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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 297/2026 CM APPL. 23224/2026 CM APPL. 23225/2026

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -2

.....Appellant

Through: Mr. Ruchir Bhatia SSC with Mr. Anant Mann and Mr. P. Gupta, JSCs.

versus

NORD ANGLIA EDUCATION LTD.

.....Respondent

Through: Dr. Shashwat Bajpai and Mr. Mayank Chaturvedi, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% 10.04.2026

1. The present appeal filed under Section 260A of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*) challenging the order dated 07.08.2024 passed by the Income Tax Appellate Tribunal Bench "D", New Delhi (ITAT) (*hereinafter referred to as 'Tribunal')* in ITA No. 2385/DEL/2023 for the Assessment Year (AY) 2020-21 has been preferred with an assertion that following substantial questions of law are involved:-

i) Whether on the basis of the facts and in the circumstances of the case, the ITAT erred in not considering the fact that the service provided by the Assessee to PBIL

under the Intra Group Service agreement help in providing en enduring benefit to the service recipient PBIL and satisfy the make available clause under Article 13 of the India UK DTAA?

ii) Whether on the basis of the facts and in the circumstances of the case, the ITAT erred in not holding that the receipts from the services provided by the Assessee to PBIL under the Intra Group Service Agreement are taxable as Fees for included services (FIS) under Article 13 of the India UK DTAA?

2. Before adverting to the questions involved (whether these are substantial questions of law or of facts), we would like to outline the transactions, undertaken by the respondent-company in India through its Indian entity i.e. People Combine Business Initiative Private Limited (*hereinafter referred to as 'PBIL'*) which has been extracted from the order of the Appellate Authority and reproduced hereinfra:-

> *"3.1 That Nord Anglia Education Ltd. (hereinafter referred to as "the Assessee') is a non-residence company engaged in providing education services and is a leading international schools organization, operating in 3 % 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 (Bengalum), and Oakridge International School (Manali). 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 company incorporated under the laws of United Kingdom (UK) 2nd is a tax resident of UK in accordance with the Article '4 of the Indian-UK Double Taxation Avoidance Agreement ('DTAA') and 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.

3.2That Assessee filed its return of income on 30.03.2021 declaring an income of Rs.41,44,17,300/- and same was processed under the provision of Section 143(1) of the Act and thereafter case of the assessee was selected for scrunity assessment and notice under Section 143(2) was issued.

3.3That 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 studentgs 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 :

Name of the society	*Amount*
Vikas Educational Society	*6,70,73,681/-*
Orange Education Society (Karnataka)	*2,18,02,831/-*
Oakridge Educational Society	*3,79,94,791/-*

3.4 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. The consideration of the aforesaid services, Assessee received Rs.28,64,22,509/-

3.5That 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.

3.6 That during the course of assessment proceedings, the Assessing Officer 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 by holding 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. It was further held by the Assessing Officer 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. In view of the aforesaid facts, as stated above, Draft Assessment order under Section 144C, framed by the Assessing Officer."*

3. A draft assessment order under Section 144C(1) of the Act of 1961 was prepared and served to the respondent on 23.09.2022, in response whereof the respondent filed objections on 21.10.2022. But those objections were not favourably considered by the Dispute Resolution Panel-2, Delhi (*hereinafter referred to as 'the DRP*), and an adverse order dated 10.05.2023 came to be passed against the respondent. The said order (dated 10.05.2023) came to be challenged before the Tribunal.

4. The Tribunal by way of its impugned order analyzed the nature of transactions and the Intra Group Service Agreement (*hereinafter referred to as 'the Agreement'*) between the respondent and PBIL and found that there was no imparting of technical knowledge or enduring benefit provided to PBIL. And accordingly concluded that the condition of "make available" is not satisfied in the present situation. Having concluded so, the Tribunal held that the services provided by the respondent-company to PBIL do not amount to Fees for Technical Services (*hereinafter referred to as 'FTS*) in terms of Article 13 of the India-UK Double Taxation Avoidance Agreement (DTAA) (*hereinafter referred to as 'India-UK Treaty'*).

5. Mr. Ruchir Bhatia, learned Senior Standing Counsel for the

Department took the Court through the Agreement, which has been reproduced by the Tribunal at internal page no. 3 to 6 of the impugned order and argued that if the entire bouquet of transactions and services, provided by the respondent-company to PBIL is taken into consideration, it can easily be discerned that whatever has been provided to PBIL constitutes "make available" services, and the respondent-company practically provides everything to PBIL and guides it in every single aspect, including technical and marketing.

6. He further argued that if the Agreement between respondent and PBIL is taken into consideration, PBIL has practically no say in the matter and its functions as described are guided by the respondent-company. He submitted that the Assessing Officer (AO) and the DRP had taken correct view of the matter and that the Tribunal has erred in setting aside the findings and in holding that the services provided by the respondent to PBIL do not fall within the ambit of FTS, as per the provisions of Income Tax Act 1961 and the India-UK Treaty.

7. Mr. Shashwat Bajpai, learned counsel for the respondent-assessee, on the other hand, submitted that whether the transactions, services or the Agreement fall within the ambit of FTS or not is purely a finding of fact that had been determined by the last fact finding authority as prescribed by the Act of 1961 and since such finding has not been alleged or proved to be perverse, the High Court cannot, in its limited jurisdiction under Section 260A of the Act of 1961, interfere.

8. Learned counsel further submitted that there are a catena of judgments of this Court, including the one being ITA No.564/2023 titled as **The Commissioner of Income Tax (International Taxation)-1, Delhi v.**

M/s Bio-Rad Laboratories (Singapore) PTE Ltd. decided on 03.10.2023, and contended that while dealing with almost similar sector/nature of transactions, this Court has upheld the findings of the Tribunal by holding that there are no "make available" services.

9. He submitted that the guidelines or instructions which are provided by the respondent-company to PBIL do not provide any enduring benefit. Not only the technical aspect, even other aspects are in the hands and control of the respondent-company and simply because in the process of receiving and executing instructions, some employees of the Indian company develop certain skills, it cannot be said that any enduring benefit has been derived by its Indian counter-part i.e. PBIL.

10. Heard learned counsel for the parties.

11. On going through the nature of transactions and Agreement, we are of the view that they contain quintessentials of a commercial agreement between two companies, which may be situated in two geographically distinct countries or within the same country.

12. According to us, the ultimate control and supervision including marketing and its scientific know-how etc. remain and rest with the parent company. Simply because of the assumption of the Department that in such process, some skill or expertise will be developed by the Indian counter-part, it cannot be said that the entire technical skill or scientific know-how has been 'made available' to its Indian counter-part. Insofar as technical skill and developmental skill are concerned, they do not appear to have been shared with the Indian counter-part.

13. Having an Indian counter-part is a need and basic requirement of a foreign company to carry out its business smoothly in India. According to

us, even if the arguments of the appellant-Department are taken to their fullest extent, some advantage or skill may percolate to the employees of their Indian counter-part but that *per se* cannot be taken as an enduring benefit to the Indian company itself. Unless the technical aspects and skills are transferred to and are provided by necessary intendment or 'made available' to the Indian counter-part, it cannot be said that there is a fee for technical services. There is no evidence to show that scientific or technical know-how has, in fact, been made available to the Indian counter-part. The basic ingredient of 'make available' is a necessary condition for treating the services as FTS.

14. This is precisely what has been held by this Court in the case of **Bio-Rad Laboratories** (supra), which has been relied upon by the Tribunal in its impugned order in para no.23 and other judgments on the same line.

15. We, therefore, do not find any question of law, much less substantial question of law involved in the present appeal.

16. The appeal, therefore, fails.

17. The appeal along with the pending applications is disposed of accordingly.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 10, 2026/*dd*