

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "डी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री ब्रजेश कुमार सिंह, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

आअसं.1584/दिल्ली/2025 (नि.व. 2018-19)

ITA No.1584/DEL/2025 (A.Y.2018-19)

International Bridge Technologies Middle East DMCC,  
Unit No. 2695 DMCC Business Centre, Level No. 1,  
Jewellery & Gemplex 2, Dubai United Arab Emirates,  
Dubai 37269

PAN: AADCI-4927-L

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income-Tax,  
International Taxation, (2)(1)(1)  
Civic Centre, E-2 Block, Room No. 410,  
4<sup>th</sup> Floor, Minto Road, New Delhi 110002

.....प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by: S/Shri Kamal Sawhney & Arun Bhadauria,  
Advocates

प्रतिवादीद्वारा/Respondent by: Shri M.S Nethrapal, CIT-DR

सुनवाई की तिथि/ Date of hearing : 15/12/2025

घोषणा की तिथि/ Date of pronouncement : 13/03/2026

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the Assessment Order dated 27.01.2025 passed u/s.147 r.w.s 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19.

2. The primary issue raised by the assessee in appeal is taxability of the amounts received by the assessee aggregating to Rs.2,10,21,587/- from Systra

India as 'royalty' under the provisions of the Act and India-UAE Double Taxation Avoidance Agreement (DTAA).

3. The facts of the case in brief as emanating from records are: The assessee company was incorporated in United Arab Emirates (UAE) and is a tax resident of UAE. The assessee is engaged in designing of bridges. The assessee entered into Sub-Consultancy Agreement dated 22.12.2017 with Systra MVA Consulting (India) P. Ltd. (in short 'Systra India') for providing consultancy services in relation to Versova-Bandra Sea Link Project. The scope of services *inter alia* includes preparation of Tender design (hereinafter referred to as 'Design Support Services'). In lieu of providing Design Support Services, the assessee was entitled to receive professional fees from Systra India Rs.2,10,21,587/-. The assessee claimed that the professional fee received is not chargeable to tax in India, as the assessee has no Permanent Establishment (PE) in India. The fact of assessee having no PE in India has not been disputed by the Department. During the course of Draft Assessment proceedings, the Assessing Officer (AO) came to the conclusion that the professional fee received by the assessee in lieu of provision for Design Support Services is in the nature of 'royalty', hence, taxable in India under section 9(1)(vi) of the Act as well as under provisions of the DTAA. Against the Draft Assessment Order dated 24.03.2024, the assessee filed objections before the Dispute Resolution Panel (DRP), but remained unsuccessful. The AO passed Final Assessment Order in consonance with the DRP directions. Hence, the present appeal by the assessee.

4. Shri Kamal Sawhney, appearing on behalf of the assessee submits that the assessee has entered into an agreement with Systra India for providing sub consultancy services in relations to Versova-Bandra Sea Link Project. The services

inter alia include preparation of design of the bridge as per the specific requirements of the project. He submitted that the scope of work as per the agreement is elaborately spelled out in Appendix 1 to Sub Consultancy Agreement. Referring to Article 13 of the agreement, the Id. Counsel submits that all documents, reports, data or deliverables prepared or developed by the assessee in performance of its obligations under the agreement shall be owned by Systra India. In other words, the designs and drawings specific to the project would be outrightly sold to the client i.e. Systra India. In lieu of drawings, designs, reports, data, deliverables, etc. the assessee would be remunerated by way of lumpsum fee of USD 307,600 and Euro 16486.76.

4.1. Referring Article 12(3) of India-UAE DTAA, he submits that the 'royalty' as defined under Article 12(3) means payment received as a consideration for the use of or the right to use any copy right, artistic or scientific work. In the instant case, it is a case of outright sale of designs, drawings, data, etc. The consideration received for outright sale of design, drawings, data, etc. does not fall within the ambit of definition of 'royalty'. To support of his submissions, the Id. Counsel placed reliance on the decision rendered in the case of *Gera Development P. Ltd. vs. DCIT (IT) 72 taxmann.com 238 (Pune-Trib)*. He further placed reliance on the decision in the case of *DCIT vs. Aedas Pte. Ltd. 154 taxmann.com 659 (Delhi-Trib)*, to contend that where designs and ownership of designs is transferred to client and that where the contract entered by the assessee with client are for development/conceptualization of designs and not for mere right to use of any existing design, payments made in consideration of architectural design services, the said payments cannot be classified as 'royalty' under Article 12(3). For the similar proposition, the Id. Counsel placed reliance on the decision of Hon'ble

Delhi High Court in the case of CIT vs. DCM Ltd. in ITA no.87-89/1992 decided on 10.03.2011 and decision of Tribunal in the case of *DCIT vs. Kalpataru Power Transmission Ltd.* 149 taxmann.com 484 (Ahd-Trib.).

5. Per contra, Shri M.S Nethrapal representing the department vehemently defending the impugned order prayed for dismissing appeal of the assessee. The Id. DR furnished detailed written submissions, the same are reproduced herein below:-

*"1. The present legal submission is formulated to articulate the Department of Revenue's definitive stance regarding the taxability of remittances made by the Assessee, an Indian entity, to International Bridge Technologies Middle East DMCC (hereinafter referred to as the "UAE Entity" or "SYSTRA IBT"). The dispute arises from the characterization of payments made for the design, drawing, and engineering of the Versova Bandra Sea Link (VBSL). While the Assessee contends that these payments constitute business profits or fees for technical services—which, in the absence of a Permanent Establishment (PE) and a specific Fees for Technical Services (FTS) clause in the India-UAE Double Taxation Avoidance Agreement (DTAA), would escape taxation in India—the revenue posits that the payments are unequivocally "Royalty."*

*2. This classification as Royalty is grounded in a rigorous interpretation of Article 12(3) of the India-UAE DTAA, which explicitly includes consideration for the use of any "design," "model," "plan," or "copyright of artistic work." Unlike generic consultancy services, the transaction in question involves the transfer of proprietary architectural designs and technical plans that are intrinsic to the existence of the bridge itself. Furthermore, the legal matrix governing architectural works differs fundamentally from that of mass-market software, rendering the Supreme Court's ratio in Engineering Analysis Centre of Excellence Pvt. Ltd. inapplicable to the present facts. In the realm of architecture, the "use" of a design inherently necessitates its "reproduction" in material form (i.e., construction), a right exclusively reserved for the copyright holder under Section 14(c) of the Copyright Act, 1957. Therefore, the payment inherently includes consideration for the license to exploit this copyright.*

*3. This submission is fortified by binding judicial precedents, most notably the Calcutta High Court's decision in Leonhardt Andra Und Partner, GmbH v. CIT, which specifically addressed bridge designs and held them to be taxable as Royalty. The analysis herein will demonstrate that the exclusion of FTS from the India-UAE DTAA does not provide a safe harbor for payments that satisfy the specific definition of Royalty, which takes precedence as *lex specialis*.*

4. *Factual Matrix: Deconstructing the Transaction-To accurately characterize the income, one must look beyond the nomenclature of the contract and dissect the true nature of the rights transferred and the services rendered. The "Sub-Consultancy Agreement" between the Indian Assessee and the UAE Entity serves as the primary evidentiary document.*

5. *The Nature of the Project. A Complex Engineering Feat- The project in question is the "Pretender Services for die Construction of Versova Bandra Sea Link." This is not a standard civil work; it involves complex marine engineering, including a Cable-Stayed Bridge, a Balanced Cantilever Bridge, and a Marine Viaduct. The complexity of the project is relevant because it underscores that the 'plans' and "designs" provided are not merely standard instructions but represent high-value "scientific and industrial experience" (Know-How) and unique "artistic work" protected by copyright.*

6. *Scope of Work and Deliverables- Appendix 1 of the Agreement details the "Services to be performed by Systra IBT." A review of these deliverables reveals that the contract is for the supply of specific intellectual property assets rather than generic services:*

<i>Deliverable Type</i>	<i>Contractual Description</i>	<i>Implication for "Royalty" Classification</i>
<i>Concept Design Plans</i>	<i>Preparation of "Concept design plans, Sections and Elevations of the Main Bridge (Cable Stayed Bridge, Balanced Cantilever Bridge and ..Marine viaduct) &amp; Connectors".</i>	<i>This constitutes a "Design" and an "Artistic Work" (Architectural drawing) under the Copyright Act. Payment is for the creation and use of this specific design.</i>
<i>Technical Blueprints</i>	<i>"General Arrangement Drawings and cross section drawings... Pile foundation drawings showing the proposed diameter and tip, elevation".</i>	<i>These constitute "Plans" within the specific meaning of Article 12(3) of the DTAA ("use of... plan"). They are the instruction set for the bridge.</i>
<i>Engineering Calculations</i>	<i>"Design (including construction loads) Summary Reports. Typical reinforcement and pre-stressing details... Justification of the main structural member".</i>	<i>This represents the imparting of information concerning industrial, commercial or scientific experience" (Know- How). The UAE entity is transferring its proprietary engineering logic.</i>

Construction Methodology	<i>"Schematic construction sequence for Main Bridge... based on Clients evaluation and selection of preferred construction methods".'</i>	This is a "Process" or "Secret Formula/Model" for assembly. The methodology for erecting a cable-stayed bridge is proprietary technical knowledge.
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*The Assessee is not paying for the time of the engineers (which would be FTS); they are paying for the result of that time: the Designs, Plans, and Calculations. Without these specific deliverables, the bridge cannot be built. The payment is linked to the delivery of these assets.*

7. *The Licensing Arrangement (Article 13)*

*The contractual provisions regarding ownership and intellectual property are dispositive in distinguishing this transaction from a "sale of goods." Article 13 of the Agreement states:*

*Article 13.1: "SYSTRA India shall own the documents, reports, data or other deliverables prepared, produced or developed bp the SYSTRA IBT... The SYSTRA IBT hereby grants SYSTRA India an irrevocable, non-exclusive, worldwide, royalty-free license to use SUB- CONSULTANT's existing intellectual property right in so far as such is incorporated in the documents... and to the extent necessary for SYSTRA India to use, view or access any of them for the Project. "*

*This clause contains three critical admissions:*

1. *Retention of Background IF: The UAE Entity (IBT) retains its "existing intellectual property rights. " It does not sell its core engineering IP to the Indian entity.*
2. *Grant of License: The clause explicitly grants a "license to use" this background IP. In a pure sale of goods (like selling a book), no "license" is required to read the book. A license is only necessary when rights in the underlying property (copyright/patent) are being exploited.*
3. *"Royalty-Free' Misnomer: The contract uses the term "royalty-free license," but this is self-serving drafting. The consideration for this "license" is bundled into the "Remuneration" paid under Article 9 (Lump Sum Fees). The Revenue asserts that a portion of this lump sum is explicitly attributable to the license granted in Article 13. Without the payment under Article 9, the License under Article 13 would not be granted. Therefore, the payment is consideration for the license.*

8. *Remuneration Structure (Article 9)*

Article 9.1 specifies a "lump sum fees of USD 307,600 and Euro 16,486.76". Article 9.2 states this includes "producing, and reproducing deliverables." This phrasing—"reproducing deliverables"—is significant. It aligns with the Revenue's argument that the payment is for the right to reproduce the work (the design) in the form of the bridge.

#### 9. Statutory Framework: The Definition of Royalty

The characterization of the income relies on the interplay between the domestic Income Tax Act and the India-UAE DTAA.

Income Tax Act, 1961 (Section 9(l)(vi))

Section 9(l)(vi) deems royalty to accrue in India. Explanation 2 defines "Royalty" widely to include consideration for:

- (i) the transfer of all or any' rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process...
- (ii) the imparting of any information concerning the working of or the use of, a patent, invention, model, design, secret formula or process...
- (v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work...':

The definition under the Act is broad enough to cover the transaction. However, the Assessee will seek shelter under the DTAA.

India-UAE DTAA (Article 12)

Article 12(3) of the India-UAE DTAA. 1 defines Royalties as:

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

Crucial Observation: The Treaty definition contains specific inclusions that are directly relevant to the Assessee's case:

1. "Design or Model": The contract explicitly requires the creation of a "Concept Design" and "Tender Design".<sup>1</sup>
2. "Plan": The deliverables include "General Arrangement Drawings" and
3. "Copyright of Artistic Work": Architectural drawings are artistic works.

4. *"Scientific Experience": The engineering analysis for a sea link involves specialized scientific experience.*

*The absence of an FTS clause in the India-UAE DTAA does not automatically render all service payments non-taxable. If the payment fits the specific definition of Royalty (e.g., use of a plan/design), it remains taxable under Article 12, regardless of whether it also constitutes technical services.<sup>5</sup> The specific (Royalty) overrides the general (Business Profits).*

10. *The Core Argument: Architectural Design as "Royalty"*

*The Revenue's primary contention is that the transaction constitutes Royalty under two distinct but overlapping limbs of Article 12(3): the "Copyright" limb and the "Design/Plan" limb.*

*The "Right to Reproduce" Argument (The Copyright Limb)*

*The Assessee argument that they have merely purchased a "copyrighted article" (the drawing) for use, not the "copyright" itself. This argument is legally flawed in the context of architecture due to the unique provisions of the Copyright Act, 1957.*

*Architectural Works as "Artistic Works"*

*Section 2(c) of the Copyright Act, 1957 defines "artistic work" to include:*

- (i) a painting a sculpture, a drawing (including a diagram, map, chart or plan)...*
- (ii) a work of architecture..*

*Thus, the bridge designs provided by the UAE Entity are "artistic works" protected by copyright.*

*The Meaning of "Reproduction" in Architecture*

*Section 14 of the Copyright Act grants exclusive rights to the copyright owner. The rights differ based on the nature of the work*

- Literary Works (e.g., Software/Books): The right to reproduce involves making copies of the code or text. Merely reading a book or running software is not reproduction.*
- Artistic Works (e.g., Architecture): Section 14(c)(i) explicitly grants the owner the exclusive right "to reproduce the work in any material form including... depiction in three- dimensions of a two-dimensional work."*

*When the Indian Assessee takes the 2D architectural drawings (the design) and constructs the VBSL Bridge (a 3D structure), they are engaging in an act of "reproduction" as defined by the Copyright Act.*

- *In software, using the program for business is functional use, not reproduction.*
- *In architecture, "using" the design means building the structure, which is legal reproduction.*

### *The Inherent License*

*Since the construction of the bridge constitutes "reproduction" of the artistic work, the Assessee must possess a license from the copyright holder (the UAE Entity) to perform this act. If they did not have this license, the construction of the bridge would constitute copyright infringement under Section 51 of the Copyright Act.*

*Therefore, the payment made to the UAE Entity is not just for the physical drawings (the "article") but explicitly for the license to-reproduce those drawings in the form of a bridge. Consideration for a license to exploit a copyright right ("right to reproduce") falls squarely within the definition of Royalty under Article 12(3) ("consideration for the use of, or the right to use, any copyright").*

### *11. The "Design or Plan" Argument (The Industrial Property Limb)*

*Independent of the copyright argument, the Treaty definition of Royalty includes consideration for the use of any "design", "model", or "plan".'*

- *Plain Meaning: A "plan" in the context of construction refers to a detailed proposal or drawing. The contract deliverables—"General Arrangement Drawings," "Pile foundation drawings," "Piping and instrumentation diagrams"—are technically and legally "plans".<sup>1</sup>*
- *Use vs. Sale: The Assessee pays to "use" these plans to execute the project. The plans have no value in isolation: their value is derived entirely from their appreciation to the VBSL project.*
- *Distinction from "Outright Sale": The Assessee might argue that this is an outright sale of the plans. However, an outright sale implies the seller retains no rights. Here, Article 13 of the Contract retains "existing intellectual property rights" with the UAE Entity. Furthermore, the "plans" are customized for a specific site but derived from the UAE entity's proprietary know-how. The "use" of the plan is the essence of the transaction.*
- *AAR Ruling P. No. 30 of 1999: The Authority for Advance Rulings held that providing technical designs and drawings for a specific project amounts to the imparting of technical know-how/use of a plan, and is thus taxable as Royalty.<sup>1</sup> This supports the view that "plans" are distinct royalty-generating assets.*

### *12. The "Scientific Experience" Argument*

*Article 12(3) also includes payment for "information concerning industrial, commercial or scientific experience" (Know-How).*

*Designing a bridge like the VBSL requires deep "scientific experience" regarding:*

- *Geotechnical behavior of marine soil.*
- *Wind tunnel analysis for cable-stayed structures.*
- *Corrosion resistance in saline environments.*
- *Load-bearing physics for balanced cantilevers.*

*When the UAE Entity provides the "Design Basis Report" and "Engineering Calculations" they are imparting this scientific experience to the Indian entity. The Indian entity uses this experience to ensure the bridge stands. This transfer of knowledge fits the "Know-How" limb of the Royalty definition.*

### *13. Distinguishing the Supreme Court's Ruling in Engineering Analysis*

*The Assessee will undoubtedly place heavy reliance on the Supreme Court judgment in Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) n, which held that payments for shrink-wrapped software were not Royalty. The Revenue must proactively distinguish this case to prevent its misapplication to architectural works.*

<i>Parameter</i>	<i>Software (Engineering Analysis)</i>	<i>Architectural Design (Current Case)</i>
<i>Type of Work</i>	<i>literary Work (Section 2(o)).</i>	<i>Artistic Work (Section 2(c)).</i>
<i>Nature of "Use"</i>	<i>The end-user "functions" the software (e.g, uses MS Word to write). This is not reproduction of the code.</i>	<i>The builder "constructs" the bridge based on the design. This is reproduction (converting 2D to 3D) under Section 14(c)(i).</i>
<i>Rights Granted</i>	<i>The license restricts reproduction. User cannot copy the software for resale.</i>	<i>The license enables reproduction. The very purpose is to copy the design into a physical structure.</i>
<i>Statutory Rights</i>	<i>Section 14(a) does not define "cunning a program" as reproduction.</i>	<i>Section 14(c) explicitly defines "depiction in 3D" as reproduction.</i>

*The "Book" Analogy: The Supreme Court likened software to a book—buying a book lets you read it, not reprint it.*

*The "Blueprint" Counter-Analogy: Buying a blueprint is different. You don't just "read" a blueprint; you build from it. If you buy a book on "How to Build a Bridge," you can build the bridge because the idea is not protected. But if you buy specific architectural plans*

*for a specific bridge, the expression is protected. Building that specific bridge is a reproduction of the expression. The payment allows you to do what would otherwise be illegal (reproduction). Thus, it is a payment for the "right to use the copyright."*

#### 14. *Reliance on Binding and Persuasive Judicial Precedents*

*To bolster the Revenue's case, we rely on jurisprudence that specifically addresses engineering and architectural designs, which are factually closer to the present case than software judgments.*

*Leonhardt Andra Und Partner, GmbH v. CIT (Calcutta High Court)*

*This judgment is the locus classicus for the taxation of bridge design fees.*

- *Facts: The case involved a German company providing designs for the Second Hooghly Bridge in Kolkata. The contract involved supplying design calculations and supervision.*
- *Assessee's Argument: They argued it was an "outright sale" of designs or FTS, and since the German Treaty had no FTS clause (at the time) or they had no PE, it wasn't taxable.*
- *High Court's Holding: The Court held the payments were Royalty.*
- *Rationale: The Court rejected the "outright sale" theory. It found that the foreign company retained proprietary rights in the designs (similar to Article 13 of the IBT contract). The payment was for the use of these designs to build the bridge. The provision of designs was deemed to be "imparting of information concerning the working of or the use of a design/model/plan."*
- *Relevance: This case is factually identical (Bridge Design) and legally binding (High Court level)? It establishes that bridge design fees are Royalty, not just business profits.*

*Gentex Merchants (P.) Ltd. v. DDIT (ITAT Kolkata)*

*Although this case was decided under the US Treaty (which has an FTS clause), its findings on the nature of "Design Transfer" are crucial.*

- *Facts: An Indian company paid a US firm for designs of water features (fountains / landscaping).*
- *Finding: The Tribunal held that providing technical designs and drawings constitutes the "transfer of a technical plan or design?" It rejected the argument that this was merely "consultancy."*
- *Implication for UAE Treaty: The UAE Treaty Royalty definition includes payment for the "use of a plan." Gentex confirms that supplying designs is the transfer of a plan. If it's a "plan," and it's being "used," it fits the UAE Royalty*

*definition. The Assessee cannot argue it's just "service" when the Tribunal has recognized it as the "transfer of a technical plan."*

*Shehnik Specialists (Mumbai ITAT)*

*In this case, the Tribunal held that drawings and designs constitute "plant" or intellectual property. Payment for them is for the "use" of IP, and therefore taxable as Royalty. This reinforces the asset-based nature of the transaction over the service-based nature.*

#### 15. *Economic Substance and Policy Argument*

*From a pokey perspective, accepting the Assessee's argument would lead to base erosion.*

- *Value Creation: The substantial value of the VBSL project lies in its Design and Engineering. This value is created by the UAE entity but "used" and "exploited" in India.*
- *Source Rule: The "Source" of the income is the physical bridge in India. The design has no value without the Indian location.*
- *Treaty Intent: The inclusion of "Design," "Model," and "Plan" in Article 12(3) of the UAE Treaty (which follows the UN Model's broader Royalty definition rather than the OECD Model's narrower one) indicates an intent to tax such technical deliverables at source.<sup>1</sup> If the intent were to exempt designs, these words would not have been explicitly listed in the Royalty definition. Treating them as "Business Profits" (and thus tax-exempt) renders the specific inclusion of "Plan/Design" in Article 12 otiose (redundant).*

#### 16. *Conclusion and Prayer*

*In view of the detailed analysis of the contract, the statutory provisions, and the judicial precedents, the Revenue submits:*

1. *Contractual Substance: The payments to the UAE Entity are for the supply of specific "Plans" and "Designs" and for the "License" to use them, not for general services.*
2. *Statutory Fit: The transaction falls within the definition of Royalty under Section 9(l)(vi) of the Act and Article 12(3) of the India-UAE DTAA. under two distinct limbs:*

*Limb A: Use of a "Design or Model, Plan".*

*Limb B: Use of "Copyright in an Artistic Work" (specifically the right to reproduce the work in 3D form under Section 14(c) of the Copyright Act).*

3. *Binding Precedent: The Calcutta High Court in Leonhardt Andra provides a direct and binding precedent that bridge design, fees are Royalty.*

4. *Distinction: The Engineering Analysis judgment is inapplicable as it pertains to software where no right of reproduction is granted, whereas architectural contracts inherently grant the right to reproduce (construct) the work.*

*Prayer:*

*The Department of Revenue respectfully prays that the Hon'ble income Tax Appellate Tribunal hold the payments made to International Bridge Technologies Middle East DMCC as Royalty, taxable at the rate of 10% under Article 12 of the India-UAE DTAA, and confirm the demand raised against the Assessee."*

6. Submissions made Id. Counsel for the assessee heard, written submissions filed on behalf of the Department perused. We have also examined the impugned order and the directions of the DRP. The solitary issue raised by the assessee in appeal is against findings of the AO in characterizing the payment received by the assessee from Systra India amounting to Rs.2,10,21,587/- as 'royalty' under the provisions of the Act and India-UAE DTAA.

7. The assessee has entered into Sub Consultancy Agreement (Intra Group) on 22.12.2017 with Systra India for designing of bridge as per the requirements of the Versova-Bandra Sea link project, undertaken by Systra India. The detailed scope of work to be performed by the assessee is given in Appendix 1 to the aforesaid agreement. The relevant extract of scope of work is reproduced herein below:-

*"The Scope of work covered for the project includes preparation of Complete Bill of Quantities (BOQ) along with Tender Design Basis Report, Designs and Drawings for tender submission based on the tender Documents including all the replies, clarifications, corrigenda, amendments and addenda issued by the Employer from time to time. Drawings includes Typical General Arrangement Drawings, and Typical cross - sectional drawings as per tender requirement.*

*The detailed scope under above mentioned works includes the following,*

- Review of the technical content of the Tender Documents and raise comments to Client where necessary to seek clarification from the Owner.*
- Participate in workshops/meetings with Employer (1 meeting during tender and meeting during tender evaluation)*
  
- Site visit together with and arranged by the Client to understand the requirements & restrictions. Identify the key issues and physical constraints such as topography, access, services, future developments etc.,*
  
- Providing cost effective designs.*
  
- Develop the design with respect to local by-laws and requirements of statutory authorities and preparation of submission plans.*
  
- Preparation of 3 options for foundation, substructure and superstructure for Main Bridge (Cable Stayed Bridge, Balanced Cantilever Bridge and Marine viaduct) & Connectors. Presented as clear sketches as requested by Client. Discussion for the best options considering methodology of construction, site conditions, quantity, cost etc.*
  
- Preparing presentations for and participating in the Workshops conducted with Client to finalize the preferred options for Main Bridge (Cable Stayed Bridge, Balanced Cantilever Bridge and Marine viaduct) & Connectors.*
- Technical submissions to the Client, make presentations, respond to comments and resubmit the final agreed scheme during tendering and pre award / post tendering stage.*
  
- Design and drawings of structures as proposed in the tender documents to establish quantities within reasonable accuracy. Details for structures to include member sizing to establish quantities within reasonable accuracy for these items. Typical reinforcement and pre-stressing details will be presented in drawings/ sketches as part of design reports. The estimated accuracy (%) of quantities for main items shall be discussed with and reported to the Client by the design subcontractor.*
  
- Justification of the main structural member such as concrete, prestressed tendon, structural steel and reinforcement shall be provided.*
  
- Schematic construction sequence for Main Bridge (Cable Stayed Bridge and Balanced Cantilever Bridges, Marine viaduct) & Connectors based on Clients evaluation and selection of preferred construction methods. The design output shall also include the global reinforcement due to the structural system between bridge completion stage and construction stage.*
  
- Provision of expert advice related to need for any site exploratory works during tender phase and structural related aspects.*

- *Review of the geotechnical information provided in the 'Request for Proposal' and geotechnical design notes to cover geotechnical parameters and the degree of risk shall be provided.*
- *Deliverables as outlined below.*
- *Providing the detailed BOQ as per the Client's requirement and format."*

8. As per Article 9 of the agreement (supra) Systra India would pay a lump sum fees of USD 307,600 and Euro 16486.76 to the assessee in lieu of performing the work assigned to the assessee as per agreement.

9. Article 13 of the agreement (supra) specifies that all the drawings, designs, reports, etc. in relation to the project i.e. designing of the bridge shall be owned by Systra India. For the sake of completeness, the relevant extract of Article 13 and deliverables given under scope of work are reproduced herein below:-

**"ARTICLE 13 - OWNERSHIP OF DOCUMENTS**

*13.1 SYSTRA India shall own the documents, reports, data or other deliverables prepared, produced or developed by the SYSTRA IT in the performance of its obligations under this Agreement. The price of all intellectual property rights and any other associated rights is included in the remuneration of the SUB-CONSULTANT. The SYSTRA IBT hereby grants SYSTRA India an irrevocable, non-exclusive, worldwide, royalty-free license to use SUB-CONSULTANT's existing intellectual property right in so far as such is incorporated in the documents, reports, data or other deliverables and to the extent necessary for SYSTRA India to use, view or access any of them for the Project.*

*13.2 The SYSTRA IBT shall fully and effectively indemnify SYSTRA India (including without limitation its personnel, SUB-CONSULTANTS, representatives, agents and Client) against any and all liabilities, claims, losses, fees, expenses, costs, actions, demands or damage, arising whether from breach of this contract or from torts, which SYSTRA India may incur or which may be made against it by a third party as a result of or in connection with any infringement or alleged infringement or any exercise or alleged exercise of the rights protected by any patent, registered design, copyright, trade mark, trade name or other industrial or intellectual property right protected by law and arising by reason of the performance of the Services and use by SYSTRA India and/or the Client in relation to the SYSTRA IT in the performance of the Services.*

**DELIVERABLES**

*The transfer of the documents to L&T / SAMSUNG - JV will be through L&T's File Transfer Protocol (FTP) server and emails.*

• *Type, size and location drawings for the bridges as described in the tender documents, showing the geometry of the Main Bridge (Cable Stayed Bridge, Balanced Cantilever Bridge and Marine viaduct) & Connectors of Versova Bandra Sea Link This includes:*

- *Design Basis Report for Main Bridge (Cable Stayed Bridge, Balanced Cantilever Bridge and Marine viaduct) & Connectors.*
- *Concept design plans, Sections and Elevations of the Main Bridge (Cable Stayed Bridge, Balanced Cantilever Bridge and Marine viaduct) & Connectors.*
- *Bill of Quantities (BOQ) as per the Client's requirement and format including all the items required for complete scope of work included in the tender documents for Main Bridge (Cable Stayed Bridge, Balanced Cantilever Bridge and Marine viaduct) & Connectors.*
- *Plan & Profile GA drawings, Overall Layout plans showings key dimensions (Bridge Profile showing the pavement surface profile alignment and navigational channel clearance underneath.*
- *Pile foundation drawings showings the proposed diameter and tip elevation of each pile in relation to the bearing stratum proposed based on the geotechnical investigation information supplied by the employer.*
- *Design (including construction loads) Summary Reports of Main Bridge (Cable Stayed Bridge, Balanced Cantilever Bridge and Marine viaduct) & Connectors.*
- *General Arrangement Drawings and cross section drawings of Main Bridge (Cable Stayed Bridge, Balanced Cantilever Bridge and Marine viaduct) & Connectors, and Expansion joint, Bearings, etc.*
- *Input to Contractor's technical submission to Owner.*
- *Specific other bridge engineering technical submissions/ Drawings required as per tender documents. Tender. design drawings shall include necessary and enough information which is capable to calculate quantities with adequate accuracy for the bidding. The tentative number of tender design drawings expected is indicated in the Tentative drawing list in Attachment - 1."*

10. From perusal of scope of work and Article 13 of the agreement it emerges that the assessee would develop the design and drawings of the bridge/structure as proposed in the Tender document and, thereafter, handover the project specific documents, reports, data, designs or other deliverables to Systra India. The ownership in intellectual rights and designs, drawings, data etc. is completely transferred by the assessee to Systra India. Thus, it is a case of outright sale of

design and not a case of consideration received for the use of or the right to use of any design. Before proceeding further, it is imperative to refer to the definition of 'royalty' as defined under Article 12(3) of India-UAE DTAA.

*"3. The term "royalties" as used in this Article means payment 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 cinematography films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience but do not include royalties or other payments in respect of the operation of mines or quarries or exploitation of petroleum or other natural resources."*

11. There is subtle difference in consideration received for sale of design and drawings and consideration received for the use of or the right to use design. Former is a case where ownership in the drawings and design specific to the project is transferred. Whereas, in later case, the ownership of design remains with the creator of design and it only authorizes use of design or the right to use of design. The payments received in later case are in the nature of 'royalty'.

12. In the case of Gera Development P. Ltd. vs. DCIT (supra), the Coordinate Bench in a case where the consideration received by the assessee was for transfer of architectural drawings and design for a particular commercial complex, the Department characterized such consideration as 'royalty'. The Tribunal held as under:-

*"24. A perusal of the definition of "Royalty" as defined under Article 12(3) of India-USA DTAA would show that the payment made by assessee to Gensler were not in the nature of consideration for transfer of or right to use any copyright of a scientific work, design or model or information concerning industrial, commercial scientific experience etc. The payments made by assessee to Gensler were for making architectural drawings & designs for its particular commercial complex. The drawings & designs made by Gensler were project specific and there was no transfer of copyright in scientific work. The assessee by no means could have benefitted by commercial exploitation of the designs and drawings of the particular building."*

In the instant case also, the drawings and designs made by assessee were project specific, there is transfer in ownership of drawing and design, etc.

13. In the case of DCIT vs. Aedas Pte Ltd. (supra), the Coordinate Bench after considering facts of the case and Organization for Economic Corporation and Development (OECD) Model Convention held as under:-

*"7.8 Thus, basis a holistic reading of the terms of the contract, the appellant vehemently submitted that the nature of the contract is clearly for provision of designing services and not simpliciter use of or the right to use the design falling within the ambit of Royalty payments. The appellant pointed out that in the instant case, a project specific design/model/plan is developed and the same is handed over to the client in an as is manner', therefore, it would tantamount to 'rendition of services' as against royalty.*

*7.9 In this regard, the appellant placed reliance on the decision of ITAT, Pune in the case of Gera Developments Pvt. Ltd. (72taxmann.com238) wherein it is held that "the payments made by Assessee to Gensler were for making architectural drawings & designs for its particular commercial complex. The drawings & designs made by Gensler were project specific and there was no transfer of copyright in scientific work. The Assessee by no means could have benefitted by commercial exploitation of the designs and drawings of the particular building."*

*7.10 Further, the Appellant placed reliance on the following extract form the commentary to the Organization for Economic Co-operation and Development (OECD) Model Convention [2010 version] :*

*"10.2 A payment cannot be said to be "for the use of, or the right to use" a design, model or plan if the payment is for the development of a design, model or plan that does not already exist. In such a case, the payment is made in consideration for the services that will result in the development of that design, model or plan and would thus fall under article 7. This will be the case even if the designer of the design, model or plan (e.g. an architect) retains all rights, including the copyright, in that design, model or plan. Where, however, the owner of the copyright in previously-developed plans merely grants someone the right to modify or reproduce these plans without actually performing any additional work, the payment received by that owner in consideration for granting the right to such use of the plans would constitute royalties"*

*7.11 It may be relevant to take note of the relevant clauses of the agreement entered into with the clients to appreciate the correct position regarding transfer of copyright and ownership of the intellectual property. The clause "ownership of documents copyright" as per agreement with L&T reads as under :—*

*"After the completion of the project or the termination of the design consultant's employment, copyright in all documents, drawings, reports and specifications prepared by the Design consultant (soft copies as well as editable versions including ACAD, REV IT, 3DS Max, MAYA, Wire meshes/Sketch-ups etc.) in any works executed from those documents shall remain the property of the Client whether the works for which they have been prepared are executed or not. However, the Drawings, specifications, Electronic Data, renderings, fly-throughs, sketches and other documents prepared by the Design consultant for this project are "deliverables" for use solely with respect to this Project only. The Design Consultant is the author of all deliverables and retains all common law, statutory and other reserved rights. The Deliverables and retains all common law, statutory and other reserved rights. The Deliverable may not be used by or through Design Consultant or Clients for other projects or for purposes or extensions to the project for which they were originally prepared except with the prior written consent of the Design consultant or Client. Design Consultant may include representations of the Project, including photographs of the exterior and interior, among Design Consultant's promotional and professional materials. Design Consultant will take required permissions from the client before using any images, photographs, etc. of the project."*

7.12 The clause "ownership of documents copyright" as per agreement with "S&P Foundation" reads as under:

*"13. Ownership of intellectual property rights.—The Intellectual property Rights of this project shall solely vest with the Company. The architectural designs, plans drawings, documents, sketches, specification, etc. made by the AEDAS shall not be used for any other project or publication in any manner whatsoever, except by the prior written approval of the company".*

7.13 It flows from the above clauses that the ownership of the design lies with client for whom it has been developed. Thus, it is a case where the developed design/drawing is meant for the client and the developer does not retain any right on it. Effectively, it is a case of rendering technical services as against a case of Royalty."

*[Emphasized by us]*

14. The Hon'ble Delhi High Court in the case of CIT vs. DCM Ltd. (supra), has held that where by virtue of agreement there is complete transfer of technology and knowhow albeit on a non-exclusive basis, the consideration received for such transfer of technology is not in the nature of royalty. To fall within the four corners of Article 13(3), the right conferred should be usage; anything more than

that, takes it outside the ambit of definition of royalty provided under DTAA. Hence, the remittances made for outright transfer of title in design and drawings, data, etc., would not fall in the definition of 'royalty' as per Article 13(3) of DTAA.

15. The Id. DR in detailed written submissions as missed the point of distinction that, it is not a case of consideration received for use or right to use any design. It is a case of transfer of design, hence, the submissions made on behalf of the department are rejected. Further, the Id. DR has also referred to definition of royalty under the provisions of the Act. The definition of 'royalty' under the Act is much wider as compared to definition of royalty in DTAA. Since, the assessee has opted for DTAA provisions, the provisions of Act would not apply.

16. In the result, impugned order is *set aside* and appeal of the assessee is allowed.

Order pronounced in the open court on Friday the 13<sup>th</sup> day of March, 2026.

Sd/-

(BRAJESH KUMAR SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 13/03/2026

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar) ITAT, DELHI