



DEL ITAT: Receipts From Test-Reports Sharing Scientific Experience Taxable As ‘Royalty’; IT Support Reimbursements Not FTS

Facts and Issues

The Assessee Nunhems Netherlands B.V., is a Netherlands tax resident engaged in R&D for improvement of vegetable varieties, received Rs. 3,58,03,283 towards testing services and Rs. 10,66,76,030 towards reimbursement of IT support services from its Indian AE, Nunhems India Pvt. Ltd., and filed a nil return. The Assessing Officer treated the testing service receipts as royalty u/s 9(1)(vi) and the IT support reimbursements as fees for technical services u/s 9(1)(vii), both of which were upheld by the DRP. The issues for consideration are whether the testing service receipts are taxable as royalty under Article 12(4) of the DTAA and whether cost-to-cost IT support reimbursements are taxable as FTS in the absence of satisfaction of the “make available” condition.

Contentions of the Assessee before the Tribunal

The Assessee contended that the receipts from testing services were wrongly characterised as royalty by the Assessing Officer and the DRP. The Assessee merely acted as a service provider rendering routine testing services, including marker analysis and doubled haploid services, at its research and development facilities in the Netherlands. The Assessee argued that the agreement with Nunhems India was purely for provision of services and not for the use or right to use any intangible property or for imparting information concerning industrial, commercial, or scientific experience. It was argued that the “make available” condition, though relevant for fees for technical services, was not satisfied even otherwise, as the services were standard and repetitive in nature. The Assessee also contended that access to the Nautilus software was only for communication and sharing of results and did not involve any transfer of copyright or right to use any equipment. With regard to IT support services, the amounts recovered from Nunhems India represented pure reimbursement of costs incurred for IT support services procured from a third-party service provider, TCS Netherlands, without any mark-up. The Assessee contended that the IT support services did not satisfy the “make available” condition under the India–Netherlands DTAA, as no technical knowledge or skill was transferred to Nunhems India enabling it to independently perform such functions in the future.

Contentions of the Revenue before the Tribunal

The Revenue contended that the consideration received by the Assessee from Nunhems India for testing services was rightly taxable in India as royalty u/s 9(1)(vi) of the Act read with Article 12(4) of the DTAA. The Assessee did not render routine or mechanical testing services, but provided valuable information through test reports that encapsulated its scientific experience, expertise, and specialized technological processes. According to the Revenue, such information had clear industrial and commercial significance, as it enabled Nunhems India to improve plant varieties, achieve breeding progress, and efficiently conduct its commercial seed business. The Revenue contended that the consideration was for the use of, or right to use, information concerning industrial, commercial, or scientific experience and therefore squarely fell within the definition of “royalty” under Article 12(4) of the DTAA, and that the “make available” test was not relevant for characterising such income as royalty. With respect to IT support services, the Revenue contended that the Assessee, through centralized arrangements, provided comprehensive and technical IT support services such as infrastructure management, data centre services, cyber security, application



support, and maintenance of business systems, which constituted fees for technical services u/s 9(1)(vii) of the Act read with Article 12(5) of the DTAA. It was argued that the receipts could not be regarded as mere reimbursements, as the Assessee facilitated and made available critical IT infrastructure and support services to its Indian affiliate, which were integral to its business operations. Accordingly, the Revenue prayed that the additions made in respect of both testing services and IT support services be sustained.

Observations and Ruling of the Tribunal

The Tribunal observed that the marker analysis and doubled haploid (DH) services were not routine testing activities but involved application of the Assessee's scientific expertise, proprietary technology, and long-term R&D conducted in the Netherlands. The test reports shared with Nunhems India embodied the Assessee's accumulated scientific experience, enabling the Indian entity to improve plant varieties and commercially exploit enhanced seeds. Accordingly, the consideration was held to be for providing information concerning industrial, commercial, or scientific experience and was taxable as "royalty" under Article 12(4) of the India–Netherlands DTAA. The Tribunal further held that the "make available" condition is not applicable to royalty under Article 12(4) and upheld the taxability of the receipts.

The Tribunal observed that receipts towards IT support services were mere cost reimbursements, as the services were procured from TCS Netherlands and recovered on a cost-to-cost basis without mark-up. Since the IT infrastructure and technical know-how were neither transferred nor made available to Nunhems India, and the Indian AE could not independently perform the functions, the "make available" condition under Article 12(5) of the DTAA was also not satisfied. Accordingly, the receipts were not taxable as fees for technical services, relying on Bio-Rad Laboratories (Singapore) Pte Ltd (ITA 564/Del/2023) and RELX Inc [2024] 160 taxmann.com 109 (Delhi).

Citation

Nunhems Netherlands B.V. [TS-1639-ITAT-2025(DEL)]

Our Comments

The Delhi ITAT ruling draws a clear distinction between specialized testing services and routine IT support services. It holds that where testing services involve sharing accumulated scientific experience with commercial impact, the consideration may qualify as "royalty" under Article 12(4) of the DTAA, even without satisfying the "make available" condition. Conversely, routine IT support services recovered on a cost-to-cost basis, without transfer of technical knowledge or profit element, are not taxable as fees for technical services. It means that the tax characterization of cross-border service receipts depends on the real nature of the services, the contractual rights and obligations, and how the services are actually performed, rather than merely on their description or nomenclature.