आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

श्री रविश सूद,न्यायिक सदस्य एवं श्री मधुसूदन सावड़िया लेखा सदस्य समक्ष|

Before Shri Ravish Sood, Judicial Member
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं /**ITA Nos.498/Hyd/2025 & 486/Hyd/2026**
(निर्धारण वर्ष/Assessment Years: 2022-23 & 2023-24)

M/s. AutoForm Sales GmbH, Hyderabad PAN:AAICA6357P	Vs.	Asstt. Director of Income Tax (International Taxation)-1, Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	CA Amulya K	
राजस्व द्वारा/Revenue by:	Shri Waseem UR Rehman, CIT (DR)	
सुनवाई की तारीख/Date of hearing:	17/08/2026	
घोषणा की तारीख/Pronouncement:	16/10/2026	

ORDER

Per Madhusudhan Sawdia, A.M:.

These two appeals are filed by M/s. AutoForm Sales GmbH ("the assessee"), feeling aggrieved by the separate assessment orders passed by the Assessing Officer under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ("the Act") for A.Ys. 2022-23 & 2023-24, dated 22.01.2025 and 22/01/2026 as per the directions of the Learned Dispute Resolution Panel-1 Bengaluru ("Ld. DRP") dated 23.12.2024

and 29.12.2025 respectively. Since identical issues are raised by the assessee in both these appeals, for the sake of convenience, these two appeals were heard together and are being disposed of by this common and consolidated order.

ITA No.498/Hyd/2025 for the A.Y 2022-23:

2. The assessee has raised the following grounds of appeal:

I. General Ground

1. The final assessment order *("Impugned Order")* passed by the Assistant Director of Income Tax (International Taxation) - 1, Hyderabad ('Ld. AO') under section 143(3) read with section 144C(13) of the Act suffers from legal defects such as being passed in violation of principles of natural justice and consistency, is devoid of merits, based on conjectures, surmises and a pre-judged mind, contrary to facts on record and the applicable provisions of the Income Tax Act, 1961 ("the Act"), and hence, is bad in law and liable to be quashed.

II. Violation of the principle of consistency

2. The Ld. AO and the Ld. Dispute Resolution Panel ("lower authorities") erred in arbitrarily departing from the position accepted in the assessment proceeding for the immediately preceding year, wherein similar receipts for AY 2021-22 were not subjected to tax in India upon accepting the claim that the receipts were not in the nature of Royalty or Fees for technical services, when there is no material change in the facts and circumstances of the case or in the applicable law for the Impugned AY.

III. Addition towards Royalty and Fees for technical services ("FTS")

3. The lower authorities erred in making an addition of INR 4,35,46,691 in determining the Appellant's taxable income under the Act, in the Impugned Order.

4. The lower authorities erred in holding that the Appellant's receipts from the sale of standard software licenses to AutoForm Engineering India Private Limited *("AutoForm India")*, for further distribution by AutoForm India as a reseller of the said software in the Indian market, is in nature of Royalty and FTS, taxable under sections 9(1)(vi) and 9(1)(vii) read with Section 5(2) of Act.

5. The lower authorities erred in holding that the Appellant's receipts from the sale of software license to AutoForm India is in the nature of Royalty and FTS, taxable under Article 12 of the Agreement for Avoidance of Double Taxation ("DTAA") between India and Switzerland, read with the provisions of section 90 of the Act.

6. The lower authorities erred in making an arbitrary conclusion towards 'Royalty' and 'FTS' on a generic basis, without making out a case for the said receipts being either Royalty or FTS, and without appreciating that both are significantly different in their fundamental nature.



7. The lower authorities erred in alleging that the Appellant undertook sale of customized software and provided technical/training services to the end-customers, without appreciating that its entire receipts were from the sale of a 'copyrighted article in the form of a standard software license'.

The Appellant craves leave to alter, amend, rescind or withdraw all or any of the Grounds of Appeal contained herein or add any further grounds as may be considered necessary either before or during the hearing of this Appeal.

for **AutoForm Sales GmbH**



Place: Hyderabad
Date: 18 March 2025

Signed
(Appellant)
Name: Nitin Gupta
Designation: Authorised Signatory

3. The brief facts of the case are that the assessee is a foreign company incorporated under the laws of Switzerland, engaged in providing software for product manufacturability, tool and material cost calculation, die-face design and virtual stamping, which is primarily used in the automobile industry. The assessee filed its return of income for A.Y. 2022-23 on 23.11.2022 declaring total income of Rs. Nil and claimed the entire TDS of Rs. 4,35,46,690/- as refund. The case of the assessee was selected for complete scrutiny under CASS and accordingly, notice under section 143(2) of the Act was issued by the Assessing Officer on 31.05.2023. During the assessment proceedings, the Assessing Officer observed that during the year under consideration, the assessee had received an amount of Rs. 43,54,66,906/- from AutoForm Engineering India Pvt. Ltd. ("AutoForm India") towards sale/distribution of software products. The assessee claimed that the said receipts were

not chargeable to tax in India. The Assessing Officer, however, was of the view that the software supplied in India was specialised/customised software and that technical/training services were also associated with the supply of such software. Accordingly, the Assessing Officer passed the draft assessment order under section 144C(1) of the Act dated 31.03.2024 treating the entire receipts of Rs. 43,54,66,906/- as royalty as well as fees for technical services ("FTS") and proposing to assess the total income of the assessee at Rs. 43,54,66,906/-.

4. Aggrieved by the draft assessment order, the assessee raised objections before the Ld. DRP. However, the Ld. DRP, vide its directions under section 144C(5) of the Act dated 23.12.2024, upheld the action of the Assessing Officer. Pursuant to the directions of the Ld. DRP, the Assessing Officer passed the final assessment order under section 143(3) read with section 144C(13) of the Act dated 22.01.2025 assessing the total income of the assessee at Rs. 43,54,66,906/-.

5. Aggrieved by the final assessment order, the assessee is in appeal before us. At the outset, the Learned Authorized Representative ("Ld. AR") submitted that the dispute essentially relates to the characterization of the receipts of Rs. 43,54,66,906/- from sale/distribution of AutoForm software as royalty and FTS. In this regard, the Ld. AR submitted that AutoForm Engineering GmbH ("AutoForm Engineering") is involved in developing highly specialised

software for optimizing sheet-metal products and sheet-metal forming processes and designing tools with complex geometries, hereinafter referred to as "AutoForm software". AutoForm India is a private limited company incorporated in India and is engaged in the business of distribution of software owned/developed by AutoForm Engineering. AutoForm Engineering has entered into a Distribution Agreement with AutoForm India appointing it as a distributor of such software to end-users/third-party customers in India. The assessee has been appointed as the invoicing entity in the distribution chain and, accordingly, invoices in respect of the software supplied are raised by the assessee and payments are received by the assessee from AutoForm India. The Ld. AR, inviting our attention to the Distribution Agreement entered into between AutoForm Engineering and AutoForm Engineering India, placed at page nos. 27 to 51 of the paper book, submitted that AutoForm Engineering develops the software and exclusively owns the intellectual property rights therein, whereas AutoForm India has merely been appointed as a non-exclusive distributor of AutoForm software in India. Further, inviting our attention to the appointment letter issued by AutoForm Engineering in favour of the assessee, placed at page no. 52 of the paper book, the Ld. AR submitted that the assessee merely functions as the foreign distribution/invoicing entity. It was submitted that neither the assessee nor AutoForm India acquires ownership of, or any exploitation rights in, the copyright underlying the

AutoForm software and the intellectual property rights continue to vest with AutoForm Engineering.

6. The Ld. AR further invited our attention to the AutoForm price list placed at page nos. 109 to 112 of the paper book; the sample quotation issued by AutoForm India to one of its customers placed at page nos. 113 to 116 of the paper book; the sample purchase order received by AutoForm India from one of its customers placed at page nos. 118 to 120 of the paper book; the tax invoice issued by AutoForm India to one of its customers placed at page nos. 121 to 123 of the paper book; and the corresponding invoice issued by the assessee to AutoForm India placed at page nos. 132 to 135 of the paper book. Referring to the aforesaid documents, the Ld. AR submitted that the AutoForm software supplied is a suite of pre-existing software products comprising various modules and functionalities. The customers merely select different combinations of modules, features and add-ons according to their business requirements. Such selection, according to the Ld. AR, merely amounts to configuration from the existing product suite and does not involve modification, redevelopment or customer-specific development of the underlying software. It was submitted that the license key merely activates the modules and license parameters purchased by a particular customer and does not alter the source code or result in creation of any customer-specific executable or source code.

7. The Ld. AR further submitted that neither AutoForm India nor the ultimate end-users acquire any right to reproduce, modify, adapt, reverse engineer, decompile or create derivative works from the software or to access its source code. They also do not acquire any right to commercially exploit the copyright underlying the software. Thus, according to the Ld. AR, what is supplied is merely a copyrighted software product and no right in the copyright itself is transferred. The Ld. AR placed heavy reliance on the decision of the Hon'ble Supreme Court in Engineering Analysis Centre of Excellence (P.) Ltd. Vs. CIT (2021) 432 ITR 471 (SC) and submitted that the issue is squarely covered by the said decision. It was submitted that the Hon'ble Supreme Court has specifically considered software distribution arrangements involving foreign software suppliers, foreign distributors, Indian distributors and Indian end-users and has held that where no right in the underlying copyright is transferred, consideration received towards sale/distribution of software does not constitute royalty.

8. With regard to the treatment of the receipts as FTS, the Ld. AR invited our attention to the details of the amount received on account of sale of services forming part of the audited financial statements of AutoForm India at note no. 2.13, placed at page no. 184 of the paper book. The Ld. AR submitted that the said financial statements show Nil training income, which, according to him, further substantiates the contention that no customer-specific

technical or training services were rendered by the assessee either to AutoForm India or to the ultimate end-users. It was submitted that the clauses relating to support, maintenance or training contained in the Distribution Agreement merely contemplate general support or product familiarization incidental to the software distribution arrangement. No separate service agreement or statement of work existed, no separate invoice for technical or training services was raised and no separate consideration was received by the assessee for any such services.

9. The Ld. AR further submitted that the Assessing Officer as well as the Ld. DRP have treated the entire receipts simultaneously as royalty and FTS without identifying either the particular right in copyright which was allegedly transferred or the particular managerial, technical or consultancy service which was allegedly rendered by the assessee. It was submitted that royalty and FTS are distinct categories of services and the conditions prescribed for each category are required to be independently satisfied.

10. The Ld. AR also drew our attention to the assessment order of the assessee for the A.Y. 2021-22 placed at page nos. 231 to 233 of the paper book and submitted that in the immediately preceding A.Y. 2021-22, receipts arising from the same software distribution arrangement had been accepted as not taxable in India by the Revenue after considering the decision of the Hon'ble Supreme Court in Engineering Analysis Centre of Excellence (P.) Ltd. (supra). It

was submitted that there has been no change in the software products, contractual framework, distribution model or other material facts during the assessment year under consideration. Accordingly, the Ld. AR prayed that the addition made by the Assessing Officer by treating the impugned receipts as royalty and/or FTS be deleted.

11. Per contra, the Learned Departmental Representative ("Ld. DR") relied upon the orders of the lower authorities. The Ld. DR submitted that the software supplied by the assessee is highly specialized software intended for the automobile industry and that different modules, features and functionalities are selected and configured according to the requirements of individual customers. Therefore, according to the Ld. DR, the transaction cannot be regarded as a simple sale of software. The Ld. DR further submitted that the Distribution Agreement contains provisions relating to technical support, training and other assistance connected with the software supplied in India. Accordingly, the Ld. DR supported the action of the Assessing Officer in treating the receipts as royalty and FTS under the provisions of the Act and prayed that the grounds raised by the assessee be dismissed.

12. We have heard the rival submissions and perused the material available on record, including the case law relied upon by the parties. The issue before us is whether the receipts of the assessee from the sale/distribution of AutoForm software products to AutoForm India are liable to

be taxed in India as royalty and/or FTS. The principal contention of the Revenue is that the software is highly specialized for the automobile industry, that different modules and functionalities are selected and configured according to the requirements of individual customers, and that training, technical support and other assistance are provided in connection with its use. According to the Revenue, these features show that the transaction involves a grant of rights in the copyright underlying the software. We have examined the relevant portions of the Distribution Agreement placed at page nos. 27 to 51 of the paper book, to which our attention was invited by the Ld. AR. The agreement shows that AutoForm Engineering is the developer of the AutoForm software and retains the intellectual property rights therein, whereas AutoForm India has been appointed as a non-exclusive distributor in India. We have also examined the appointment letter placed at page no. 52 of the paper book, relied upon by the Ld. AR to explain the assessee's role as the foreign distribution/invoicing entity. Further, we have examined the AutoForm price list placed at page nos. 111 and 112, sample quotation placed at page nos. 113 to 116, sample purchase order placed at page nos. 118 to 120, customer invoice placed at page nos. 121 to 123 and corresponding invoice raised by the assessee on AutoForm India placed at page nos. 132 to 135 of the paper book. On a conjoint reading of these documents, we find that customers select the required modules and functionalities from the existing AutoForm software suite and that invoices are raised in

respect of the identified software modules/licenses. The material before us does not show that a separate software product was developed for any customer or that the source code of the existing software was modified for a particular customer. Selection or configuration of different combinations of existing modules does not, by itself, establish customer-specific development of the underlying software or a grant of rights in its copyright. In this regard, we have also carefully gone through the para no. 97 of the order of the Hon'ble Supreme Court in Engineering Analysis Centre of Excellence (P.) Ltd. Vs. CIT (Supra), which is to the following effect:

> 97. This ruling of the AAR flies in the face of certain principles. When, under a non-exclusive licence, an end-user gets the right to use computer software in the form of a CD, the end-user only receives a right to use the software and nothing more. The end-user does not get any of the rights that the owner continues to retain under section 14(b) of the Copyright Act read with sub-section (a)(i)-(vii) thereof. Thus, the conclusion that when computer software is licensed for use under an EULA, what is also licensed is the right to use the copyright embedded therein, is wholly incorrect. The licence for the use of a product under an EULA cannot be construed as the licence spoken of in section 30 of the Copyright Act, as such EULA only imposes restrictive conditions upon the end-user and does not part with any interest relatable to any rights mentioned in sections 14(a) and 14(b) of the Copyright Act.

13. On perusal of the above, we find that the Hon'ble Supreme Court has explained that an end-user who receives a non-exclusive licence to use computer software obtains the right to use the software, but does not thereby acquire any of the rights retained by the copyright owner under section 14 of the Copyright Act, 1957. The restrictions imposed upon the end-user under a licence for use of the software do not, by themselves, amount to a grant of an interest in the copyright. Applying the distinction explained by the Hon'ble Supreme

Court to the Revenue's contention in the present case, we find that the Revenue has failed to brought before us any materials to substantiate that AutoForm India or the ultimate Indian end-users are granted any right to reproduce the software for independent commercial exploitation, modify or adapt it, create derivative works, or otherwise exercise a right comprised in the copyright. The intellectual property rights continue to vest with AutoForm Engineering. The specialized nature of the software and the selection or configuration of existing modules to suit different customers do not establish a transfer of rights in the copyright underlying the software.

14. We now turn to the Revenue's contention regarding training, technical support and other assistance connected with the software. We have examined the audited financial statements of AutoForm India, particularly note no. 2.13 placed at page no. 184 of the paper book, to which our attention was specifically invited by the Ld. AR. The assessee relies upon that note to show that no training income was recorded. We have also considered the invoices and other transaction documents referred to above. The invoices placed before us pertain to identified software modules/licenses. No separate invoice for customer-specific training or technical services has been brought to our notice. While the absence of a separate invoice is not, by itself, decisive, neither the assessment order nor the directions of the Ld. DRP identify any particular training, managerial, technical or consultancy service actually rendered by the assessee to AutoForm India

or to an ultimate Indian customer in consideration for the impugned receipts. The Revenue has not identified the recipient of any such service, the person through whom it was rendered, or any identifiable consideration attributable thereto. More particularly, the Revenue has not explained how the alleged training, technical support or other assistance conferred upon AutoForm India or any end-user a right in the copyright underlying the software. Assistance in learning to operate software, even if rendered, does not by itself confer a right to reproduce, modify, adapt or commercially exploit the software as a copyright holder. A provision in the Distribution Agreement contemplating training or support also does not establish that such a service was actually rendered by the assessee for the consideration under appeal, much less that its rendition resulted in a transfer of rights in copyright. Thus, the factual link on which the Revenue's contention rests has not been established.

15. We further find that the lower authorities have characterized the same receipts as royalty and FTS without identifying the rights in copyright said to have been granted or the services said to have been rendered by the assessee for those receipts. The two characterizations require separate findings on their respective factual foundations. On the material before us, the Revenue has established neither a grant of rights in the copyright underlying the software nor the rendition of managerial, technical or consultancy services by the assessee for the impugned consideration.

16. We also note the assessee's submission that receipts arising from the same software distribution arrangement were accepted as not taxable in India in the immediately preceding A.Y. 2021-22. The Revenue has not pointed out any material change in the relevant contractual terms or distribution model during the year under consideration. We have, however, reached our findings independently on the basis of the agreements, transaction documents, audited financial statements and other material placed before us.

17. In view of the foregoing discussion and considering the totality of the facts and circumstances of the case, we find that the Revenue has failed to establish its contention that the sale/distribution of the software, including the selection or configuration of its existing modules and the alleged provision of training or assistance, resulted in the grant of rights in the copyright underlying the software. The Revenue has also failed to establish that the impugned receipts, or any identifiable part thereof, represent consideration for managerial, technical or consultancy services rendered by the assessee. Accordingly, the addition of Rs. 43,54,66,906/- made by treating the receipts from the sale/distribution of AutoForm software products as royalty and/or FTS cannot be sustained. Accordingly, We direct the Assessing Officer to delete the said addition.

18. In the result, the appeal of the assessee in ITA No.498/Hyd/2025 is allowed.

ITA No.486/Hyd/2026 for A.Y. 2023-24:

19. The facts and issues involved in the present appeal are identical to the issue involved in the appeal of the assessee in ITA No.498/Hyd/2025 for the A.Y. 2022-23. The parties have not brought to our notice any material difference in the relevant agreements, distribution arrangement, nature of software or nature of transactions for A.Y. 2023-24. Therefore, our findings and conclusions recorded hereinabove for A.Y. 2022-23 shall apply mutatis mutandis to A.Y. 2023-24. Accordingly, the Assessing Officer is directed to delete the corresponding addition made by treating the software receipts as royalty and/or FTS for A.Y. 2023-24 also.

20. In the result, the appeal of the assessee in ITA No.486/Hyd/2026 for the A.Y. 2023-24 is also allowed.

21. To sum up, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on 16th October, 2026.

Sd/-	Sd/-
(RAVISH SOOD) **JUDICIAL MEMBER**	**(MADHUSUDAN SAWDIA)** **ACCOUNTANT MEMBER**

Hyderabad, dated 16th October, 2026.
Vinodan/sps

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3 & 4	Pr. CIT/Director of Income Tax(International Taxation), Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order