

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

**Before Sh. Saktijit Dey, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2385/Del/2023 : Asstt. Year : 2020-21**

Nord Anglia Education Ltd., 4 <sup>th</sup> Floor, Nova South, 160, Victoria Street, London, United Kingdom-SW1E5JB	Vs.	DCIT, International Taxation, Circle-2(2)(2), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAGCN2898G</b>		

**Assessee by : Sh. Kanchan Kaushal, Adv.**

**Revenue by : Sh. Vijay B. Vasanta, CIT-DR**

**Date of Hearing: 08.05.2024**

**Date of Pronouncement: 07.08.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order dated 27.06.2023 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

*"1. On the facts & circumstances of the case & in law, the final assessment order dated June 27, 2023 passed under section 143(3) read with section 144C of the Income Tax Act, 1961 ('Act') by the Learned Deputy Commissioner of Income tax, Circle 1(1)(1), International Taxation, Delhi ('Ld. AO') pursuant to the directions of the Ld. Dispute Resolution Panel-2, New Delhi (Ld. DRP') making an addition of INR 28,64,22,509 is bad in law and therefore, liable to be set aside.*

*2. That on the facts and in the circumstances of the case and in law, the Ld. AO/ DRP grossly erred in concluding that the receipts amounting to INR 28,64,22,509 accruing to the Appellant from its Associated Enterprises (AEs) in India on account of provision of routine support services are in the nature of Fee for Technical Services ('FTS') under the India-UK*

*Double Taxation Avoidance Agreement ('DTAA') and thus are liable to taxation in India.*

*3. On the facts & circumstances of the case & in law, the Ld. AO/DRP grossly erred in misinterpreting the nature and object of standard routine support services and alleging that the services rendered by the Appellant are of a technical and consulting nature that enhance the knowledge and skill base of the recipient's employees and hence satisfy the 'make available' test.*

*4. That on the facts and in the circumstances of the case and in law, Ld. AO/DRP has erred in holding that the services provided by the Appellant satisfy the twin test of rendering services and making technical knowledge available at the same time and thus partake the character of FTS.*

*5. That on the facts and in the circumstances of the case and in law, Ld. AO/DRP has erred in initiating the penalty under section 270A of the Act for under-reporting of income without appreciating the fact that there is no under-reporting of income by the Appellant."*

3. The assessee is engaged in providing education services and is a leading international schools organization, operating in 31 countries with more than 80 premium schools globally. The Indian entity is engaged in providing services to five Indian schools namely Oakridge International School (Visakhapatnam), Oakridge International School (Bachupally), Oakridge International School (Gachibowli), Oakridge International School (Bengaluru), and Oakridge International School (Mohali). These schools are managed and run by four Indian societies, namely Oakridge Educational Society, Orange Educational Society (Karnataka), Orange Educational Society (Punjab) and Vikas Education Society. The Assessee is a company incorporated under the laws of United Kingdom (UK) and is a tax resident of UK in accordance with the Article 4 of the India-UK Double Taxation Avoidance Agreement ('DTAA'). The business operations of the Assessee is primarily providing management and support services for learning technology and consultancy services to its group entities, which in turn manage the schools in their respective jurisdictions.

4. During the year, the Assessee entered into a licensing agreement with Vikas Educational Society, Orange Educational Society (Karnataka) and Oakridge Educational Society on 26 March 2020 for grant of license for certain platforms (collectively referred to as 'NAE IP products') for the students and teachers of Oakridge International School (Gachibowli), Oakridge International School (Bengaluru), Oakridge International School (Visakhapatnam) and Oakridge International School (Bachupally). In consideration, the Assessee received license fees for providing access to the online platform to the afore-mentioned three educational societies. The said consideration has been duly offered for taxation which are as under:

<b>Name of the Society</b>	<b>Amount</b>
Vikas Educational Society	6,90,73,681
Orange Educational Society (Karnataka)	2,18,02,831
Oakridge Educational Society	3,71,18,279
<b>Total</b>	<b>12,79,94,791</b>

5. Further, the Assessee has also entered into a service agreement with its group entity in India, i.e., PBIL for rendering certain centralized administrative services (information technology, human resource, marketing and communication etc.) of routine nature to bring in efficiency in managing the operations of PBIL.

6. The details of services provided to PBIL under the service agreement are as follows:

Nature	Details
Marketing & communication	<ul style="list-style-type: none"> <li>• Providing assistance to PBIL with its marketing strategies and giving shape to its marketing campaigns.</li> <li>• Offering assistance in devising digital</li> </ul>

	<p>marketing strategy, managing social media apps, providing standard marketing related brochures, templates and pamphlets that are customized by 4PBIL based upon the Indian market.</p> <ul style="list-style-type: none"> <li>• Reviewing PBIL's marketing strategies for content &amp; quality.</li> <li>• Supporting PBIL in organizing the marketing workshops for school management team and provides mobile applications helping staff in learnings, workshops on communications in general, workshops on reporting structures, etc.</li> <li>• Providing designs that helps PBIL in making prospectus; and helping PBIL with various collaborations with global universities.</li> <li>• Assisting PBIL in managing media relations</li> <li>• Assisting PBIL in various research and data analysis.</li> </ul>
Human resource	<ul style="list-style-type: none"> <li>• Assisting PBIL with various standard policies in relation to recruitment, compliance, appraisal, background checks, health &amp; safety, behavioral &amp; functional, etc.</li> <li>• Supporting PBIL in hiring of senior level resources such as principals at the schools wherein the hiring process is governed by PBIL.</li> <li>• Managing the student exchange programmes and endorsing various HR activities for PBIL's</li> </ul>

	employees.
Commercial, corporate affairs & legal	<ul style="list-style-type: none"> <li>• Providing any endorsement, if required and asked for any activity related to this function and is engaged with monitoring of the same.</li> <li>• Providing transactional level advice and necessary support for any key on-recurring taxation related matter.</li> <li>• Monitoring global regulatory and fiscal trends that could impact Indian regulatory environment.</li> <li>• Endorsing the agendas made by PBIL in respect to board meetings.</li> <li>• Providing support on tax disputes under a 'Group Tax Audit &amp; Dispute Policy', providing guidance on when to book provisions and advice on how best to interact with tax authorities.</li> <li>• Providing access to group master service agreements ('MSAs') to engage specialist advisers at discounted rates.</li> </ul>
Finance	<ul style="list-style-type: none"> <li>• Assisting in budgeting and forecasting process and endorsing the day-to-day activities and monitoring the same for the finance department.</li> <li>• Maintaining financial and reporting software's.</li> <li>• Providing policies and procedural guidance and assists with certain technical support in connection with statutory audit, IFRS, etc.</li> <li>• Tax compliance monitoring and assistance,</li> </ul>

	providing additional support on timetables and management.
Information Technology	<ul style="list-style-type: none"> <li>• Assistance in providing various standard applications like Microsoft office, Microsoft Outlook, etc. to PBIL</li> <li>• Access to standard policies and guidance material</li> <li>• Devising policies and best practices in respect to the IT systems</li> </ul>
Facilities Management/ Corporate Development	<ul style="list-style-type: none"> <li>• Providing assistance where any expansion related decision needs to be taken.</li> <li>• Providing support through market research and analysis, undertaking return on investment analysis, and working with projects team to advise on best practice guidelines for delivering maximum efficiencies.</li> <li>• Assisting in integration support to manage integration budget and roll out of company policies.</li> <li>• Undertaking macro level analysis on market conditions such as FDI and economic growth to help better assess growth opportunities in the market.</li> </ul>

7. In consideration for the above services, the Assessee received Rs.28,64,22,509/- from PBIL.

8. The license fees received by the Assessee for providing access to the online platform to the afore-mentioned societies amounting to Rs.12,79,94,791/- was offered to tax as royalty income.

9. The receipts on account of cross charges amounting to Rs.28,64,22,509/- from routine services provided to PBIL was not offered to tax in India relying on the provision of section 90(2) of the Act read with Article 13(4)(c) of the India-UK DTAA since these are routine managerial activities which do not allow PBIL to enjoy any right, property or information nor does it make available any technical knowledge, experience, skill, know how or processes to PBIL. Due to the restricted nature of the definition of Fees for Technical Services ('FTS') in India-UK DTAA the same was not considered to be liable to tax in India. Accordingly, the income amounting to Rs.28,64,22,509/- earned from cross charges is claimed as exempt income by the Assessee in its return of income in accordance with the provisions of the India-UK DTAA.

10. During the course of assessment proceedings, the AO proposed to treat the cross charge receipts from PBIL is taxable as 'FTS' under Section 9 of the Act as well as per Article 13 of the India-UK DTAA. The AO held that the services rendered by the Assessee are technical in nature and such services provide enduring benefit to the service recipient and enhance the knowledge/experience skill of service recipient. The AO held that the assistance provided by the Assessee is a benefit to PBIL from the global expertise and knowledge of the Assessee which increases PBIL's knowledge and skill base and PBIL may need not take assistance/help from the Assessee in the future as the experience and knowledge has already transferred to PBIL thereby satisfying the make available test.

11. Aggrieved by the draft assessment order passed by the AO, the Assessee further filed objections before the Id. DRP.

12. Additionally, the Assessee filed an application for additional evidence in accordance with Rule 4(3) read with Rule 9 of the Income tax (Dispute Resolution Panel) Rules, 2009 ('DRP Rules') before the Id. DRP, in order to substantiate that the centralized administrative services/ support services regarding educational quality improvement, financial consulting, improved personnel strategy, business advisory services, marketing, corporate affairs, information technology etc., rendered to its group entity viz. PBIL pursuant to the Service Agreement, are routine and generic in nature and did not enable PBIL to perform these services on its own in future i.e., the impugned services do not qualify the make available test and hence are not taxable under the India-UK DTAA. Further, PBIL is regularly required to obtain these services from the Assessee as the said services keep getting updated from time to time, in order to adhere to the best practices followed by the Assessee.

13. Before the Id. DRP, the assessee reiterated the nature of services rendered by the assessee to PBIL which are as under:

- Providing assistance to PBIL with its marketing strategies and giving shape to its marketing campaigns.
- Offering assistance in devising digital marketing strategy, providing standard marketing related brochures, templates and pamphlets that are customized by PBIL based upon the Indian market.
- Supporting PBIL in organizing marketing workshops for school management team, workshops on communications in general, workshops on reporting structures, etc.
- Reviewing PBIL's marketing strategies for content & quality.



- Child Safeguarding Allegations Policy along with SOP
- General Data Protection Regulations on Child Protection Information Sharing
- Guidance on Safeguarding & Child Protection Policy and Safe Working Practice at School
- Guidance to Schools on field trips
- Once the policies/SOPs are provided by the Assessee, same are subsequently modified/amended basis the comments received from PBIL.

14. The Assessee submitted before the Id. DRP that it has not made available any technology to PBIL by way of which PBIL is enabled to absorb and apply the technology on its own, without any recourse to the Assessee in future. It was submitted that the guidance is an ongoing activity rendered w.r.t. the day-to-day business operations and the services i.e., marketing and communications, human resource, commercial, corporate affairs and legal, finance, information technology, facilities management/ corporate development provide support to PBIL whereby it can run its business operations in an efficient manner.

15. The AO in his remand report dated 10 April 2023 reiterated the averments made in the draft assessment order. The Id. DRP affirmed the draft order of the Assessing Officer.

16. Aggrieved, the assessee filed appeal before the Tribunal.

17. The Id. AR argued that the Assessee has not make available the technology to PBIL in the sense that PBIL is enabled to absorb and apply the technology on its own in the future. The intention for entering into the Service Agreement with Indian group company is to give direction or guidance to the group company as a whole so that they adopt the

standard procedures with the object of achieving global standardization for the Nord group. The guidance is an ongoing activity in day-to-day spheres of business operations including marketing and communication, human resource, legal, finance, etc. By any stretch of imagination, this cannot be considered as imparting of technical knowledge, experience, skill, such that the Indian company can make use of the guidance by themselves in its business or for its own benefit and without recourse to the Assessee in future. It was reiterated that the services are standard/general services, rendered in order to bring in efficiency in managing the operations of PBIL. The Id. AR argued that the assessee is working in a very niche field, providing standard operating procedures/policies and supporting the schools in laying down the best of guidelines. It was argued that the correspondence between the Assessee and PBIL which provides an insight on the routine services provided by the Assessee to PBIL and such services would never partake the character of services that "make available" the knowledge to apply such services independently by PBIL in future.

18. The Id. AR placed reliance on the decision of DIT vs. Guy Carpenter & Co. Ltd. [346 ITR 504] and CIT vs. De Beers India Minerals (P.) Ltd. [2012]' 346 ITR 467 and the orders are as under:

- Sandvik Australia Pty. Ltd. (TS-46-ITAT-2013) (Pune ITAT)
- Sun Microsystems India (P.) Ltd. (48 taxmann.com 93) (Kar. HC)
- Veeda Clinical Research (P.) Ltd (35 taxmann.com 577) (Ahd. ITAT)
- Boston Consulting Group (94ITD 31) (Mumbai ITAT)
- Bharti AXA General Insurance Co. Ltd (234 CTR 62) (AAR)
- Raymond Ltd. v. DCIT 86 ITD 791 (Mumbai ITAT)

19. Based on the above case laws, the Id. AR argued that "*the 'make available' test is fulfilled if the service recipient is able to absorb the technical*

*knowledge, know-how, processes and skill. Technology is considered 'made available' when the service recipient is enabled to apply the technology contained therein, i.e., the service recipient is able to make use of the technical knowledge, etc., by himself for his own benefit and without recourse to the service provider in future. Therefore, technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in future without depending on the service provider. Just because technical knowledge, experience is used by the service provider, the services need not qualify as FTS."*

20. On the other hand, the Id. DR relied on the order of the Assessing Officer and the Id. DRP which have been perused in detail:

21. Heard the arguments of both the parties and perused the material available on record.

22. We find that the issue stands covered in the similar matter adjudicated by the Tribunal in the case of Global Schools Holdings Pte. Ltd. vs. ACIT in ITA No. 2311/Del/2022 (Delhi Tribunal) wherein under the similar fact pattern, the Assessing Officer had alleged that the provision of management services to its affiliate in India is in the nature of royalty/ FTS under the India-Singapore DTAA and thus are liable to tax in India. This view was further affirmed by the Id. DRP. The Tribunal held that the services rendered by the assessee are neither linked to royalty, nor in the nature of FTS considering make available criteria not met. The salient points are as under:

- in terms of the service agreement, assessee has provided only the routine services like human resource support, marketing and operation support etc., which are distinct from the services rendered under the license agreement;

- services rendered under the service agreement are not ancillary or subsidiary to the use of trademark/ brand name of software; and
- no material on record exists to establish that the services rendered by the assessee has resulted in transfer of technology, know how, skill to the Indian affiliate so as to enable it to perform the services independently in future without any aid from the assessee.

23. The decision of the Co-ordinate Bench of Tribunal in the case of M/s Bio Rad Laboratories [Singapore] vs. ACIT (ITA No. 995/DEL/2022) which was affirmed by Hon'ble Jurisdictional High Court in same case (155 taxmann 646) held that IT services and other administrative services were rendered by the assessee to its affiliates in India and these services were not satisfying the make available test as there was no transfer of technology. It was observed that mere incidental advantage to the service recipient wasn't an appropriate reason to arrive at the conclusion enduring benefit has been made available to the recipient. Further, the court also observed that the agreement between the respondent/assessee and its Indian affiliate had been effective from a long time and the payment is being made on year-on-year basis and if, technical knowledge, experience, skill, and other processes had been made available to the Indian affiliate, then agreement would not have run its course for such a long period.

24. In the present case, the AO has failed to demonstrate with cogent evidence, the consequential enduring benefits obtained by the Indian AE i.e., PBIL forming the basis of the conclusion that the services satisfy the make-available clause in terms of the India-UK DTAA. As evident from the aforementioned judicial decisions, the requirement of technology being made-available thereby enabling the Indian AE to apply the same on its own, has not been fulfilled in the instant case, hence the allegation of the AO is without any merit and is liable to be rejected.

25. In view of the above discussion, applying the principles laid down in the judicial precedents in the given scenario, we hold that consideration received for services in the nature of marketing and communications, human resource, commercial, corporate affairs and legal, finance, information technology, facilities management/ corporate development, rendered to PBIL would not be taxable as FTS in terms of the provisions of the India-UK DTAA.

26. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 07/08/2024.

Sd/-

**(Saktijit Dey)**  
**Vice President**

**Dated: 08/08/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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4. CIT(Appeals)
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Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**