IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "D" NEW DELHI]

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 1877/DEL/2022 (A.Y 2018-19)

RELX Inc. C/o. Relx India Private Limited, 14th Floor, Tower: B, Building No. 10, DLF Cyber City, Gurgaon, Haryana – 122 002. **PAN No. AAECR9091H**	Vs.	ACIT, Circle Int. Tax : 3 (1) (1) New Delhi.

AND

I.T.A. No. 1876/DEL/2022 (A.Y 2019-20)

RELX Inc. C/o. Relx India Private Limited, 14th Floor, Tower: B, Building No. 10, DLF Cyber City, Gurgaon, Haryana – 122 002. **PAN No. AAECR9091H** **(APPELLANT)**	Vs.	ACIT, Circle Int. Tax : 3 (1) (1) New Delhi. **(RESPONDENT)**

Assessee by : **Shri Ravi Sharma, Adv.; &**
Shri Rishabh Malhotra, A.R.;

Department by : **Shri Anshuman Pattnaik,**
[CIT] – D. R.;

Date of Hearing	**15.03.2023**
Date of Pronouncement	**05.04.2023**

ORDER

PER YOGESH KUMAR U.S., JM

These two appeals are filed by the assessee against two separate orders of the ld. Commissioner of Income Tax (Appeals) [hereinafter referred to CIT (Appeals) New Delhi, both dated 22.06.2022 for assessment years 2018-19 and 2019-20.

I.T.A. No. 1877/DEL/2022 (A.Y 2018-19)

2. The assessee has raised the following grounds of appeal:-

"Ground No. 1

On the facts and in the circumstances of the case and in law, the Honourable Dispute Resolution Panel ('the Hon'ble DRP') has erred in confirming the action of the Deputy Commissioner of Income-tax, Circle Int Tax 3(1)(1), Delhi ('the Ld. AO') of making an addition of INR 18,65,00,000 received from the Indian customers as subscription fees by treating it as Fees for Technical Services ('FTS') as per the provisions of section 9(1)(vii) of the Income-tax Act, 1961 (the Act) without appreciating that there are no technical services rendered at all.

Accordingly, the Appellant prays that the aforesaid addition made by the Ld. AO ought to be deleted.

Ground No. 2

On the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in confirming the action of the Ld. AO of

making an addition of INR 18,65,00,000 received from the Indian customers as subscription fees by the Appellant by treating it as Fees for Included Services ('FIS') under Article 12 of the tax treaty between India and the United States of America (India-USA DTAA') without appreciating that even if services are considered to be rendered, these services do not "make available" any technical knowledge to the recipient and hence are not taxable in India.

Accordingly, the Appellant prays that the beneficial provisions of India-USA DTAA be applied in its case.

Ground No. 3

On the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in confirming the action of the Ld. AO of not concluding that the receipt from subscription fees of INR 18,65,00,000 from Indian subscriber to its Lexis Nexis database is in the nature of "Business Profits" under Article 7 of the India- USA DTAA and not taxable in India as the Appellant did not have a "Permanent Establishment" in India under Article 5 of the India-USA DTAA.

Accordingly, the Appellant prays that the addition made by the Ld. AO ought to be deleted.

Ground No. 4

On the facts and in the circumstances of the case and in law, the Ld. AO has erred in initiating the penalty proceedings under section 270A of the Act.

Accordingly, the Appellant prays that the penalty proceedings initiated by the Ld. AO ought to be dropped.

The above grounds are independent of and without prejudice to each other. The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.

I.T.A. No. 1876/DEL/2022 (A.Y 2019-20)

3. The assessee has raised the following grounds of appeal:-

"Ground No. 1

On the facts and in the circumstances of the case and in law, the Honourable Dispute Resolution Panel (the Hon'ble DRP") has erred in confirming the action of the Deputy Commissioner of Income-tax, Circle Int Tax 3(1)(1), Delhi (the Ld. AO') of making an addition of INR 7.36,93,619 received from the Indian customers as subscription fees by treating it as Fees for Technical Services ('FTS') as per the provisions of section 9(1)(vii) of the Income-tax Act, 1961 (the Act) without appreciating that there are no technical services rendered at all.

Accordingly, the Appellant prays that the aforesaid addition made by the Ld. AO ought to be deleted.

Ground No. 2

On the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in confirming the action of the Ld. AO of making an addition of INR 7.36,93,619 received from the Indian customers as subscription fees by the Appellant by treating it as Fees for Included Services (FIS) under Article 12 of the tax treaty between India and the United States of America ('India-USA DTAA') without appreciating that even if services are considered to be rendered, these services do not "make available" any technical knowledge to the recipient and hence are not taxable in India.

Accordingly, the Appellant prays that the beneficial provisions of India-USA DTAA be applied in its case.

Ground No. 3

On the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in confirming the action of the Ld. AO of not concluding that the receipt from subscription fees of INR 7,36,93,619 from Indian subscriber to its Lexis Nexis database is in the nature of "Business Profits" under Article 7 of the India- USA DTAA and not taxable in India as the Appellant did not have a "Permanent Establishment" in India under Article 5 of the India-USA DTAA.

Accordingly, the Appellant prays that the addition made by the Ld. AO ought to be deleted.

Ground No. 4

On the facts and in the circumstances of the case and in law, the Ld. AO has erred in initiating the penalty proceedings under section 270A of the Act.

Accordingly, the Appellant prays that the penalty proceedings initiated by the Ld. AO ought to be dropped.

The above grounds are independent of and without prejudice to each other. The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."

4. Brief facts of the case are that the assessee is a tax resident of United States of America and engaged in the business of maintaining online data base (Lexis Nexis) pertaining to legal and law related information which included articles copy of judgments filed patent applications before patent registry and

other legal information. The assessee has no fixed place of business or a Permanent Establishment in India, since the assessee has no PE in India, filed return of income by treating that the subscription fees received for providing excess to data base was in the nature of 'Business Income' which is not taxable in India as per the provisions of India-US Double Taxation Advance Agreement (for short 'DTAA'). The assessment proceedings initiated against the assessee for both the assessment years and the draft assessment order passed u/s 143(3) read with Section 144C of the Act observing that from the Assessee's website, it is seen that the assessee is not providing "mere access" to a static data base but is providing full fledged services and solutions for legal professionals.

5. The final assessment order came to be passed on for the Assessment Year 2018-19 by assessing the total income of the assessee at Rs. 18,65,00,000/- as Fees For Technical Services and brought to tax @10% on the gross basis as per Section 115A of the Act and under Article 12 of India-USA DTAA vide order dated 22/06/2022. In so far as, Assessment Year 2019-20 is concerned the final assessment order came to be passed by assessing the total income of the assessee at Rs.9,41,39,051/- out of which Rs.7,36,93,619/- is treated as Fees For Technical Services which is taxable in India @ 10% on the gross basis as per Section 115A of the Act and under Article 12 of India-USA DTAA vide orders dated 22/06/2022.

6. Aggrieved by the final assessment orders dated 22/06/2022 for Assessment Year 2018-19 and 2019-20 passed u/s 143 read with Section 144(13) of the Act, the assessee preferred the above two Appeals on the grounds mentioned above.

7. The Ld. Counsel for the assessee submitted that the *lis* involved in the present appeal is no more *Res-Integra* which has been adjudicated and decided against the Department in the case of group entities of the assessee declaring that subscription fees would be in the nature of 'Business Income'. Further contended that the person interested to purchase electronic version of books/journals/articles available on Lexis Nexis can purchase it online by paying the price of the book. The frequent consumers to the books/journals/ articles available on Lexis Nexis, can opt to subscribe to the database for a certain period (subscription) allowing them to access the e-books/e-journals/e-articles on the online database. In both the cases, the content received by the user remains the same i.e. books, journals and articles in an electronic format.

8. The Ld. Counsel for the assessee further submitted that, the assessee receipts from Indian customers of the online database/and purchase of e-books, e-journals and e-articles on the database are not taxable as royalty since the receipts are not for the use of any copyright or for use of any information concerning scientific experience as per Article 12 (4) of the India

Netherlands Tax Treaty. By relying on the various case laws, submitted that the addition made by the Department is deserves to be deleted.

9. On the other hand, the Ld. DR submitted that the services rendered by the assessee are 'Technical' in nature from the information derived out of the web site of the assessee, the assessee is not providing "mere access" to static data base, the assessee is providing full fledged services and solutions focused at legal and tax professional and the assessee is not only providing to access to data base but also providing specific solutions to its customers which are technical in nature and such solutions become the knowledge base for customers to build up further analysis/solutions. Since, the assessee not only provides access to data base but also provides comprehensive solutions specific to the client which become knowledge base for further use and such knowledge skill embedded in the solution is making available to the client. Therefore, the services rendered by the assessee are covered under Article 12(4)(b) of India-US DTAA as well as Explanation 2 u/s 9(1)(vii) of the Act. Therefore, the appeal of the Assessee is devoid of merit which deserves to be dismissed.

10. We have heard the parties and perused the material available on record and gave our thoughtful consideration.

11. It is found that the assessee earns income in the nature of subscription fees from Indian subscriber for providing subscription to data base Lexis Nexis

wherein host of information started on subject/topic relating to legal and tax matters. The person interested to purchase the electronic version of the books/journals/articles can be purchased it on line by paying the price of the book and in so far as the frequent customers of the books/journals /articles available on Lexis Nexis can opt to subscribe data base for certain period which allows the customers to access the e-books/e-journals/e-articles on the online data base. In both the cases, the content received by the user remains the same that is books, journal and articles in an electronic format.

12. The assessee is a part of Elsevier Group and in case of other group entities on the similar issue of access/subscription to web-site, the ITAT Tribunal of Mumbai Bench in the case of Elsevier Information Systems GmbH Vs. Dy. Commissioner of Income Tax (IT) in ITA No. 1683/Mum/2015, dealing with the similar issue for the Assessment Year 2011-12 held as under:-

> *"15. A customer/subscriber can access the data stored in the database by paying subscription. The Department held the subscription paid to Dun & Brad Street Espana, S.A., for accessing the data to be in the nature of royalty. The Authority for Advance Ruling after dealing with the issue ultimately concluded that the subscription received by Dun & Brad Street Espana, S.A., for allowing access to the database is Elsevier Information Systems GmbH not in the nature of royalty/fees for technical services. Following the aforesaid decision, the Tribunal, Ahmedabad Bench, in ITO v/s Cedilla Healthcare Ltd. [2017] 77 taxmann.com 309, while considering the nature of subscription paid to a U.S. based*

company viz. Chemical Abstract Services, which is in the same line of business and is stated to be the competitor of the assessee, held that the subscription paid for online access to the database system "scifinder" is not in the nature of royalty. The observations of the Tribunal while deciding the issue in favour of the assessee are as under:-

> *"17. We find that as the treaty provision unambiguously requires, it is only when the use is of the copyright that the taxability can be triggered in the source country. In the present case, the payment is for the use of copyrighted material rather than for the use of copyright. The distinction between the copyright and copyrighted article has been very well pointed out by the decisions of Hon'ble Delhi High Court in the case of DIT v. Nokia Networks OY [2013] 358 ITR 259/212 Taxman 68/25 taxmann.com 225. In this case all that the assessee gets right is to access the copyrighted material and there is no dispute about. As a matter of fact, the AO righty noted that 'royalty' has been defined as "payment of any kind received as a consideration for the use of, or right to use of, any copyright of literary, artistic or scientific work" and that the expression "literary work", under section 2(o) of the Copyright Act, includes 'literary database' but then he fell in error of reasoning inasmuch as the payment was not for use of copyright of literary database but only for access to the literary database under limited non exclusive and non transferable licence. Even during the course of hearing before us, learned Departmental Representative could not demonstrate as to how there was use of copyright. In our considered view, it was simply a case of copyrighted material and therefore the impugned payments*

cannot be treated as royalty payments. This view is also supported by Hon'ble Bombay High Court's judgment in the case of DIT (International Taxation) v. Dun & Bradstreet Information Elsevier Information Systems GmbH Services India (P.) Ltd. [2011] 338 ITR 95/[2012] 20 taxmann.com 695."

16. The same view was again expressed by the Tribunal in DCIT v/s Welspun Corporation Ltd., [2017] 77 taxmann.com 165. If we examine the facts of the present appeal in juxtaposition to the facts of the decisions referred to herein before, it can be seen that the facts are almost identical and akin. In the referred cases the assessees were also maintaining databases of information collated from various journals and articles and allowed access to the users to use such material as required by them. Keeping in view the ratio laid down in the decisions (supra), the payment received by the assessee has to be held to have been received for use of copyrighted article rather than for use of or right to use of copyright.

17. Having held so, the next issue which arises for consideration is, whether the subscription fee can be treated as fees for technical services. As discussed earlier, it is evident that the assessee has collated data from various journals and articles and put them in a structured manner in the database to make it more user friendly and beneficial to the users/customers who want to access the database. The assessee has neither employed any technical/skilled person to provide any managerial or technical service nor there is any direct interaction between the customer/user of the database and the Elsevier Information Systems GmbH employees of the assessee. The customer/user is allowed access to the online database through various search engines provided through internet connection. There

is no material on record to demonstrate that while providing access to the database there is any human intervention. As held by the Hon'ble Supreme Court in CIT v/s Bharati Cellular Ltd., [2010] 193 taxman 97 (SC) and DIT v/s A.P. Moller Maersk A.S., [2017] 392 ITR 186 (SC), for providing technical / managerial service human intervention is a sin qua non. Further, Article-12(4) of India-Germany Tax Treaty provides that payment for the service of managerial, technical or consultancy nature including the provisions of services by technical or other personnel can be termed as fees for technical services. None of the features of fees for technical services as provided under Article 12(4) of the India- Germany Tax Treaty can be found in the subscription fee received by the assessee. Further, the Department has not brought any material on record to demonstrate that the assessee has employed any skilled personnel having knowledge of chemical industry either to assist in collating articles from journals / magazines which are publicly available or through them the assessee provides instructions to subscribers for accessing the online database. The assessee even does not alter or modify in any manner the articles collated and stored in the database. In the aforesaid view of the matter, the subscription fee received cannot be considered as a fee for technical services as well."

13. In the case of Elsevier Information System GmbH (supra) held that receipt of the assessee therein do not qualify as FTS as per the provisions Section 9(1) (vii) of the Act, wherein the Tribunal Bench of Mumbai adjudicated the issue regarding treaty of 'Indo-German Tax Treaty' wherein the provisions of FTS are similar to Section 9(1)(7) of the Act. The only

difference to the present appeal is that the applicable treaty is Indo-US Tax Treaty. The Article 7 of India-US DTAA, the income from subscription to Assessee's data base is in the nature of business profit, therefore, the same is not taxable in India as the assessee has no permanent establishment in India. By respectfully following the ratio laid down by the Mumbai Tribunal in the case of Elsevier Information System GmbH (supra), in the absence of any material available on record to prove that the assessee is providing full fledged service and solutions for legal professions, we are of the opinion that the A.O. has committed an error in making the addition. In view of the same, the payment received by the assessee is in the nature of 'Business Profit' which cannot be brought to tax in India in the absence of PE. Accordingly, the grounds of both the appeals of the assessee are allowed.

14. In the result, the appeal of the Assessee in ITA No. 1877/Del/2022 and ITA No. 1876/Del/2022 are allowed.

Order pronounced in the Open Court on : 05.04.2023.

Sd/-	**Sd/-**
(Dr. B. R. R. KUMAR)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 05/04/2023

MEHTA/R. N, Sr. PS

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