief granted to the assessee this legal ground would be academic in the present appeal.

Accordingly, Ground No.2 raised by the assessee stands dismissed as infructuous.

8.Ground No.4 seeking refund/set-off of Equalisation Levy was raised as an alternative in the event the assessee did not succeed on Ground No.3.

Accordingly, Ground No.4 has become academic and is dismissed as such.

9. In respect of **Ground Nos.5, 6, 7, 8 and 10**, the Ld.AR submitted that the assessee filed a rectification application u/s 154 and, on rejection thereof, carried the matter in appeal before the Ld.CIT(A). The Ld.CIT(A), vide order dated 30/06/2026, decided the aforesaid issues in favour of the assessee. The Ld. AR therefore submitted that these grounds no longer survive for adjudication.

Accordingly, Ground Nos.5, 6, 7, 8 and 10 are dismissed as infructuous.

10. Ground No.9 relating to levy of interest u/s 234B is consequential in nature. And does not require adjudication.

11. Ground No.11 relates to initiation of penalty proceedings u/s 270A being premature does not call for adjudication.

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

Order pronounced in the open court on 12.10.2026.

Sd/-

**MAKARAND VASANT MAHADEOKAR
ACCOUNTANT MEMBER**

Sd/-

**BEENA PILLAI
JUDICIAL MEMBER**

Mumbai, Dated: 12.10.2026.
Shamik Sr. P.S.