

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER
ITA No. 674/MUM/2025 (AY: 2013-14)
ITA No. 673/MUM/2025 (AY: 2014-15)
(Physical hearing)**

Manisha Kiran Temkar 32, Vinod Villa, Worli Hill Road, Worli, Mumbai – 400018. [PAN: ABSPT7644J]	Vs	ACIT – 21(2), Mumbai Piramal Chamber, Lal Baug, Parel, Mumbai – 400012.
Appellant / Assessee		Respondent / Revenue

Assessee by	Ms. Kinjal Bhuta, Advocate
Revenue by	Shri Annavarani Kosuri, Sr. DR
Date of hearing	10.07.2025
Date of pronouncement	18.08.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These two appeals by assessee is filed against the separate orders of Id. CIT(A)/NFAC for A.Y. 2013-14 & 2014-15 both dated 26.11.2024, in both the appeals of assessee has raised certain common grounds of appeal except variation of disallowance under section 40(a)(i), facts in both years are also similar, therefore, with the consent of parties both the appeals were clubbed, heard together and are decided to avoid the conflicting decision. For appreciation of fact, facts in ITA No. 674/M/2025 for A.Y. 2013-14 is treated as lead case. The assessee has raised following grounds of appeal:

"1.1 The Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Assessing Officer being commission payment made to Imperial Impact Bangladesh Ltd. amounting to Rs. 1,35,69,613/- u/s. 40(a)(i) of the Income Tax Act, 1961 under a total misinterpretation of law and factual matrix of the case.

1.2 The Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition without appreciating that withholding provisions u/s. 195 of the Income Tax Act, 1961 does not apply to the facts of the case. That the addition is illegal and ought to be deleted.

1.3 The Ld. Commissioner of Income Tax (Appeals) erred in confirming the actions of the Assessing Officer of not allowing treaty benefits u/s. 90(2) of the Income Tax Act, 1961.

2. The Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Assessing Officer being inspection and testing charges paid to Bureau Veritas Hongkong Ltd. amounting to Rs.45,15,971/- u/s. 40(a)(i) of the Income Tax Act, 1961 under a total misunderstanding of law and factual matrix of the case.

3. The Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Assessing Officer being software use payment made to EC Vision Hongkong Ltd. amounting to Rs.4,86,654/- u/s. 40(a)(i) of the Income Tax Act, 1961 under a total misunderstanding of law and factual matrix of the case.

4. The Ld. Commissioner of Income Tax (Appeals) erred in concluding the appellate proceedings and passing the order u/s. 250 of the Income Tax Act, 1961 without affording an opportunity of hearing through video conference, ignoring repeated requests made by the appellant.

5. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal."

2. Brief facts of the case are that assessee is an individual and engaged in the international merchant trade in the name of M/s. Kathmandu Apparel Group. The assessee while filing her return of income declared income of Rs. 5.74 crore. The case was selected for scrutiny. During assessment, the assessing officer noted that assessee has made foreign remittances to various parties which was reported in Form 15CA and 15CB. The assessee was asked to furnish details of such foreign remittances with name of parties, nature of services rendered, copy of agreement and if any TDS is made. The assessee furnished reply about foreign remittances. The assessee also furnished the

details and nature of payments. All such details are scanned on page no. 2, 3 & 4 of assessment order. In the payment details, the assessee stated that such payments were remitted to various parties outside India for the purpose of her business carried out outside India. Such remittances were made against invoices or debit notes relating to business transaction carried out by assessee outside India and only in case of Imperial Impact Bangladesh Ltd., the assessee has agreement with the said non-resident party to look after the execution of sale and its allied activities, copy of agreement was furnished. On considering such reply, the assessing officer vide order sheet entry dated 05.03.2016 asked the assessee why remittances made to Imperial Impact Bangladesh Ltd. Ec Vision Limited & Bureau Verital Hongkong Ltd. on which no TDS was made, be not disallowed under section 40(a)(i). In respect to such show cause, the assessee furnished her reply. The contents of reply are recorded on page 4, 5 & 6 of assessment order. The assessee in her submission submitted that she is carrying out her business in the name of M/s. Kathmandu Apparel Group and in merchant trade in international market. Goods were purchased from China, Hong Kong, Bangladesh & Vietnam and sold to customers in USA. She has a representative office (RO) at Bangladesh and Vietnam where the major merchant trade takes place. None of the garment sale is executed from India and all the business income of the assessee is earned from a source located outside territorial jurisdiction of India. The modus operandi of business were provided in reply dated 26.08.2015. The assessee is getting sample testing done for its garments and the fabric used from Bureau Verital Hongkong

Limited as authorized by its sales party in certain cases. The Imperial Impact Bangladesh Ltd. claims agency commission as per shipment contract entered with and it provided facilitation services for shipment of goods from Bangladesh. The payments made to Ec Vision Limited is for subscription for software used at Bangladesh and Vietnam RO for making various compliance, documentation like order details / packing list invoices, barcode stickers on cartons of the international trade executed from these countries. Utilization of services of such parties are outside India. The assessee also explained this scope of section 40(a)(i) and section 9(1)(vi) & (vii). The assessee finally by referring such provision submitted that she has not violated or defaulted with the provision of Chapter XVII-B of Income Tax Act. There is no reason why remittances made during the F.Y. 2012-13 shall be disallowed.

3. Reply of assessee was not accepted by assessing officer. The assessing officer by referring section 40(a) and section 9 of Income Tax Act held that assessee is a resident of India, whether the income of assessee is deemed to accrue or arise in India or not is to be established. The assessee is engaged in mercantile trade, the controlling office of assessee is in Mumbai. Samples are developed and prepared in this office. Samples are sent to USA and UK to procure order. Orders are received in India. On receipt of orders from USA and UK are placed to China, Bangladesh, Hong Kong and Vietnam from the office in India and goods are sent directly to the order in countries as per direction received from India office. In the case of merchantable trade, the import leg and export leg of transaction are completed without the goods actually entering into borders of the importer's country. On the instruction of

importer, the sellers deliver goods directly to the ultimate buyer either in his own country or a third country as per directions of the importer. The addition of merchanting trade is same in customs duty in India as goods were directly exported to USA without entering India. The assessing officer was of the view that expenditure incurred in foreign currency related to merchanting business falls under the ambit of section 9(1) and accordingly, the assessee was liable to deduct TDS on the remittances to the parties in the nature of fees and technical services and Royalty. The assessee has not furnished copy of agreement with parties to whom foreign remittances were paid and agreement only with Bangladesh parties were furnished. The assessing officer disallowed 30% of remittances to Imperial Impact Bangladesh Ltd., Ec Vision Limited & Bureau Veritas Hongkong Ltd. thereby the assessing officer made 30% of total remittances. The assessing officer made three disallowances aggregating of Rs. 1.857 crore. On appeal before Id. CIT(A), the action of assessing officer was confirmed. Further, aggrieved the assessee has filed present appeal before Tribunal.

4. We have heard the submission of learned Authorised Representative (Id. AR) of the assessee and the learned Commissioner of Income – Departmental Representative (Id. CIT-DR) for the revenue. The Id. AR of the assessee submits that grounds of appeal raised by assessee in both the years are in fact covered in favour of the assessee by a series of decision wherein it has been consistently held that when recipient is non-resident and provided services outside India and he is not liable to pay tax in India, no TDS is

required to be made on such payment. To support her submission, the Id. AR relied on the following decision:

- GE India Technology Cen (P) Ltd. vs CIT (2010) 193 Taxman 234 (SC)
- Pr.CIT vs Vedanta Ltd. (2023) 146 taxmann.com 34 (SC)
- CIT vs Toshoku Ltd. (1980) 125 ITR 525 (SC)
- PCIT vs Sesa Goa Ltd. (2023) 146 taxmann.com 35 Bom(HC)
- CIT vs International Creative Foods (P) Ltd. (2011) 9 taxmann.com 191 Ker (HC)
- PCIT vs Puma Sports India (P) Ltd. (2021) 127 taxmann.com 169 Kar (HC) - SLP of revenue dismissed
- CIT vs EON Technology (P) Ltd. (2011) 15 taxmann.com 391 Del (HC)
- ITO vs Natraj Mohan Kanchan (ITA No. 824/Mum/2015)

5. The Id AR of the assessee further submits that Inspection and testing charge cannot be considered as fees for technical services as has been held by Mumbai Tribunal in case of ACIT vs Total Oil India Pvt. Ltd. in ITA No. 4300/M/2016. Further, payment for use of software cannot be considered as Royalty as has been held in Engineering Analysis Centre of Excellence P. Ltd. (2021)125 taxmann.com 42 (SC) and CIT vs NET APP B.V (155 taxmann.com 275) SC – SLP dismissal & Shell International B.V vs DCIT (2024 160 taxmann.com 761) (Ahd. ITAT). The Id. AR while explaining the facts of her case submits that assessee is doing business of international merchant under the sole proprietorship of her firm Kathmandu Apparel Group. The assessee is trading of garment apparel to USA. The assessee is procuring such garment from Bangladesh and Hong Kong and was exporting directly to the USA. Such facts are not disputed by lower authorities. The assessee made certain remittances for various works undertaken by the agent of assessee whom the assessee has agreement or payments were made on the basis of

invoices raised. Income of those parties is not taxable in India. They have not rendered any services in India. Thus, they are not liable to pay tax in India. It is settled law, when the recipient does not have their permanent establishment and not rendered services in India, therefore, no TDS is to be made for the payment made to them. The assessee placed order to factory in China, Bangladesh and Vietnam. The assessee transfer letter of credit in China, Bangladesh and Vietnam at cost of garment. Such garments are decided and inspected for quality purpose. The garments are directly sent to USA. The assessee made commission payment to Imperial Impact Bangladesh Ltd. of Rs. 1.35 crore which was on account of agency commission. Agency agreement was provided. As per agency, agreement, the agent is required to work in Bangladesh. Such commission is not fees for technical services. Even otherwise in case commission paid is considered for technical services, the assessee falls in exception of Explanation 2 to Section 9(1)(vii).

6. On the other hand, learned Commissioner of Income tax – Departmental Representative (Id. CIT-DR) for the revenue supported the order of lower authorities. The Id. CIT-DR submits that assessing officer has clearly held that the nature of work assign to agent suggest that payments were made on the pretext of commission, is nothing but for technical and managerial work which is covered by the definition of fees for technical services.
7. We have considered the rival submissions of both the parties and perused the record carefully. We find that there is no dispute on the business model of assessee. Admittedly, the assessee remitted payment to Bangladesh based

parties. The recipient has rendered services outside India. Their income is not taxable in India. The foreign agent carried out its activities of checking or packing of assessee's goods outside India. Thus, the commission income earned by agent are outside India which had not accrued in India. Certainly, the payment made to foreign agent is also not on account of royalty or fees for technical services. Therefore, we find merit in the submissions of Id. AR of the assessee that when non-resident agent is rendered certain services outside India and commission paid to them could not be said to be income which had accrued in India. The recipient is not liable to pay tax in India, therefore, assessee is not required to deduct tax at source on payment to such agent outside India as has been held in a series of decision in a latest decision of Hon'ble Supreme Court in PCIT vs Vedanta Ltd (supra). We also find merit in the commission paid to Non-resident Indian can also not treated as fees for technical services. And further when checking and inspection charges carried out by using a technology through software, which cannot be considered as royalty. Hence, the assessee succeeded on her grounds of appeal. In the result, the grounds of appeal raised by the assessee are allowed.

8. In the result, the appeal of the assessee for AY 2013-14 is allowed.

ITA No. 673/Mum/2025 for AY 2014-15

9. As recorded above, the assessee has raised similar grounds of appeal as raised in appeal for AY 2013-14, facts in the assessment year is also similar except variation of figure of addition. Considering the fact that appeal for A.Y. 2013-14 is allowed, thus, following the principal of consistency, this appeal is

also allowed similar direction. In the result, this grounds of appeal of assessee is also allowed.

10. In the result, both the appeals of the assessee are allowed.

Order was pronounced in the open Court on 18/08/2025.

Sd/-

**PADMAVATHY S
ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

MUMBAI, Dated: 18/08/2025
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order



Assistant Registrar
ITAT, Mumbai