



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 298

Nunhems Netherlands B.V.
v.
ACIT

Marker analysis and DH testing receipts held taxable as royalty under Article 12(4) of India-Netherlands DTAA, whereas cost-to-cost IT support reimbursements held non-taxable under Article 12(5) due to non satisfaction of the “make available” condition .

21.02.2026



[2025] 181 taxmann.com 497 (Delhi - Trib.)

Jain Shrimal & Co.

Facts of the Case

- ❖ The assessee, a Netherlands-based company, is engaged in improving vegetable varieties and providing breeding solutions globally. During AY 2021–22, it received consideration from its Indian AE, Nunhems India Pvt. Ltd., towards (i) marker analysis and Double Haploid (DH) testing services, and (ii) reimbursement of IT support services.
- ❖ Under a “Service Agreement for Research and Development Activities,” the assessee supported breeding programs in India by conducting marker analysis and producing doubled haploids at its R&D facilities in the Netherlands. Indian AE sent seeds/leaves for testing; results were shared electronically through the “Nautilus” portal.
- ❖ The assessee filed its return declaring NIL income, claiming both receipts as non-taxable under the India–Netherlands DTAA. The Ld. AO treated testing receipts as royalty under Section 9(1)(vi) read with Article 12(4) of the DTAA, and IT support receipts as FTS under Section 9(1)(vii) read with Article 12(5). The DRP, by majority, upheld the additions.
- ❖ The assessee preferred an appeal before the Hon’ble Tribunal.

Assessee's Contention

- ❖ The assessee contended that marker analysis and DH services were pure testing services **performed entirely outside India** and did not involve transfer of any copyright, equipment, or “information concerning industrial, commercial or scientific experience.” It argued **that the agreement was for rendering services, not for licensing intellectual property.**
- ❖ It was further submitted that no technical knowledge, know-how, or skill was “made available” to the Indian AE. The test reports merely reflected results of analysis and did not enable Nunhems India to independently perform similar activities in the future.
- ❖ With respect to IT support services, the assessee argued that it merely recharged third-party costs (TCS Netherlands) on a cost-to-cost basis without markup. The services were routine and recurring in nature, and no technology or skill was transferred to the AE.
- ❖ The assessee therefore submitted that neither receipt qualified as royalty nor FTS under Article 12 of the India–Netherlands DTAA.

Revenue's Contention

- ❖ The Revenue contended that marker analysis and DH services **involved imparting scientific experience and technological expertise that had direct commercial relevance to the Indian AE's breeding programs**. The test reports were not mere certificates but encapsulated scientific knowledge and breeding intelligence.
- ❖ It was argued that the information shared had industrial and commercial ramifications, as the **Indian AE's business decisions and seed development programs depended on such scientific outputs**. Hence, consideration fell within the second limb of "royalty" under Article 12(4) — i.e., payment for information concerning industrial, commercial, or scientific experience.
- ❖ Regarding IT support services, the Revenue contended that the assessee centrally provided IT infrastructure and support to group entities and recovered charges from them. Such services constituted technical services within the meaning of Section 9(1)(vii) and Article 12.
- ❖ Accordingly, both streams of income were held taxable in India.

Legal provisions

Section 9 of the Act:

(1) The following incomes shall be deemed to accrue or arise in India –

(vi) income by way of royalty payable by –

(a) the government; or

(b) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India

(vii) income by way of fees for technical services payable by –

(a) the government; or

(b) a person who is a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(c) a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India

Legal provisions

India - Netherlands DTAA

ARTICLE 12- ROYALTIES AND FEES FOR TECHNICAL SERVICES

4 The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or **for information concerning industrial, commercial or scientific experience.**

5 For purposes of this Article, "fees for technical services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services –

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 4 of this Article is received; or
- (b) make available technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design.

Ruling

- ❖ The Hon'ble Tribunal analyzed Article 12(4) of the India–Netherlands DTAA and observed that “royalty” covers two distinct limbs — (i) use of copyright/IP, and (ii) **consideration for information concerning industrial, commercial, or scientific experience.**
- ❖ On facts, the Hon'ble Bench held that the assessee was not merely conducting routine tests but was supplying information embedded with its scientific and technological expertise. Particularly in **DH services, the assessee converted seeds into doubled haploids over an 18-month scientific process, and the reports encapsulated its accumulated scientific experience.**
- ❖ The Tribunal held that such sharing of scientific experience with commercial ramification to the Indian AE satisfied the definition of royalty under Article 12(4). It further clarified that the “make available” condition does not apply to royalty under Article 12(4).
- ❖ However, with respect to IT support services, the Hon'ble Tribunal noted that the assessee merely recovered third-party costs without markup. The IT infrastructure remained under the control of TCS Netherlands, and no technology or skill was transferred to the Indian AE.
- ❖ Since the “make available” clause under Article 12(5) was not satisfied, the Tribunal held that reimbursement of IT support services was not taxable as FTS.
- ❖ Accordingly, the appeal was partly allowed.

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NUNHEMS NETHERLANDS B.V. vs ACIT

ITAT Delhi | AY 2021-22



ISSUE

Whether receipts for:



Marker Analysis & DH Testing

IT Support Services

- Section 9(1)(vi) / Article 12(4)
→ Royalty



OR

REVENUE'S STAND



**TAX
AUTHORITY**

- ✓ Reports contain scientific experience
- ✓ Commercial breeding intelligence shared
- ✓ IT support is technical service

→ Taxable in India



ASSESSEE'S CLAIM



- ✓ Testing done outside India
- ✓ No IP transfer
- ✓ No "make available" of technology
- ✓ No PE in India

→ Income not taxable in India

TRIBUNAL HELD



**Marker Analysis
& DH Testing**
→ Taxable as Royalty

(Information concerning scientific
experience – Article 12(4))



IT Support Services
→ Not taxable as FTS

("Make available" condition
not satisfied
– Article 12(5))



APPEAL PARTLY ALLOWED



If technical reports reflect embedded scientific expertise with commercial value → Royalty exposure
Routine IT reimbursement without knowledge transfer → Not FTS

Our Comments

- ❖ The Tribunal held that when a report contains detailed scientific work and expertise that directly helps the Indian company in improving its products, the payment can be treated as royalty.
- ❖ It has been further interpreted that the term royalty not only means registered IP but also includes scientific experience and knowledge. However, in our humble understanding and looking at the engineering analysis judgement can it be said that amount from scientific experience should only be considered royalty only if it involves any intellectual property which is recognized.
- ❖ This decision is important for industries like agriculture research, biotechnology, pharma research, and specialized testing businesses. If the output of services reflects deep technical expertise and gives commercial advantage, tax authorities may treat such payments as royalty.

Section/Article	Section 9 and Article 12
DTAA/Country	India - Netherlands DTAA
Court	ITAT DELHI
Date of decision	08-12-2025

Note: Case law name in **Red**- in favor of the revenue, **Green**-In favor of the Assessee, **Orange** = Partial



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