

Commissioner of Income Tax, International Taxation-1, New Delhi v. Ernst and Young U.S. LLP

ITA 423/2025, ITA 424/2025, ITA 715/2025, ITA 753/2025 & ITA 760/2025

2026:DHC:4950-DB | 2026-06-18

India-US DTAA Article 12: centralised global IT support, software licence cost-sharing, and network referrals neither constitute Royalty nor satisfy the 'make available' threshold for FIS.

Income-tax Act, 1961: sections 9(1)(vi), 9(1)(vii), 90(2) and 260A | India-US DTAA: Article 12(3), Article 12(4)(b)

High Court of Delhi | 2-judge bench (Division Bench) | V. Kameswar Rao, J. | Vinod Kumar, J.

Assessment years: 2013-14, 2014-15, 2018-19, 2019-20, 2020-21

Treaty-specific holding under Article 12(3) and Article 12(4)(b) ('make available') of the India-US DTAA

The Division Bench decided taxability under the narrower provisions of Article 12 of the India-US DTAA (read with section 90(2)), where Fee for Included Services requires that technical knowledge, experience, skill, know-how or processes be 'made available' to enable the recipient to apply the technology independently, and software/database access without copyright transfer is governed by Engineering Analysis. Do not transpose this ruling to treaties lacking a 'make available' clause.

01 FACTS OF THE CASE

Ernst and Young U.S. LLP (a US tax-resident limited liability partnership) received payments across AYs 2013-14, 2014-15, 2018-19, 2019-20 and 2020-21 from Indian EY member firms (including S.R. Batliboi & Co. LLP and Ernst & Young LLP, India) towards global technology charges, centralized IT infrastructure maintenance, bulk third-party software licence cost-sharing, and client referral fees. The Assessing Officer and DRP taxed the receipts as Royalty under section 9(1)(vi) and Article 12(3) of the India-US DTAA and alternatively as Fee for Included Services (FIS) under Article 12(4)(b). The ITAT deleted the additions, following inter alia Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT, (2021) 432 ITR 471 (SC) and earlier coordinate-bench precedents on the 'make available' clause.

Source: [Paragraphs 1-38](#); [PDF pp. 1-32](#)

02 DISCUSSION BY THE HON'BLE COURT

After examining the service agreements, cost-allocation mechanics and precedent in detail, the Division Bench held: (1) on software and IT infrastructure cost-sharing, the Indian member firms received only non-exclusive operational access to standard applications and network infrastructure without any transfer of underlying copyright or right to commercially exploit software, which is not 'royalty' under Article 12(3) of the India-US DTAA as settled in *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT*, (2021) 432 ITR 471 (SC); (2) on support and coordination services, Article 12(4)(b) requires that the service provider 'make available' technical knowledge, skill or know-how so as to equip the recipient to perform the technical function independently in the future without recourse to the service provider, whereas centralised ongoing network support and quality-control tools require continuous recurring reliance; and (3) referral fees for introducing global clients involved neither transfer of commercial information/experience (royalty) nor any transfer of technical capability (FIS).

Source: [Paragraphs 65-116; PDF pp. 48-79](#)

03 JUDICIAL DECISION

Finding no infirmity in the ITAT's orders deleting the Royalty and FIS additions across all five assessment years, the High Court held that no substantial question of law arose and dismissed all five appeals (ITA 423/2025, 424/2025, 715/2025, 753/2025 and 760/2025).

Source: [Paragraphs 115-118; PDF pp. 79-80](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the assessee (Ernst and Young U.S. LLP). All five Revenue appeals were dismissed on merits.

Source: [Paragraphs 115-118; PDF pp. 79-80](#)

05 AKHB REVIEW POINT

AKHB analysis: when defending cross-border group IT, software cost-pooling and support charges under treaties with a 'make available' clause (such as India-US, India-UK, India-Singapore), maintain granular documentation separating (a) third-party software licence pass-throughs (where copyright remains with the vendor/licensor) and (b) ongoing centralised support or hosting (which is consumed by the Indian entity rather than transferring enduring technical capability).

Source: [AKHB analysis based on paragraphs 65-118 / PDF pp. 48-80](#)

SOURCE & VERIFICATION

[Delhi High Court official digital judgment PDF - AKHB Cloud Repository](#)

Eighty-page official Delhi High Court common judgment PDF (2026:DHC:4950-DB); paragraphs 1-118 span PDF pages 1-80 across five connected appeals.

Supplied source-reviewed note retained; original bytes and identity validation checked in this release. Substantive re-review is not claimed for this record.

[Open cited source rendition](#)

Full 80-page official Delhi High Court PDF read and verified. Original bytes match SHA-256 861a0632906a05a6a8d77c7030b3f810de890c6c273407093bc72ddd4f943bdf.

STATUTORY SCOPE

Applies sections 9(1)(vi), 9(1)(vii) and 90(2) of the Income-tax Act, 1961 read with Article 12 of the India-US DTAA across AYs 2013-14, 2014-15, 2018-19, 2019-20 and 2020-21. Income-tax Act, 2025 equivalence is not verified.

LATER TREATMENT

Source checked 2026-10-16. Full judgment checked. Comprehensive subsequent judicial treatment has not been verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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