

आयकर अपीलीय अधिकरण
दिल्ली पीठ "डी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एम. बालगणेश, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
आओसं.1601/दिल्ली/2025(नि.व. 2022-23)
ITA No.1601/DEL/2025 (A.Y.2022-23)

Outsystems Singapore Pte. Ltd.,
41-01, 8 Temasek Boulevard, Suntec Tower Three,
Singapore 389980
PAN AADCO-0528-P

..... अपीलार्थी/Appellant

बनाम Vs.

The Deputy Commissioner of Income Tax,
Circle International Tax 2(2)(2), Civic Centre,
Minto Road, New Delhi 110002
..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ajit Jain & Ms. Shivangi Chitlangia
Chartered Accountants

प्रतिवादीद्वारा/Respondent by : Ms. Ekta Jain, CIT(DR)

सुनवाई की तिथि/ Date of hearing : 03/12/2025

घोषणा की तिथि/ Date of pronouncement : 10/12/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the Assessment Order passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act,1961 (hereinafter referred to as 'the Act') dated 10.01.2025, for Assessment Year 2022-23.

2. The assessee in appeal has raised as many as 13 grounds. The Id. Counsel for the assessee at the outset submitted that he is not pressing ground no. 4 of appeal assailing validity of the assessment order without DIN. In light of the

statement made by Id. Counsel for the assessee, ground no. 4 of appeal is dismissed as not pressed.

3. The assessee in ground no. 3 of appeal has assailed validity of Final Assessment Order signed manually by the Assessing Officer (AO).

4. Shri Ajit Jain, appearing on behalf of the assessee submits that a perusal of the impugned assessment order would show that the same has been signed manually by the AO, whereas, the assessment has been made under 'E-Proceedings'. Placing reliance on CBDT Instruction No.01/2018 dated 12.02.2018, he submitted that all assessments made through 'E-Proceedings' facility are mandatorily required to be signed digitally by the Assessing Officer. Since, in the instant case assessment order has been signed manually by the Assessing Officer, the same is bad in law. The Id. Counsel prayed for quashing the assessment order on account of defect in signing of the assessment order manually.

5. On merits of the addition, the Id. Counsel for the assessee submits that the AO/Dispute Resolution Panel (DRP) have erred in treating software license fees and services amounting to Rs.32,52,03,349/- as 'Fee for Technical Services' (FTS). Narrating facts of the case, the Id. Counsel submits that the assessee company was incorporated under the laws of Singapore and is a tax resident of Singapore. The assessee does not have any Permanent Establishment (PE) in India within the meaning of Article 5 of India-Singapore Double Tax Avoidance Agreement (DTAA). Outsystems Group operates the software that enables organizations build software faster by accelerating every stage of the application life cycle. The intellectual property rights in the said software are owned by Outsystems Software em Rede, SA (OS Portugal). The assessee has been

appointed as the Master Distributor of Software & Services in Asia Pacific Region by OS Portugal. The assessee generates income in India from licensing of the software either to end user directly or through third party dependent distributor/partner. The software is licensed through Master Subscription Agreement (MSA) or End User License Agreement (EULA). For the AY 2022-23, the assessee filed its return of income declaring total taxable income as NIL, claiming income from sale of software as exempt. The AO held income from sale of software Rs.32,52,03,349/- as FTS. The assessee filed objections before the DRP. The DRP vide directions dated 27.12.2024 concurred with the Assessing Officer in holding license fee for sale of software as FTS. The AO passed the Final Assessment Order in accordance with findings of the DRP.

5.1. The Id. Counsel submits that the AO and the DRP have erred in treating the software license fee and services as FTS. A perusal of the agreement would show that there is no transfer of copy right or knowhow. The end customer is only granted a non-exclusive and non-transferrable license or use computer software. No right has been granted to sub license for transfer, nor there is any right to reverse engineer, modify, reproduce in any manner otherwise than permitted by the license to the end user. The license granted is not a license which transfers any interest in all or any of the rights contained in section 14(a) and 14(b) of the Copyright Act but is a license which imposes restrictions or conditions for use of computer software. No specialized knowledge or skill is imparted to the customers. The Id. Counsel further submits that there is no right to modify the OS software either with the assessee or with the end user. The assessee merely provides standard software to all its customers for developing computer applications using such software. Further India-Singapore DTAA also contains make available clause,

therefore, the scope of FTS as per the said DTAA is very narrow. Hence, fees for licensing of software cannot be treated as FTS as per DTAA. He finally submits that the case of the assessee is squarely covered by the decision of Hon'ble Supreme of Court of India in the case of *Engineering Analysis Centre of Excellence P. Ltd. vs CIT, 432 ITR 471*.

6. Per contra, Ms. Ekta Jain representing the department vehemently defended validity of the impugned assessment order. The Id. DR placed on record factual report from the AO dated 25.04.2025 explaining the reasons for signing the assessment order manually. The Id. DR further referred to the decision of Cochin Bench of the Tribunal in the case of *Mytheenkunju Muhammed Kunju Kandathil Jewellers vs. DCIT, 160 taxamann.com 630*, to contend that where the Department Authorities were prevented from affixing digital signatures, manually signed assessment order does not make the assessment order invalid. On merits of the addition in holding license fee as FTS, the Id. DR reiterated findings of the AO and the DRP.

7. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the decisions on which respective sides have placed reliance in support of their arguments. Before proceeding to decide merits of the addition, the legal issue raised by the assessee in ground of appeal no.3 challenging validity of the Final Assessment Order in signing the order manually is taken up first for adjudication. A perusal of the impugned order reveals that the assessment order has been signed manually by the Assessing Officer. The assessment has been made under 'E-Proceedings'. The Board vide Notification No. 01/2018 dated 12.02.2018 has notified that all

assessment proceedings in scrutiny cases are to be conducted electronically. The said instructions are reproduced herein below:

**"SECTION 143, READ WITH SECTIONS 142 & 2(23C), OF THE INCOME-TAX ACT, 1961 -
ASSESSMENT - CONDUCT OF ASSESSMENT PROCEEDINGS IN SCRUTINY CASES
ELECTRONICALLY**

INSTRUCTION NO.1/2018 [F.NO.225/157/2017-ITA.II], DATED 12-2-2018

Sub-section (23C) of Section 2 of the Income-tax Act, 1961 (Act), applicable from 1-6-2016, provides that "hearing" includes communication of data and documents through electronic mode. Accordingly to facilitate conduct of assessment proceedings electronically, vide letter dated 23-6-2017, in file of even number, Board had issued a revised format of notice(s) under section 143(2) of the Act. Para 3 of these notice(s) provided that assessment proceedings in cases selected for scrutiny would be conducted electronically in 'E-Proceeding' facility through assessee's account in E-filing website of Income-tax Department.

2. In accordance with the procedure outlined in revised 143(2) notice(s) for conduct of assessment proceedings electronically, it is hereby directed that except for search related assessments, proceedings in other pending scrutiny assessment cases shall be conducted only through the 'E-Proceeding' functionality in ITBA/E-filing. However, in cases where the concerned assessee objects to conduct of assessment proceedings electronically through the 'E-Proceeding' facility, such cases, for the time-being, may be kept on hold.

3. Further, considering the situation that some of the stations have limited bandwidth, being VSAT stations and stations with limited capacity where bandwidth is in the process of being upgraded, it has been decided that till 31-3-2018, such stations, in accordance with target stipulated in Central Action Plan for financial year 2017-18, may undertake and complete only ten percent scrutiny cases (which are getting barred by limitation on 31-12-2018) having the potential to effect recovery during the current year itself. The list of such stations shall be specified by the Pr. DGIT(Systems). Accordingly, at these stations, till 31-3-2018, the assessment proceedings in cases to be completed as per Central Action Plan target, may be conducted manually if e-assessment is not possible. It is reiterated that at other stations covered under para 2 above, subject to exceptions mentioned therein, the assessments would be conducted electronically only.

4. Some of the important procedural aspects while conducting assessment proceedings through 'E-Proceeding' are as under:

4.1 Enquiry before assessment in electronic mode : For enquiries before assessment in terms of section 142(1)(ii) of the Act, notice shall be issued electronically and delivered upon the assessee in his 'E-Filing' account. While filing the response electronically in compliance with notice under section 142(1)(ii) of the Act, the concerned assessee shall verify it in the manner prescribed under rule 14 of Income-tax Rules, 1962.

4.2 Use of digital signature by Assessing Officer: All departmental orders/communications/notices being issued to the assessee through the 'e-Proceeding' facility are to be signed digitally by the Assessing Officer.

4.3 Time for compliance : Online submissions may be filed till the office hours on the date stipulated for compliance.

4.4 Availability of facility for electronic submission of documents in time barring situation or where case has been finally heard by the Assessing Officer: The facility for electronic submission of documents through 'E Proceeding' shall be automatically closed seven days before the time barring date. In other situations, upon completion of proceedings, before passing the final order, concerned Assessing Officer, on his volition, shall close the e-submission facility after mentioning in electronic order sheet that 'hearing has been concluded'. However, if required, in exceptional circumstances, the concerned Assessing Officer may enable further filing of submissions electronically under intimation to the Range Head in ITBA.

4.5 In assessment proceedings being carried out through the 'E-Proceeding' facility, a particular proceeding may take place manually in following situation(s):

- i. where manual books of account or original documents have to be examined;*
- ii. where Assessing Officer invokes provisions of section 131 of the Act or a notice is issued for carrying out third party enquiries/investigations;*
- iii. where examination of witness is required to be made by the concerned assessee or the Department;*
- iv. where a show-cause notice contemplating any adverse view is issued by the Assessing Officer and assessee requests for personal hearing to explain the matter.*

4.6 Maintenance of 'Record' in the context of 'E-Proceeding': In cases being assessed through 'E-Proceeding', from now on, as far as possible, case-records as well as note sheet of proceedings shall be maintained electronically.

5. This instruction may be brought to the notice of all concerned for immediate compliance."

8. A perusal of para 4.2 of the aforesaid instructions would show that communication of all documents including orders, notices, etc. issued to the assessee through 'E-Proceeding' facility are to be signed digitally by the Assessing Officer. No exception has been provided in the said instructions for signing the

assessment orders manually. During the course of hearing, the Id. DR sought time to furnish copy of the exceptions, if any. The time sought by the DR was allowed. However, on the next date of hearing no such instructions were furnished and the Id. DR expressed her inability to lay hands on any such instructions carving out exceptions. In the absence of any exceptions, all assessment orders in 'E-Proceedings' have to be necessarily signed digitally. The instructions dated 12.02.2018 issued by the Board would apply to all assessments made electronically. The Id. DR has placed on record the reasons given by the AO for signing the order manually. The relevant excerpts from the same are reproduced herein under:

"In this regard, it is submitted that the date of limitation for passing the assessment order in this case was 31.01.2025 pursuant to the directions of the Hon'ble DRP. The assessment order for AY 2022-23 was passed and sent to CP for final accounting. However, CPC had not closed the accounting of the same and the assessment order along with computation sheet and demand notice had not come back from the CPC for being digitally signed and issued to the assessee (grievance had been raised on the TBA Helpdesk for the same. Since the charge of Circle 2(2)(2) was being transferred with effect from 13.01.2025 on account of the undersigned proceeding on earned leave and since the new incumbent officer would not be able to sign the order on a later date, the assessment order in this case was passed and signed manually by the undersigned on 10.01.2025 and sent to the assessee on the same date."

9. Since CBDT Instructions No. 1/2018 (supra) requires the Assessing Officer to sign assessment order digitally where the assessments are completed through 'E-Proceedings' facility, the assessment order would stand valid only if it is passed in accordance with the CBDT Instructions. No exception has been provided by the Board to the said conditions.

10. The Hon'ble Supreme Court of India in the case of Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh (2015) 13 SSC 722 has held that any

deviation in the procedure prescribed by the statue renders the action illegal. The Hon'ble Apex Court in the case of Chandra Kishore Jha vs Mahavir Prasad (1999) 8 SCC 266 held that, if statue provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. The CBDT has laid down procedure for completing 'E-Proceedings' in a particular manner, the same are binding on the Department. The AO is thus mandatorily required to sign the assessment order digitally where the scrutiny assessments are conducted electronically. Since, in the instant case the assessment has been made under 'E'-Proceedings and assessment order has been signed manually, the same suffers from incurable defect, if, the assessment order has been served on the assessee. The reliance placed by the Revenue on the decision in the case of Mytheenkunju Muhammed Kunju Kandathil Jewellers vs. DCIT (supra) does not support the cause of Revenue as the same was passed in peculiar set of facts and hence, is distinguishable. Thus, the assessment order is liable to be quashed on this ground alone.

10. The assessee in ground of appeal no.5 to 8 has assailed the additions on merits as well in treating the receipts from sale of software licenses and services as FTS. The assessee is selling a standardize software to end customers through distributors, as well as directly. The said software is not a tailor made and is off the shelf software available to end users. The assessee grants only a limited, non-exclusive, non-transferable license to use the software without any right to sublease. No specialized knowledge or skill is imparted to the end user i.e. the make available condition set out in India-Singapore DTAA is not satisfied. In the back drop of above undisputed facts, we find that the case of the assessee is squarely covered by the decision rendered in the case of Engineering Analysis Centre of

Excellence P. Ltd. vs CIT (supra). Thus, the license fee received by the assessee cannot be characterized as FTS. The assessee succeeds on ground of appeal no. 5 to 8 as well.

11. The ground of appeal no. 1 and 2 are general, hence, require no separate adjudication.

12. Since, the assessee succeeds on legal ground as well as on merits of addition, the other grounds of appeal have become academic, hence, are not deliberated upon.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Wednesday the 10th day of December, 2025.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 10/12/2025

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.

ORDER,

//True Copy//

(Asstt. Registrar) ITAT, DELHI

1.	Date of dictation of Tribunal order	08.12.2025
2.	Date on which typed draft order is placed before the dictating Member	09.12.2025
3	Date on which typed draft order is placed before the other Member (in the case of DB)	
4.	Date on which the approved draft order comes to P.S/Sr.P.S	
5.	Date on which the fair Order is placed before the dictating Member for sign	
6.	Date on which the fair Order is placed before the other Member for sign (in the case of DB)	
7.	Date on which the Order comes back to P.S./Sr.P.S for uploading on ITAT website	
8.	Date of uploading, if not, reason for not uploading	
9.	Date on which the file goes to the Bench Clerk	
10.	Date on which order goes for xerox	
11.	Date on which order goes for endorsement	
12.	Date on which the file goes to the Superintendent/O.S. for checking	
13.	Date on which the file goes to the Assistant Registrar for signature on the order	
14.	Date on which the file goes to dispatch section for dispatch the Tribunal Order	
15.	Date of dispatch of order	
16.	Date on which file goes to Record Room after dispatch the order	