IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11074 OF 2025

Benteler Automotive (China) Investment Limited .. Petitioner

Versus

Assistant Commissioner of Income-Tax (IT), Circle 1, Pune & Ors. .. Respondents

Mr. V. Sridharan , Senior Advocate *with Mr. Ravi Sawana, Ms. Neha Sharma and Ms. Priyanshi Chokshi, Advocates for the Petitioner.*

Mr. A.K. Saxena, *Advocate for the Respondent Nos. 1 and 2 – Revenue.*

CORAM: B. P. COLABAWALLA & AMIT S. JAMSANDEKAR, JJ.

DATE: SEPTEMBER 20, 2025

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1. The main issue in the above Writ Petition is the interpretation of Article XII of the India-China Double Taxation Avoidance Agreement (for short “DTAA”). To put it in a nutshell, it is the case of the Petitioner that though it rendered “technical services” to its group company in India namely “Benteler Automotive India Pvt. Ltd.”, the same does not fall within the definition of the words “fees for technical services” as understood in Article XII (4) of the India-China DTAA”. The Petitioner contends that the wordings of Article XII(4) clearly indicate that in order for “fees for technical services”

to fall within Article XII (4), those services have to be rendered by a resident of China in India. In other words, the services have to be rendered and/or performed in India and not merely from China. According to the Petitioner, and which is also an undisputed fact, the services rendered/performed by the Petitioner were from China and not in India. In other words none of their personnel came to India to render these services pursuant to the agreement which is the subject matter of the present Petition.

2. In support of the aforesaid submissions, the Petitioner, amongst other things, also relied upon the circular issued by the State Administration of Taxation (of China) on the interpretation and implementation of certain provisions of the India- China DTAA dated 9th December 1994. According to the Petitioner, even the Chinese counter part understood Article XII (4) to mean that "technical services" would have to be rendered in India and not merely rendered from China. In this regard, the Petitioner relied upon Clause IV of the said circular which reads thus :

> *(a) Where the provision of technical services constitutes a permanent establishment in accordance with the provisions of Article V of the Agreement on permanent establishment, the relevant technical service fees shall be taxed in accordance with the provisions of Article VII of the Agreement on business profits. Where each company or enterprise sends personnel to the other to provide technical services which do not constitute a permanent establishment, the fees for such technical services shall be subject*

> *to a 10 per cent withholding tax in accordance with the provisions of paragraph 2 of Article XII of the Agreement.*
>
> *(b) The fees for technical services subject to withholding tax under this article shall be to the extent described in paragraph 4 and shall not include fees for technical services related to labour activities to which the provisions of paragraph 2(k) of Article 5 of the Agreement apply, nor shall they include remuneration for the services dependent individuals to which the provisions of Article 15 of the Agreement apply.*

3. As can be seen from the aforesaid reproduction, according to the Chinese Competent Authority (as defined in the India-China DTAA under Article 31J) India and China had agreed to specify in Article XII, in addition to the provisions on taxation of royalties, provisions on taxation of “fees for technical services”. What the Chinese counterpart understood of Article XII and more particularly with reference to “fees for technical services”, is set out in the above circular.

4. Since the Competent Authority of China has taken this interpretation, we would like Respondent No.3, and who is the Competent Authority for India under the India-China DTAA, to file an affidavit stating whether they agree or disagree with the interpretation put on Article XII by the Competent Authority of China. If for any reason they disagree with the aforesaid interpretation, we would also like the affidavit to state as to what would be

the Indian Competent Authority's interpretation of Article XII, and more particularly Article XII (4). We would also like Respondent No.3, in the said affidavit, to inform the Court if they were aware of the Circular dated 9th December 1994 and on what date. It is obviously needless to clarify that this affidavit shall be filed by Respondent No.3 or his office, uninfluenced by the affidavit filed by Respondent Nos. 1 and 2. In other words, we want their independent interpretation on Article XII.

5. We direct that this affidavit, if any, should be filed on or before 1st October 2025 and a copy of the same should be served on the Advocate for the Petitioner.

6. We now place this matter for further hearing on 3rd October 2025 at 3.00 p.m.

7. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR , J.] **[B. P. COLABAWALLA, J.]**

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