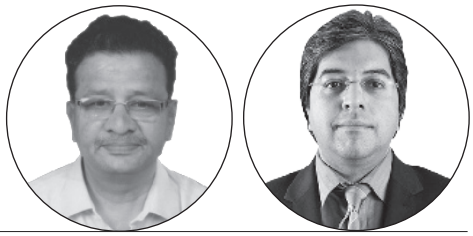

INTERNATIONAL TAXATION

Case Law Update

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A. High Court

1 ***DIT vs. Autodesk Asia (P.) Ltd. [2020] 120 taxmann.com 324 (Karnataka)***

Substitution of old Article 12(2) of India-Singapore DTAA (which prescribes 15% rate of tax on royalty income) vide Notification No. 185/2005 dated 18th July 2005 with new Article 12(2) (which prescribes 10% rate of tax on royalty income) would be applicable for the entire financial year i.e. from 1st April 2005 and not from 18th July 2005 and therefore the entire royalty receipts for the year would be taxable @10% and not @15%

Facts

i) The assessee, a tax resident of Singapore, was engaged in the business of marketing and selling softwares. During the year under consideration i.e. AY 2006-07, the assessee sold software licences to its Indian customers and also rendered certain ancillary services in relation to the software's sold. The assessee filed a return of income declaring NIL income, by claiming that the consideration received from selling softwares would not be in nature of 'royalty' under the IT Act.

ii) During the course of assessment proceedings, the AO held that the said consideration would be in nature of 'royalty' and thus the same would be taxable in India. The AO determined the quantum of tax liability by applying the rate of tax on royalty @ 15% for the period 1st April 2005 to 17th May 2005 and @10% for the period 18th July 2005 to 31st March 2006 prescribed under the India-Singapore DTAA read with Notification No. 185/2005 dated 18th July 2005 (which reduced the rate of tax on 'royalty' under the India-Singapore DTAA from 15% to 10%). The action of the AO was upheld by the CIT(A).

iii) On appeal, the Tribunal held that the consideration would be in nature of 'royalty' by relying on the decision of Hon'ble Karnataka High Court in case

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of Synopsis International Pvt. Ltd. (ITA No.11 to 15 of 2008 and 17 of 2008 dated 3rd Aug 2010).

iv) With respect to the quantification of the tax liability, the Tribunal upheld the plea of the assessee that the rate of 10% would be applicable for the entire financial year, by observing that Article 12(2) of the India-Singapore DTAA was substituted vide Notification No. 185/2005 dated 18.7.2005, implying that the earlier provision was obliterated and the new provision takes its place. The Tribunal further observed that in such a situation, it can only be inferred that the new provision is the only provision which is in existence and the old provision has no existence in the eyes of law.

v) On further appeal by Revenue, the Karnataka HC held as under:

Decision

i) The Karnataka High Court, by relying on the decision of Supreme Court in case of ***West U.P. Sugar Mills Association vs. State of U.P. [2002] taxmann.com 2483 (SC)*** reiterated in ***West UP Sugar Mills Association vs. State of UP [2012] 2 SCC 773*** and the decision of Karnataka High Court in case of ***Government M vs. State of Karnataka [2013] 1 Kar LJ 497 (Kar.),*** observed that when an old rule is substituted by a new rule, the old one is never intended to be kept alive and the substitution has the effect of deleting the old rule and making the new rule operative.

ii) In light of the above principles, the High Court, dismissed the appeal of the Revenue, by holding that the substitution has the effect of deleting the old rule (i.e. rate of 15%) and making the new rule (i.e. rate of 10%) operative and therefore, the new rate of tax @10% as substituted in Article 12(2) of India-Singapore DTAA would be applicable for the entire financial year.

2 *PCIT vs. Solar Turbines India (P.) Ltd. [2020] 117 taxmann.com 324 (Bombay)*

Where the Tribunal had recorded a finding, based on the appreciation of evidences and materials on record, that the assessee was not rendering any marketing support services to its AE and consequently deleted the TP adjustment made by the TPO, the High Court upheld the order of the Tribunal.

Facts

i) The assessee, a domestic company, was a wholly-owned subsidiary of Turbomach SA (hereinafter referred as AE), engaged in the business of designing, developing, installation, commissioning, servicing of gas turbines of captive power plants and annual maintenance service and supply of spare parts to its customers.

ii) During the course of assessment proceedings, the TPO observed that the assessee had entered into a contract with PWD (CWG), Delhi on behalf of its AE for the supply of gas turbines and its installation, commissioning, etc. The TPO observed that the entire bidding process and subsequent granting of the contract were attended to and coordinated by the assessee on behalf of its AE and accordingly held that the assessee had been liaising with the Government of India on behalf of its AE for which no service charges had been

charged to the AE. Further, based on the information received u/s 133(6), the TPO observed that the assessee had provided support service for sale, marketing and after-sale services on behalf of the AE in India for which it should have received indenting, commission or service fees. The TPO computed the ALP of the marketing support services allegedly rendered by the assessee to its AE, by taking the average rate of commission earned by other independent parties (based on the information received u/s 133(6)). The action of the TPO was upheld by the DRP.

iii) On appeal, the Tribunal deleted the adjustment by observing as follows:

a. Registration under the Delhi VAT, 2004 was a pre-requisite for bidding in the PWD (CWG) tender and since the AE did not have a VAT registration under the Delhi VAT, 2004, the AE was not qualified for bidding the tender. In view of the said limitation, the contract was executed between the PWD (CWG) and the assessee. The scope of the contract clearly specified the scope of work to be executed by the assessee and its AE, which inter alia included the fact that AE would be providing the gas turbine generation system and not the assessee.

b. The bidding for PWD (CWG) required participation only of the Original Equipment Manufacturers, which was the AE in the present case and not the assessee

c. The payment for the supply of the turbines was made directly by the customers of the AE and not by the assessee.

d. In the preceding years also, the AE was supplying the turbines and the assessee was rendering services in relation to installation, commissioning, annual maintenance, however no additions were proposed by the TPO in relation to the alleged marketing activities by the assessee.

e. Based on the information received u/s 133(6) it could be inferred that the Indian customers of the AE had directly negotiated and entered into a contract with the AE and the assessee was not involved in such transactions.

f. No documentary evidences were furnished to prove that the assessee had rendered marketing/indenting services to its AE

iv) On further appeal by Revenue, the Bombay HC held as under

Decision

i) The Bombay High Court observed that the Tribunal deleted the adjustment based on concrete evidences and thus there was no error or infirmity in the approach of the Tribunal (which was held to be as quite reasonable and pragmatic). The HC also observed that the findings of the Tribunal were based on the appreciation of evidences and materials on record and hence the same could not be said to be vitiated by any material irregularity or perversity. In view of the same, the HC dismissed the appeal of the Revenue.

3 *PPN Power Generating Company Pvt Ltd [TS-537-HC-2020(MAD)-TP]*

In a re-assessment proceeding, a reference to the TPO u/s 92CA could not be made, unless the AO had disposed of the objections filed by the assessee for re-opening the assessment

Facts

i) The assessee, an Indian company, was engaged in power generation.

ii) During the year under consideration, the AO had issued notice u/s 148 of the IT Act dated 25th February, 2010. The assessee requested the AO to furnish the reasons for re-opening the re-assessment u/s 148 of the IT Act. The AO furnished the reasons for re-opening vide order dated 16th September 2010 and subsequently the assessee filed objections for re-opening of the assessment. Subsequently, the assessee received a notice dated 27th January 2011 along with a detailed questionnaire from the TPO, stating that the case for re-opening had been referred by the AO u/s 92CA.

iii) Against the action of the AO in referring the case of re-opening to the TPO, the assessee filed a Writ Petition before the Madras High Court. The said Writ Petition of the assessee was dismissed by a Single Judge Bench, by observing that there were several questions of facts involved in the issue which could not be considered by a Court in the exercise of its jurisdiction under Article 226 of Constitution of India and therefore ordered the assessee to participate in the adjudication mechanism u/s 148 of the IT Act.

iv) Aggrieved by the order of the Single Judge Bench, the assessee filed further appeal before the Madras High Court.

Decision

i) The Division Bench of the Madras High Court upheld the order of the Single Judge Bench by observing that the IT Act was a complete Code by itself which provided for a hierarchy of remedies. Therefore, unless there were valid or cogent reasons, the procedures contemplated under the Act providing for the hierarchy of remedies could not be bypassed.

ii) However, the High Court, by relying on the decision of Supreme Court in case of ***GKN Driveshafts (India) Ltd vs. ITO 2003 259 ITR 19 (SC)***, also held that the AO was bound to dispose of the objections filed by the assessee. Since the objections were not disposed of at the time of issuing notice dated 27th January 2011 along with a detailed questionnaire from the TPO, the AO was directed to dispose of the objections filed by the assessee and to pass a reasoned order within a period of 6 months from the date of receipt of the order of the High Court.

4 *Nissin Brake India Pvt Ltd [TS-262-HC-2020(P & H)-TP]*

When the TPO was not able to demonstrate, that CUP method was the most appropriate method for benchmarking payment of royalty and product development fees as against TNMM, which was applied for benchmarking the said transactions in preceding years, the approach of the Tribunal, in setting aside the

matter to the TPO for fresh adjudication, was to be upheld

Facts

i) The assessee, a domestic company, was engaged in manufacturing, altering, procurement, sale and trading of all types of automotive and aluminium brake and aluminium components. The AE of the assessee was engaged in developing and manufacturing a wide range of brake products for motorcycles and four-wheeled vehicles. The assessee entered into certain international transactions with its AE which interalia included payment of royalty and product development fees. The assessee adopted TNMM to benchmark the said international transaction and adopted operating profit/operating revenue as its PLI. The assessee concluded that its PLI in relation to the said international transaction was 0.65% (after seeking adjustment for working capital and risk) as against the comparables margin of -3.16% and thus its international transactions were at ALP.

ii) During the course of assessment proceedings, the TPO observed that the assessee was not deriving any benefit from the payment of royalty and product development fees and therefore determined the ALP of the said international transaction at NIL, by rejecting the TNMM method and applying the CUP method. The action of the TPO was upheld by the DRP.

iii) On appeal, the Tribunal observed that the Revenue had been applying TNMM method on a year to year basis, however during the year under consideration, the TPO had abruptly applied the CUP method without assigning any reason, and further the TPO had decided the issue applying the benefits test which was not permissible under the provisions of the IT Act. Further, the Tribunal also observed that the payment of royalty and product development fee was intrinsically interlinked with the productions and sales and could only be decided under TNMM. In light of the above, the Tribunal, by relying on the decision of Delhi High Court in case of EKL Appliances Ltd. 341 ITR 241 (Del.), remanded the matter to the file of the TPO to decide the matter afresh.

iv) On further appeal by Revenue, the Punjab & Haryana HC held as under:

Decision

i) The Punjab & Haryana High Court dismissed the appeal of the Revenue, by observing that neither the Revenue was able to demonstrate that the applicability of the CUP method was more appropriate nor any reasons were put forth to justify the departure from the TNMM being followed in preceding years. In light of the above, the HC held that there was no legal infirmity in the approach of the Tribunal in coming to the conclusion that the invocation of the CUP method was not justified and that no reason existed for the departure from the preceding years.

B. Tribunal

5 *Kapil Dev Ranwan [TS-594-ITAT-2020(DEL)]*

When the Revenue had not disputed the fact that the assessee, a resident of India, had paid taxes in UK, in relation to the salary earned in UK, the claim of foreign tax credit ought to be allowed in terms of section 90(2) and Article 24 of the India-UK DTAA

Facts

i) The assessee individual, a tax resident of India, was a salaried employee of IBM India Pvt. Ltd. and was sent for an international assignment, for a period exceeding 183 days, to the United Kingdom during the year under consideration i.e. AY 2011-12. The assessee filed a return of income in India and claimed a foreign tax credit (FTC) to the tune of INR 40.75 lakhs in terms of Article 24 of the India-UK DTAA.

ii) During the course of assessment proceedings, the AO disallowed the FTC by observing that the assessee should have claimed exemption from taxes in UK, in terms of Article 16(2) of the India-UK DTAA. The action of the AO was upheld by the CIT(A)

iii) On appeal, the ITAT held as under:

Decision

i) The Tribunal held that since the assessee was working in UK for a period of more than 183 days, which was not disputed by the Revenue, and thus the benefit provided under Article 16(2) was not applicable to the case of the assessee.

ii) The Tribunal observed that the AO was well aware that the assessee had paid taxes in UK for the remuneration received in UK and hence the claim of the assessee was valid in terms of section 90(2) and Article 24 of the India-UK DTAA.

6 *Smit Singapore Pte Ltd [TS-586-ITAT-2020(Mum)]*

Consideration for the time charter of vessel and crew would not be in nature of 'royalty' under India-Singapore DTAA if the control of the vessel, throughout remained with the assessee and the control did not get transferred to the charterer

Facts

i) The assessee, a tax resident of Singapore, operating in the maritime sector was engaged in the business of salvage, wreck removal, environmental protection, and consultancy.

ii) During the year under consideration i.e. for AY 2014-15, the assessee had time chartered its vessel namely 'Smit Borneo' (hereinafter referred as 'vessel') along with the crew to Leighton India Contractors Pvt. Ltd. (hereinafter referred as 'Leighton'), for providing services in relation to exploration or extraction of mineral oils to Oil and Natural Gas Corporation ('ONGC'). The assessee filed a NIL return of income by claiming that though, the receipts from time charter of the vessel fell within the ambit of section 44BB of the IT Act (since the vessel was used in connection with prospecting, extraction or production of mineral oils), the same would not be taxable in India, since

the services/facilities provided by the assessee did not exceed the threshold of 183 days for constituting a permanent establishment ('PE') in India as required under Article 5(5) of the India-Singapore DTAA.

iii) The AO concluded the assessment proceedings by holding that the amount received from time charter of the vessel (including the mobilization fees) was in nature of royalty under section 9(1)(vi) of IT Act and Article 12(3)(b) of India-Singapore DTAA on following grounds:

a. Agreement was not executed with ONGC and hence the services could not be said to be provided in connection with the exploration of mineral oil under section 44BB;

b. Benefit of exclusion in terms of Explanation 2 (which provides that consideration for use of equipment taxable under section 44BB would not fall within the definition of royalty) to section 9(1)(vi) would not be available to the assessee, since the income was not taxable under section 44BB and therefore the income would be in nature of royalty under section 9(1)(vi) of the IT Act

c. Provision of a vessel by the assessee on a time charter basis results in the 'use of vessel' by charterer i.e. Leighton and accordingly, the said income would also be taxable as 'royalty' under Article 12(3)(b) of India-Singapore DTAA.

iv) The action of the AO was upheld by the DRP.

v) On further appeal, the Tribunal held as under:

Decision

Under the Act

i) The Tribunal held that in absence of a PE of the assessee in India (a fact which was not disputed), the income would not be taxable in India under section 44BB of the IT Act and thus the said income would not be covered by the exclusion carved out from clause (iva) of the Explanation 2 to section 9(1)(vi) of the IT Act (which provides that consideration for use of equipment which is taxable under section 44BB would not fall within the definition of royalty).

ii) Further, though the Tribunal accepted that the assessee had at no stage passed over the 'use or right to use' the vessel to the charterer, it rejected the plea of the assessee that the amount received did not constitute royalty, by holding that the assessee had failed to dislodge the claim of the Revenue that in view of Explanation 5 to section 9(i)(vi) of the Act, the fact that whether or not the possession or control of the property was with the payer or that the right or property was used directly by the payer, would not have any bearing while characterising the amounts received as 'royalty', within the meaning of clause (iva) of the Explanation 2 to section 9(1)(vi) of the Act.

Under the India-Singapore DTAA

iii) The Tribunal observed that based on the terms of the agreement, consideration received by the assessee was neither for the 'use' or 'right to use' of the vessel,

since the said vessel remained with the assessee and was never transferred to Leighton, nor the agreement was in the nature of the contract for the hiring of equipment on an independent basis. In light of the same and relying on the decision of Delhi High Court in case of ***Technip Singapore Pte. Ltd. vs. DIT 70 taxman.com 233 (Del),*** the Tribunal held that in a case where the control of the equipment throughout had remained with the assessee and the control did not get transferred to the charterer, the consideration received therefrom would not be in nature of 'royalty'

iv) The Tribunal also distinguished (on the facts of the current case) the decision of Madras High Court in case of ***Poompuhar Shipping Corporation vs. ITO (I.T)-II Chennai (2014) 360 ITR 257 (Mad)*** (wherein it was held that that by giving possession to the charterer who had control and custody of the vessel the condition of 'use' or 'right to use' is satisfied and thus payments of hire charges under a time charter agreement amounted to 'royalty' under clause (iva) of Explanation 2 to section 9(1)(vi)), by holding as under:

a. The business of the owner/lessor in case of ***Poompuhar Shipping Corporation (supra)*** was moving of coal from various ports in India as against provision of time charter services in connection with extraction of mineral oil in case of the assessee;

b. Place of delivery and re-delivery of ships/ vessel in case of Poompuhar Shipping Corporation (supra) was at the option of charterer/ lessee whereas in the current case it was at the location of owner/ lessor;

c. The crew of the ship was at the disposal of charterer/ lessee in case of Poompuhar Shipping Corporation (supra) whereas in this case, the management of vessel was under the exclusive control of owner/ lessor; and

d. The right to use the ship, select time and route vested with the charterer in case of Poompuhar Shipping Corporation (supra) whereas in this case the charterers were only concerned with the results of services performed by owner for it.

vi) The Tribunal also relied on the decision of ***Sical Logistics Ltd [TS-701-ITAT-2016(CHNY)], Bombardier Transportation India Pvt. Ltd.[TS-6-ITAT-2017(Ahd],*** and ***Dharti Dredging & Infrastructure Ltd.[TS-5154-ITAT-2012(HYDERABAD)-O]*** to conclude that the assessee had received charges on account of time charter services rendered by its vessel along with the crew to Leighton and not for allowing the latter the 'use' or 'right to use' industrial, commercial, or scientific equipment and hence the said income could not be treated as royalty within the meaning of Article 12(3)(b) of the India-Singapore DTAA.

vii) W.r.t the mobilization fees the Tribunal held that since the same formed an inextricable part of time charter service and since the consideration received on time charter services did not fall under the definition of royalty under the India-Singapore DTAA, mobilization fee also would not be taxable in India.

7 *Sabre Asia Pacific Pte. Ltd. v. DCIT [2020] 117 taxmann.com 756 (Mumbai - Trib.)*

Where assessee, a Singapore based company, engaged in the business of promotion, development, marketing and maintenance of Computerized Reservation System (CRS) for airlines sector, had its wholly-owned subsidiary in India which was exclusively performing marketing and distribution of CRS and was also securing business for the assessee by entering into subscription agreements with various travel agents in India, the said subsidiary was to be regarded as assessee's PE in India

Facts

i) The assessee, a tax resident of Singapore, was engaged in the business of promotion, development, operation, marketing and maintenance of a Computerized Reservation System ('CRS'). The primary business of the assessee was to make airline reservations for and on behalf of the participating airlines by using the CRS. The participating airlines provided the necessary information which was displayed to the travel agents throughout the world so that they could guide their customers to make the necessary requests for booking of tickets through the CRS. The assessee had licensed the rights to market the CRS to its various Group company i.e. a National Marketing Company ('NMC'), in each of the Asia Pacific Countries, and the respective NMC marketed the CRS directly to the travel agents in the respective country. The assessee received fees from the airlines/travel-related vendors for each of the booking made by the travel agents and for each of the booking made through the NMC's subscribers a commission was paid by the assessee to the respective NMC. The assessee had appointed its wholly-owned Indian subsidiary company, viz. Abacus Distribution System (India) Ltd. ('ADSIL') as its NMC in India.

ii) During the year under consideration i.e. AY 2013-14, the assessee had received total fees of INR 93.71 crore in respect of its activity of providing airline reservations in India and the assessee had paid an amount of INR 25.56 crore to ADSIL towards commission and INR 44.50 crore to ADSIL towards marketing services rendered by it. Further, the assessee had also received certain payments being in nature of reimbursement to the tune of INR 4.90 crore from ADSIL and the assessee had also granted interest-free loans to ADSIL. The assessee filed its return of income for the year under consideration and claimed that the receipts in respect of its activity of providing airline reservations in India would not be taxable in India since the assessee did not have a PE within the meaning of Article 5 of the India-Singapore DTAA.

iii) The AO concluded the assessment proceedings and made the following additions to the returned income of the assessee:

a. W.r.t fees received for the activity of providing airline reservations in India: The AO concluded that the assessee had a fixed place of business in India i.e. the Abacus Country Node located in India which remained under the management and control of the

assessee and which served as a distribution point for its services in India. The AO perused the 'distribution agreement' executed between the assessee and ADSIL and concluded that ADSIL was carrying on the business activities of the assessee in India and that ADSIL was functioning as a controlled subsidiary of the assessee and was exclusively performing the marketing and distribution of CRS for the assessee. The AO also held that ADSIL was securing business for the assessee by entering into subscription agreements with the travel agents and the said activity was habitually, wholly and exclusively performed by ADSIL for the assessee, therefore, ADSIL constituted an Agency PE of the assessee in terms of Articles 8(c) and 9 of the India-Singapore DTAA. The AO also relied on the decisions of Delhi Tribunal in case of ***Galileo International Inc. vs. Dy. CIT [2009] 116 ITD 1 (Delhi)*** and ***Amadeus Global Travel Distribution S.A. vs. Dy. CIT [2011] 11 taxmann.com 153 (Delhi)*** wherein it was held that CRS activities carried through a node and agent would constitute a PE. In light of the above, the AO attributed 10% of the total receipts from the activity of providing airline reservations in India i.e. INR 9.37 crore (i.e. 10% of 93.71 crores)

b. W.r.t reimbursement received from ADSIL: The AO placed reliance on the directions of the DRP in assessee's own case for A.Y. 2006-07 wherein it was held that 10% of the reimbursements were to be treated as the income of the assessee. Accordingly, the AO held that 10% of the total amount of INR 4.90 crore i.e. INR 49.02 lakhs would be in nature of business income of the assessee.

c. W.r.t granting of interest-free loan: The TPO made an adjustment of INR 88.62 lakhs by determining the ALP interest rate @ 5.687% in respect of the interest-free loan taking into consideration LIBOR 6 months plus 500bps for a loan having maturity period exceeding 5 years.

iv) The action of the AO/TPO was upheld by the DRP.

v) On further appeal, the Tribunal held as under:

Decision

W.r.t existence of PE of the assessee in India

i) The Tribunal relied on the co-ordinate bench decision in assessee's own case for AY 1999-2000 to A.Y. 2014-15, wherein the Tribunal had upheld the orders of the lower authorities and had concluded that the assessee was having the business connection and PE in India.

W.r.t attribution of profits to the PE of the assessee in India

ii) The Tribunal relied on the co-ordinate bench decision in assessee's own case for A.Y. 2005-06 to A.Y. 2011-12, wherein it was held that 15% of the gross receipts pertaining to the activity of providing airline reservations in

India, would be the income attributable to the PE of the assessee in India. However, the Tribunal also held (by placing reliance on the co-ordinate bench decision in assessee's own case for A.Y. 2005-06 to A.Y. 2011-12) that since the commission paid by the assessee to its NMC viz. ADSIL was higher than its income attributable to India, no part of the income would remain in the hands of the PE of the assessee in India, which would be taxable in India.

W.r.t taxability of reimbursement received from ADSIL

iii) The Tribunal relied on the co-ordinate bench decision in assessee's own case for A.Y. 2005-06 to A.Y. 2011-12, wherein it was held that since the assessee, despite having been afforded sufficient opportunity by the AO to furnish documentary evidence to substantiate that the receipts were pure reimbursement of expenses, the assessee had failed to do so, 10% of the amount of reimbursement received from ADSIL would be taxable as business income of the assessee. Further, the Tribunal also held that the assessee would be entitled to claim set-off of the commission paid to ADSIL against the said business income.

W.r.t TP adjustment

iv) The Tribunal relied on the co-ordinate bench decision in assessee's own case for A.Y. 2005-06 to A.Y. 2011-12, (which in turn relied on the decision of Hon'ble High Court of Bombay in the case of ***CIT vs. VFS Global Services Pvt. Ltd. (ITA No. 336/Mum/2015, dated 19-1-2017)*** and in case of CIT v. Tata Autocomp Systems Ltd. [2015] 374 ITR 516)) and held that the ALP of the interest-free loan given to ADSIL would be LIBOR rate plus 2%. However, the Tribunal also held (by placing reliance on the co-ordinate bench decision in assessee's own case for A.Y. 2005-06 to A.Y. 2011-12) that the said notional interest income on the loans advanced by the assessee to ADSIL would be entitled to be adjusted against the expenditure incurred by the assessee by way of marketing service fees paid to ADSIL.

(***Note***: Similar view has been expressed by the Delhi Tribunal in case of ***Amadeus IT Group SA vs. ADIT [2020] 120 taxmann.com 450 (Delhi - Trib.),*** wherein it was held that fees received for the activity of providing reservations services in India through a CRS would result in the creation of a PE in India and 15% of the fees received therefrom would be attributable to the said PE in India. Further, the Tribunal in Amadeus IT Group SA (supra), by placing reliance on Delhi HC decision in the case of ***DIT vs. New Skies Satellite BV ITA No. 473/2012,*** has also held that consideration received for use of Altea Reservation System (ARS) from British Airways in relation to bookings arising from India would not be taxable as royalty under Article 13 of the India-Spain DTAA, since the payment made by British Airways to the assessee in relation to the ARS was for the services rendered by the assessee and not for 'use' of any process in the ARS.)

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