THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, DELHI

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No.1958/Del/2025
(Assessment Year 2022-23)

Coursera Inc. 381, East Evelyn Avenue Mountain View, California United States of America - 94040	Vs.	ACIT, Circle-1(2)(1) International Taxation, Civic Centre, Minto Road New Delhi – 110002
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAICC4141K		
Appellant	..	Respondent

Appellant by :	Sh. Sachit Jolly, Sr. Adv, & Sh. Abhiyuday Bajpai, Adv.
Respondent by :	Dr. Vedanshu Tripathi, CIT, DR

Date of Hearing	28.05.2025
Date of Pronouncement	29.05.2025

O R D E R

PER VIJAY PAL RAO, VICE PRESIDENT:

This appeal by the assessee is directed against the Assessment Order dated. 27.01.2025 passed under Section 143 r.w.s 144C(13) of the Income Tax Act, 1961 in pursuance to the directions of the DRP dated 04.12.2024 passed under Section 144C(5) of the Act for the Assessment Year 2022-23. The assessee has raised following grounds of appeal:

"1. That, the Assessing Officer ('AO') erred on facts and in law in computing the income of the Appellant for the relevant Assessment Year ('AY') 2022-23 at Rs. 89,28,61,219/-as against the 'Nil' income returned by the Appellant.

2. That, the Final Assessment Order ('FAO') dated 27.01.2025 is barred by limitation in terms of Section 153 of the Act and hence, void ab initio.

3. That, on the facts and circumstances of the case, the Assessing Officer erred in failing to appreciate that this Hon'ble Tribunal, vide Order dated 21.08.2024 in the Appellant's own case for Assessment Years 2020-21 and 2021-22 (bearing ITA No. 2416/D/2023 and 3646/D/2023 respectively), has categorically held that the amount received by the Appellant from Indian customers does not qualify as Fees for Included Services under Article 12(4) of the India-US Double Taxation Avoidance Agreement ('India-US tax treaty').

4. That, on the facts and circumstances of the case, the AO and DRP erred in holding that consideration of Rs. 89,28,61,219/- received by the Appellant from enterprise customers constitutes fee for technical services under the Act and the India-US tax treaty.

5. That on the facts and circumstances of the AO and DRP appreciating that the Appellant provided standard facility without human intervention to customers in the form educational consideration thereof could not be treated as technical services under the Act or fee for included services under the India-US tax treaty.

6. That on the facts and circumstances of the case the AO and DRP erred in not appreciating that User Services merely criterion with respect to characterisation of receipts from Indian customers as fee for technical services under the Act or fee or included services under the India-US tax treaty.

7. That on the facts and circumstances of the case the AO and DRP erred in not appreciating that User Services were provided by the Appellant free of cost and, therefore, no part of the consideration could be attributed to the said User Services.

8. That, without prejudice to the above, on the facts and circumstances of the case, the AO and DRP erred in not appreciating that consideration received by the Appellant from Indian enterprises customers cannot be treated as fee for included services as per the provisions of Article 12(5)(c) of the India-US tax treaty.

9. That, without prejudice to the above, on the facts and circumstances of the case, the AO and DRP has erred in not appreciating the fact that receipts of Rs.89,28,61,219/- includes receipts from two non-resident customers and accordingly, erred in considering the Appellants receipts

from Indian enterprise customer during the subject year as Rs.89,28,61,219/- as against Rs.86,09,65,031/-.

10. That on facts and circumstances of the case AO erred in levying interest under Section 234B of the Act.

11. That, without prejudice to the above, on the facts and circumstances of the case, the AO erred in computing the total interest payable by the Appellant at Rs.21,38,86,563/- instead of Rs.99,91,002/-.

That on facts and circumstances of the case AO erred in initiating penalty under Section 270A of the Act."

2. The solitary issue arises is whether the DRP as well as AO is justified in treating the gross receipts in question as fee for technical services/fee for included services as per Article 12(4) of Indo-US DTAA.

3. The assessee company is incorporated in US and engaged in the business of facilitating education through online medium as well as host multimedia courses for the end users in the field of management, data analysis, philosophy, humanities etc. The assessee filed its return of income for the year under consideration under Section 139(1) on 31.10.2022 declaring nil income. The case was selected for scrutiny on the basis of CASS. During the scrutiny assessment the AO noted that the assessee has earned gross receipt of Rs.156,00,36,258/- from India comprising of the receipts from individual customers as well as enterprise customers. The AO issued a show cause notice to the assessee that in view of the factual matrix remains same as for the Assessment Year 2020-21 and 2021-22 and therefore, as to why the entire receipts from India should not be considered information consisting industrial, commercial or scientific experience and consequently a royalty both under the act as well as under India-USA DTAA. Alternatively, the AO also asked the assessee to show cause as to why the receipts should not

be considered as fee for technical services under the Act as well as DTAA. The assessee filed its reply and explained that the services provided by the assessee is only online learning platform that offers anyone anywhere access to online courses from universities and companies, therefore, the payment received by the assessee against providing the online courses in various disciplined does not fall in the ambit of royalty or fee for included services as per India-USA DTAA. The AO did not accept this contention of the assessee and opined that for the Assessment Year 2020-21 & 2021-22 an identical issue has been decided by considering these receipts as fee for technical services/fee for included services and consequently passed a draft assessment order dated 21.03.2024 whereby the AO proposed to assess the entire receipt from India to tax.

4. The assessee filed the objection against the draft assessment order before the DRP but could not succeed.

5. Before the Tribunal the Ld. Senior Counsel Mr. Sachit Jolly appearing for the assessee has submitted that the AO while passing the draft assessment order has followed his earlier order for the Assessment Year 2020-21. Further while deciding the objections filed by the assessee the DRP also followed its earlier directions for the Assessment Year 2020-21 and 2021-22. He has further pointed out that this Tribunal has decided this issue in favour of the assessee by holding that the gross receipts of the assessee in question are not taxable in India as these are neither royalty nor FTS as per the Indo-US DTAA. The Ld. Senior Counsel has further pointed out that the department challenged the order of this Tribunal dated 21.08.2024 before the Hon'ble High Court and the Hon'ble Delhi High Court vide judgment dated 19.05.2025 has

upheld the order of this Tribunal and dismissed the appeal of the Department. He has filed a copy of the judgment of Hon'ble Delhi High Court dated 19.05.2025 in ITA No. 157 of 2025. Thus, the Ld. Senior Counsel has submitted that this issue is now covered by the decision of the Tribunal in assessee's own case as well as the judgment of hon'ble jurisdictional High Court whereby the appeals of the Revenue has been dismissed.

6. On the other hand, the Ld. DR has relied upon the directions of the DRP and consequential order passed by the AO.

7. We have considered the rival submission as well as relevant material on record. The AO while passing the draft assessment order dated 21.03.2024 has issued show cause notice to the assessee which is reproduced in para 4 of the draft assessment order as under:

> "4. In relation to the receipts from India, a show cause notice dated 20.02.2024 was issued and served to the assessee. Relevant portion of the same is reproduced as under: -
>
> > "In relation to the captioned assessment proceedings, it is observed that the factual matrix in your case remains the same with respect to the AY 20-21 and AY21-22. Consequently, you are requested to show cause as to why the entire receipts from India should not be considered as consideration for information concerning industrial, commercial or scientific experience, and therefore considered as royalty, both under the Act as well as the DTAA.
> >
> > Further, you are required to show cause as to why, on a without prejudice basis, the receipts should not be considered as fee for technical services under the Act as well as the DTAA."

8. In response to this show cause notice the assessee filed reply dated 24.02.2024 but the AO did not accept the reply of the assessee and opined in para 7 to 14 of the draft assessment order as under:

“7. It is pertinent to mention that in the case of the assesse, a Final Assessment Orders have been passed on 28.06.2023 and 31.10.2023 for the A.Y. 2020-21 and 2021-22 respectively holding the gross receipts of the assessee in the nature of FTS/FIS. Further, since the factual matrix is identical in the instant case too, it is thus important to bring out the findings of the AO for assessee's case in the AY 20-21.

In view of the above, the relevant extract of the assessment order of AY 20- 21 is being reproduced as below:-

> "... 8.2 The assessee has further contested that for services that the assessee is providing would not constitute FTS because: -

(i) It is a standardized service without any human intervention.
(ii) Such services do not make available any skill, knowledge, know- how etc.

(iii) Such services are covered in the exclusion under Article 12(5)(c) of India-US treaty under "Consideration for teaching in or by educational institutions'!

(iv) Such services to individual customers are excluded from the scope of F/S as per Article 12(5)(d) of India-US treaty.

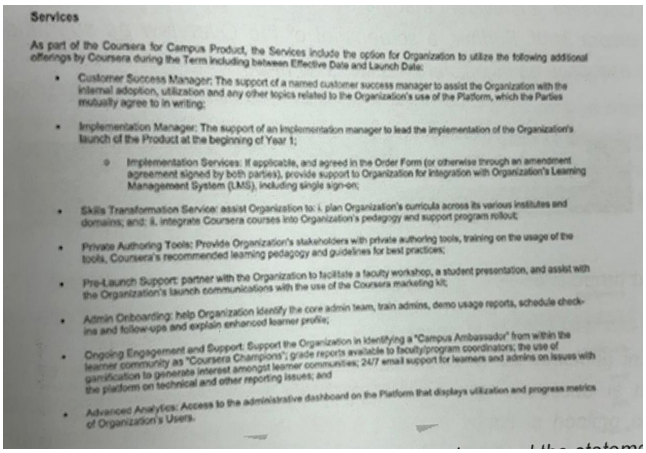
8.3 From the above, it is clear that the assessee has stated that it is a mere aggregator of educational courses and only provides content services to its customers in India. However, on perusal of the sample contracts with the customers in India, as provided by the assessee, it is evident that Coursera is not merely providing content services to the customers. On perusal of the Terms and Conditions as annexed to the Order Form signed by Gandhi Institute of Technology and Management, as provided by the assessee, it is evident that Coursera is providing two set of services to the customers: Content Services and User Services.
The extract of the Terms and Conditions are produced below:

“1. Obligations

a. As of the Launch Date (as defined herein), Coursera grants to Organization and its users ("Users") a non-exclusive, non-transferable, revocable right to access and use the User Services and Content Services (collectively, "Services") subject to the terms and conditions set forth in this Order Form. It is intended that Users are registered students of Organization. "User Services" means (i) customized landing page featuring the Organization logo and selected courses, (ii) User engagement reports, iIi) payment solution(s) that allow Users to seamlessly access premium course experiences and skip checkout, and (iv) enterprise-level User support. "Content Services" means access to

Coursera's Course and/or Specialization certificate service, including access to Course assessments and grades, for certain massive online open content offerings to be mutually agreed upon in writing by Coursera and Organization."

8.4 Similar set of "User Services" and "Content Services" have been mentioned in the agreements entered into with University of Petroleum and Energy Studies, and Manipal Global Education Services Pvt. Ltd., as provided by the assessee. Further, the Annex 1 of the agreement with Gandhi Institute of Technology and Management, also provides the following set of services to be provided by Coursera.



Services

As part of the Coursera for Campus Product, the Services include the option for Organization to utilize the following additional offerings by Coursera during the Term including between Effective Date and Launch Date:

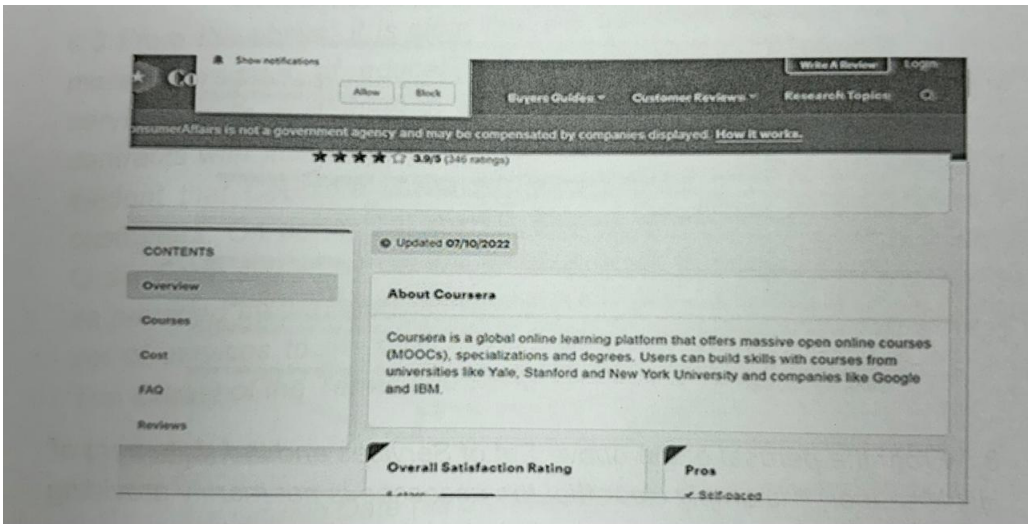
- Customer Success Manager: The support of a named customer success manager to assist the Organization with the internal adoption, utilization and any other topics related to the Organization's use of the Platform, which the Parties mutually agree to in writing;
- Implementation Manager: The support of an implementation manager to lead the implementation of the Organization's launch of the Product at the beginning of Year 1;
    - Implementation Services: If applicable, and agreed in the Order Form (or otherwise through an amendment agreement signed by both parties), provide support to Organization for integration with Organization's Learning Management System (LMS), including single sign-on;
- Skills Transformation Service: assist Organization to: i. plan Organization's curricula across its various institutes and domains; and: ii. integrate Coursera courses into Organization's pedagogy and support program rollout;
- Private Authoring Tools: Provide Organization's stakeholders with private authoring tools, training on the usage of the tools, Coursera's recommended learning pedagogy and guidelines for best practices;
- Pre-Launch Support: partner with the Organization to facilitate a faculty workshop, a student presentation, and assist with the Organization's launch communications with the use of the Coursera marketing kit;
- Admin Onboarding: help Organization identify the core admin team, train admins, demo usage reports, schedule check-ins and follow-ups and explain enhanced learner profile;
- Ongoing Engagement and Support: Support the Organization in identifying a "Campus Ambassador" from within the learner community as "Coursera Champions"; grade reports available to faculty/program coordinators; the use of gamification to generate interest amongst learner communities; 24/7 email support for learners and admins on issues with the platform on technical and other reporting issues; and
- Advanced Analytics: Access to the administrative dashboard on the Platform that displays utilization and progress metrics of Organization's Users.

8.5 From the perusal of the above Set of Services and the statement of HR Manager, it is amply clear that the assessee is not merely providing content services to the customers in India but is also providing a whole range of "User Services" which are user specific, which involve a high degree of human intervention. It is also important to note that there is no separate consideration for such user services to Coursera. It is thus clear that Coursera provides customized services to its clients.

8.6 In view of the observations made above, the contention of the assessee that the services provided by it are automated and do not involve any human intervention, is hereby rejected. It is amply clear that the services provided by the assessee (Content services and User services) are technical in nature and there is human intervention involved in the rendering of these services. In view of the same, the consideration received for such services is held to be FTS / F/S both under the Act, as well as the India-USA DTAA.

8.7 Even though the course content may be prepared by educational institutions and not Coursera, the fact that the content services and user services are being provided to Indian customers by Coursera and the completion certificate bears the logo of the educational institution as well as Coursera, it is evident that the training services are being provided by

Coursera itself. Further, a screenshot of the Overview as submitted by the assessee on its official Website is as under:



From perusal of the Overview as submitted by the assessee on its official website it is clear that the assessee is making available Specialization, Technical Skill and knowhow to its customers.

8.8 Further, it is imperative to mention that training and other services as being provided by Coursera satisfy the 'make available' test for constituting such receipts as F/S under the India- USA DTAA. The Memorandum of Understanding to the India- USA DTAA characterizes payments for technical training as F/S.

8.9 In relation to the contention of the assessee, that Coursera merely acts as an aggregator of educational institutions and is providing teaching services by hosting educational courses developed by various universities / institutions and thus falls within the exclusion provided for in para 5 of Article 12 of the India-USA DTAA, the relevant provisions of Article 12(5) are produced below:

> "5. Notwithstanding paragraph 4, "fees for included services" does not include amounts paid:
>
> (c) for teaching in or by educational institutions;"

8.10 The assessee has also contended that it merely acts as an aggregator of educational institutions making access to various courses easier. Accordingly, it has been submitted that Coursera is providing teaching services by hosting educational courses developed by various Universities/institutions and thus falls within the exclusion provided for in para 5 of Article 12 of the India-US tax treaty.

8.11 The above contention of the assessee has been considered but not found to be tenable for the following reasons:

a. The exclusion provided in Article 12(5) is only for teaching in or by educational institutions. In the instant case, the assessee is not an educational institution but a service provider which is hosting content services and is providing user services in relation to courses developed by other educational institutions. The completion certificate issued to the learners bears the logo of both, the educational institution and the assessee. Since the assessee is not an educational institution itself, it does not fall within the ambit of the exclusionary provisions of Article 12(5) of the India-USA DTAA.

Further, the contention of the assessee falls outside the purview of FIS under Article 12(5) of India-US tax treaty as it constitutes consideration for teaching in or by educational institutions' is not acceptable. The assessee has submitted that Coursera is a US based company and is engaged in the business of facilitating education through online medium i.e. through website, mobile apps and Catalog API.

From the submissions of the assessee, it is clear that the Coursera is not an Educational Institution rather an aggregation service provider which brings educational institutions & learners on one platform by using special cutting-edge technology and services.

The assessee has also stated that receipts from students through the educational institutions constitute 'consideration for services for the personal use of the individual or individuals making the payments' which is excluded from the scope of FIS under India- US tax treaty [Article 12(5)(c)].

The above submission of the assessee is also not acceptable. From perusal of the details submitted by the assessee it is seen that Coursera is offering services to Enterprise Customers which includes Corporates and Colleges/Educational Institutions who act as facilitators for their students and commercially use/ exploit the services of Coursera for their employees. Thus, the assessee is not offering services to individuals only and also not exclusively for the personal use of individuals and thus the assessee does not fall outside the purview of FIS under Article 12(5) of India-US tax treaty. In fact, all the payments to which the present application relates to are to be made by non-individual customers who are availing the services for commercial use.

b. The contention of the assessee that it is a mere aggregator of educational courses has already been found to be incorrect since it is not only providing content services for content prepared by educational institutions, but it is also providing customized user services for which it is not receiving any separate consideration.

c. Without prejudice to the above, it is stated that the exclusionary provisions of Article 12(5) of the India-USA DTAA are applicable for educational institutions situated in the two contracting states, i.e. India and USA. The assessee has stated in reply to query number 3 in its reply dated 29.06.2022 that it collaborates with educational institutions / corporate (also known as 'content partners') globally to provide online courses to customers across the globe. Thus the educational institutions

whose courses are available on the Coursera platform to customers in India are located all over the globe. Therefore, if the assessee is treated as a mere aggregator of courses and is treated at par with an educational institution for the purposes of Article 12(5) of the India-USA DTAA, it would be akin to extending the benefits of Article 12(5) of the India-USA DTAA to all the educational institutions across the globe, even if they are not resident of USA, merely because the aggregator on whose platform their courses are being provided happens to be a US entity.

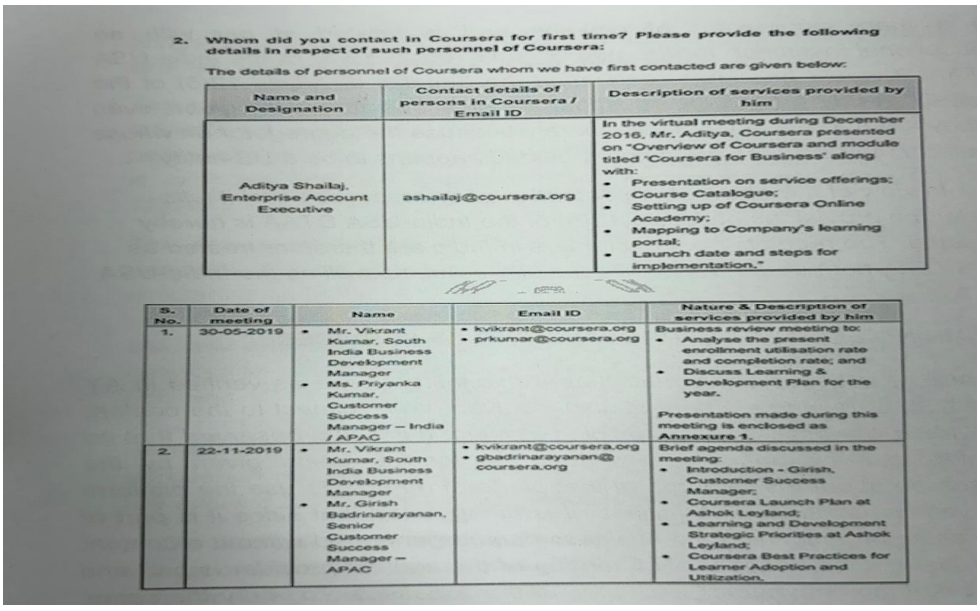
8.12. In view of the above, the contention of the assessee that it falls under the provisions of Article 12(5) of the India-USA DTAA is hereby rejected. The receipts from customers in India are therefore treated as FTS / FIS, both under the provisions of the Act, as well as the India-USA DTAA.

TRAINING ELEMENT IN PROVISIONING OF SERVICES

9. Also, it is being highlighted that in this instant case as verified in AY 2020-21, a training element is also involved. With respect to the content providers, the assessee is providing training. It is being observed that no content can be onboarded without the training being given by the assessee about the features of that platform on how to use the platform for various functions and utilities. It is being noted that since it is part of the entire organic thing, no business can be generated without a content provider getting onboard. Onboarding of the content provider is part and parcel of the commercial existence of the assessee. To verify the same, third party enquiries were undertaken.

THIRD PARTY ENQUIRIES

9.1 Enquiries done with the Customers/ clients: It was seen from the third part enquiries undertaken by issuing notices u/s 133(6). One such client of the assessee- M/s Ashok Leyland furnished following responses.



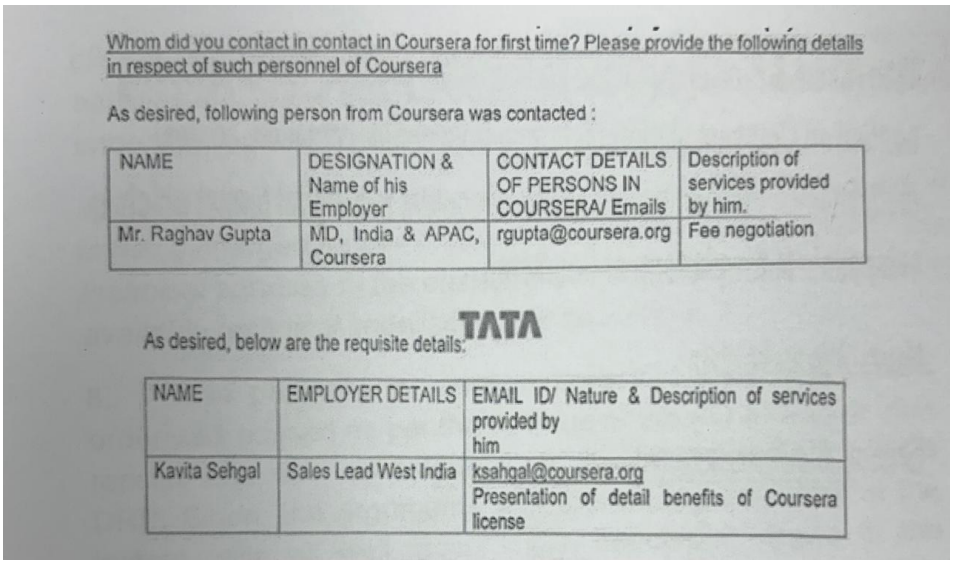
2. Whom did you contact in Coursera for first time? Please provide the following details in respect of such personnel of Coursera:

The details of personnel of Coursera whom we have first contacted are given below:

Name and Designation	Contact details of persons in Coursera / Email ID	Description of services provided by him
Aditya Shailaj, Enterprise Account Executive	ashailaj@coursera.org	In the virtual meeting during December 2016, Mr. Aditya, Coursera presented on "Overview of Coursera and module titled 'Coursera for Business' along with: - Presentation on service offerings; - Course Catalogue; - Setting up of Coursera Online Academy; - Mapping to Company's learning portal; - Launch date and steps for implementation."

S. No.	Date of meeting	Name	Email ID	Nature & Description of services provided by him
1.	30-05-2019	- Mr. Vikrant Kumar, South India Business Development Manager - Ms. Priyanka Kumar, Customer Success Manager – India / APAC	- kvikrant@coursera.org - prkumar@coursera.org	Business review meeting to: - Analyse the present enrollment utilisation rate and completion rate; and - Discuss Learning & Development Plan for the year. Presentation made during this meeting is enclosed as Annexure 1.
2.	22-11-2019	- Mr. Vikrant Kumar, South India Business Development Manager - Mr. Girish Badrinarayanan, Senior Customer Success Manager – APAC	- kvikrant@coursera.org - gbadrinarayanan@coursera.org	Brief agenda discussed in the meeting: - Introduction - Girish, Customer Success Manager; - Coursera Launch Plan at Ashok Leyland; - Learning and Development Strategic Priorities at Ashok Leyland; - Coursera Best Practices for Learner Adoption and Utilization.

In case of M/s Tata Service Limited, the reply of 133(6) was seen.



Whom did you contact in contact in Coursera for first time? Please provide the following details in respect of such personnel of Coursera

As desired, following person from Coursera was contacted :

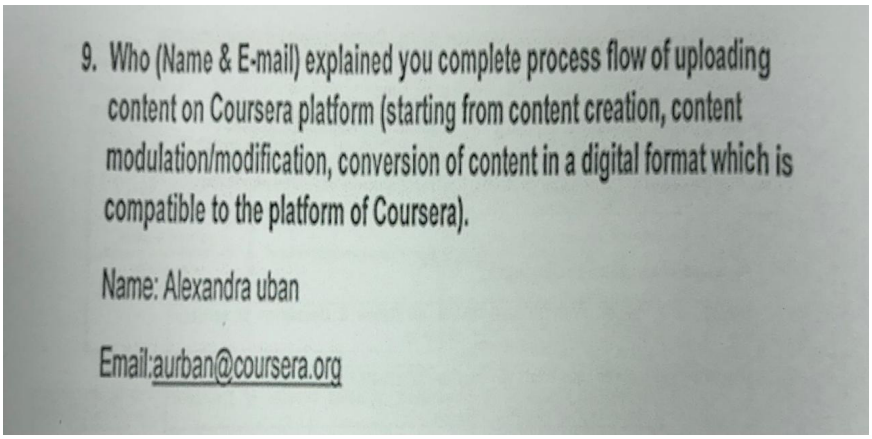
NAME	DESIGNATION & Name of his Employer	CONTACT DETAILS OF PERSONS IN COURSERA/ Emails	Description of services provided by him.
Mr. Raghav Gupta	MD, India & APAC, Coursera	rgupta@coursera.org	Fee negotiation

As desired, below are the requisite details: TATA

NAME	EMPLOYER DETAILS	EMAIL ID/ Nature & Description of services provided by him
Kavita Sehgal	Sales Lead West India	ksahgal@coursera.org Presentation of detail benefits of Coursera license

9.2 All of these employees/ personnel as mentioned in the above replies are employees of M/s Coursera India Pvt. Ltd. (Indian AE of the assessee). It is seen that the assessee's AE on behalf of the assessee, . services like mapping to company's learning portal, steps for implementation, learner's adoption and utilization are being given to the customers of the assessee. Further, the personnel of Indian AE is also negotiating fee on behalf of the assessee. Also, it is highlighted the Indian AE of the assessee is getting paid hefty amount to the tune of Rs. 20,25, 13,880/- for the marketing and support services, which in turn supports the evidence that the Indian AE is involved in multifarious activities in respect to the services being offered to the customer/ clients.

Enquiries done with Content Provider:- Also, the 133(6) enquiries were done and one of the content provider- ISB, Hyderabad was asked the following: -



9. Who (Name & E-mail) explained you complete process flow of uploading content on Coursera platform (starting from content creation, content modulation/modification, conversion of content in a digital format which is compatible to the platform of Coursera).

Name: Alexandra uban

Email:aurban@coursera.org

9.3 The reply of ISB Hyderabad shows that the personnel of the assessee do guide and help in onboarding of the content provider. From her Linkedin profile, it was seen that Ms. Alexandra Urban is Principal Learning Design consultant in Coursera. Further emails exchanges/ digital communication evidence were asked from the assessee vide notice u/s 142(1), but assessee failed to provide email exchanges with the content providers.

But, the above observations highlight that the training component is definitely involved in respect to the enterprise customers and content provider. Also, the Indian AE of the assessee i.e. Coursera India Pvt. Ltd., is engaged in marketing and support services in relation to the service delivery to customers of the assessee. Also, the User services are being provided to all the customers of the assessee as highlighted on the above paras.

9.4 From the perusal of the above, it is amply clear that the assessee is not merely providing content services to the customers in India but is also providing a whole range of "User Services" which involve a high degree of human intervention. It is also important to note that there is no separate consideration for such user services to Coursera. Also, there is an element of training involved with respect to both customers and the clients as observed from the perusal of the 133(6) replies. This further satisfies the 'make available' test for constituting such receipts as FIS under the India-USA DTAA.
9.5 In light of above observations, the gross receipts of the assessee is being charged as per Article 12(4) of India- USA DTAA for rendering technical services to the customers through their platform and making available technical knowledge and know-how..."

8. It is pertinent to mention here that final assessment order was passed as per the findings of the AO as above after receipt and due consideration of the directions of Hon'ble DRP. Since, the arguments and fact finding hold true in the instant case as well, accordingly, conclusion drawn in the assessment order for AY 20-21 and subsequently followed in AY21-22 is being followed for assessment of AY22-23 too.

9. Further the assessee has asked for relief in terms of the receipts from the individual customers. The assessee has relied of the Section 5(d) of the India-USA DTAA which suggests that

> "5. Notwithstanding paragraph 4, "fees for included services" does not include amounts paid -(d) for services for the personal use of the individual or individuals making the payments".

10. Further the assessee has also contended that in the order for the AY 21-22, the assessee was allowed part relief in terms of non-taxation of receipts from the Indian Individual customers. In light of the above, the payments from Individual Indian customers amounting to Rs. 66,71,75,776/- are not being included in the FTS/FIS that needs to be taxed as per the provisions of India-USA DTAA.

11. In light of the above discussion, the entire receipts from Indian Enterprise Customers i.e. educational institutions
corporate customers amounting to Rs. 89,28,61,219/- which has not been offered to tax in India should be offered to taxation. Accordingly, the gross receipts of the assessee amounting to Rs. 89,28,61,219/- which has been claimed as exempt is being added to the income of the assessee.
(Addition as discussed: Rs. 89,28,61,219/-)

12. Further, this is a fit case for under-reporting of income on part of the assessee. Hence, penalty is being proposed to be initiated u/s 270A of the IT Act, 1961.

13. Hence, total income of the assessee is computed as under:-

Income as per ITR	NIL
Add: Addition as per Para 11 above	Rs.89,28,61,219/-
Assessed Income	Rs.89,28,61,219/-

14. Accordingly, proposed to be assessed at total income of Rs. 89,28,61,219/- and taxed accordingly as per Income Tax Act, 1961, Charge interest as per Act. Cess and surcharge to be charged as applicable. Credit for prepaid taxes is to be allowed after verification on account of income offered for taxation. Detailed computation of tax payable and interest chargeable as per provision of law will be made in ITNS-150 as part of final order. Demand Notice u/s 156 of the Act & penalty notice u/s 270A of the Act will be issued with the final order."

9. The assessee filed objections against the draft assessment order before the DRP. The DRP while passing the directions under Section 144C(5)of the Act has taken note of the fact about the identical issue involved for the Assessment Year 2020-21 and 2021-22 and decision of this Tribunal deciding this issue in favour of the assessee but confirmed the finding of the AO in draft assessment order in paragraph 6 & 7 as under:

"6. Directions of DRP:

(i) Ground of objection number 1 is general in nature hence not required any specific adjudication.

(ii) Ground of objection number 2, 2.1 & 2.2 are inter-related and the basic issue involved is addition of receipts from educational institutions, and

corporate customers as Fee for Technical Services/Fee for included Services under Article 12 of the India-US DTAA.

(iii) The Panel has considered the rival averments as mentioned above. It is observed that it is a legacy issue as this case came before the Panel in AY 2020-21 and AY 2021-22 also and most of the issues involved in the objections are already considered and adjudicated by it. The factual matrix of the case continuous to be the same for AY 2022-23. In view of the historical background of the case, the basis of the Panel's order for AY 2022-23 shall be, the directions issued by the Panel for AY 2021-22 mutatis mutandis.

(iv) The operative portion of the DRP directions for the AY 2021-22 is reproduced as under:

> "(ii) The Panel takes note of the fact that Assessee company is an aggregator. It acts as a platform for content providers and brings numerous courses in various discipline at one platform for ease of availability to the learners who may be individuals, education institutes or corporates. It provides services to the users when users are pursuing the course. The Panel takes a note of the AO's remarks made at para no. 9.3 to 9.4 of the draft order wherein it is mentioned that assessee is not only providing content services to the customers in India but also providing whole range of user services which involve a high degree of human intervention. In this regard the Panel adds its observation from the 'order form' of Coursera, submitted by the assessee company, wherein it has billed M/s Gandhi Institute of Technology and Management. At the bottom of the page is very small font following is written ' For internal accounting purpose, Coursera will allocate 70% of these fees for Content Service and 30% for User Services.' This reveals that the claim of assessee company that it is not charging user fee is not a correct claim. The words are very carefully drafted but their meaning is the same that whatever is being charged includes 30% as fee for user services that it provides to its customers.
>
> (iii) The Panel agrees with the observation in the draft order that there is an element of training involved with respect to the customers which has been further verified on the basis of the information received u/s 133(6) of the Act. When a corporate avails services of the assessee company, it does so to impart training and upgrade the skills of its employees. Corporates are not NGOs they are profit making organisation that spend money to enhance skills of their employees for enduring benefits it will bring to their organisation post training of the employee. And for the same reason that corporates are not NGOs, they have specific criteria for making these training facilities available to their employees. The employees cannot avail these courses on the basis of their likes and dislikes, instead they can avail it on the basis of its utility to their organisation. This learning has commerce at the centre of it and not personal growth of an individual for personal gains. When an educational institution which is teaching in avails services of the assessee company, it does so as a business just like its business of making other services

like food, books, clothing etc. In its institute it is already teaching its students, as per their curriculum, what they need to learn. What comes by way of Coursera to the students is the training they receive that aids their course content in the educational institute. Students when avail such courses it is as per the need that the educational institute identifies, and often educational institutes mark its students on the basis of their completion/ performance at such courses. This is not the same as a person sitting at home, taking subscription of the course from Coursera, at individual level, for personal growth. It is about business of seeking courses for students to give them the training they require for performing better in the educational institute. The purpose here is not the same as for a corporate client but it is business none the less for a commercial gain coming from extra training/ education in the chosen discipline.

(iv) Relevant part of Article 12 of India US DTAA is reproduced below for ease of reference:-

> "4. For purposes of this Article, "fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services including through the provision of services of technical or other personnel) if such services :
> a).....; or
> b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.
>
> 5. Notwithstanding paragraph 4, "fees for included services" does not include amounts paid:
> c) for teaching in or by educational institutions

(v) From a plain reading of the aforesaid provision it can be seen that for assessee company to be taxable as FTS/ FIS following criteria will have to be fulfilled-
a) The services should be technical/ consultancy in nature.
b) Such services can include providing technical or other personnel.
c)The services should make available any one or more of these 7 attributes available - technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.
d) The services should not be by an educational institute like Narsee Monjee Institute Of Management Studies or they should not be for teaching in such an institute.
e)As per various judicial pronouncements the make available clause will apply only when services have an enduring benefit to the customer which remains with him even after service provider is no longer available.
(f)Also as per various judicial pronouncements the services should involve a human driven element.

(iv) When assessee company is examined on the basis of above provisions it is found that:

a) Coursera is a service provider that is in business of providing material for training of employees/ students of corporates/ educational institutes for profit as : a business concern. The nature of material provided for training is as technical as it can get in field of education. It cannot be compared with the technical aspect in other fields since it would amount to comparing "apples with oranges". The content provided is curated and has specialized studying material including video sessions. They are highly specialized courses for learning at ones own pace. Despite the content / course being the same, the nature of these courses acquires different dimension when it is being taken up by an individual for personal reasons versus when it is taken up by a corporate / educational institute for commercial reasons.

b) Coursera charges user fee @30% for the user services it provides for the course content which requires use of work force working remotely online for ease of

c) The services that coursera provides (out of the 7 mentioned attributes above in 4(b) of Article 12 of India US DTAA) imparts skill to the employee of corporate houses and student of the educational institute. It is not as if a Microsoft Subscription on excel has been given for the users to work upon. Nature of all businesses differ hence 'one size fits all' cannot be used for all businesses. What is 'make available' differ with nature of business. In case of assessee company if we interpret make available with the argument that no technology or right transfer is being done, it will make the argument haywire since the minute this argument is applied the nature of services will become royalty and not remain FTS. Hence arguments has to be of a nature where it more than a simple service but less than royalty. The services provided were if like an 'e-book' it would not make available' anything but the minute specialized content with specialized methods of imparting training are applied it 'make available' skill/ experience to the user in a predigested, better retention capacity and more eye catching manner that aids learning. If assessee company presents its argument like an 'e-book' seller would present its arguments, it will be a very erroneous argument. In case of assessee 'make available' has to be seen differently as described above.

d) Assessee company is a service provider of educational material, it is neither an educator in a teaching institute nor a teaching institute itself. It has collaborated with universities across the world to bring courses under one platform for ease of choice in taking up courses. It is doing business of facilitating for which it charges user fee, it is not an educator itself. In fact the universities that it caters to as content partners are the educators.

e) The very aim of learning is towards enduring benefits that arise from it for acquiring job in future or doing better at the current job. Hence, this argument squarely applies in the case of the assessee company.

f) The videos involved in teaching and involvement of guidance to the learners through employees for which user charges are being taken by the assessee company prove the human element. In an era of fast digitization and minimal human intervention, the way we define human intervention, has to be recalibrated, for such services. For a 'mortar and brick' human intervention would differ from an 'on line' coaching institute. Here 'video content' and other services provided to aid learning will be the test,

(vii) In view of the above there is no infirmity found with the order of the assessing Officer who is directed to pass a well reason speaking final assessment order. The grounds of objection in this regard, are disposed off accordingly."

(v) As the issue is identical in the subject AY 2022-23 and the factual matrix also continues to be same for the AY under consideration, the Panel has no reason to deviate from the Earlier Directions of DRP issued for AYs 2020-21 & AY 2021-22. Further, the assessee in its submissions has stated that Hon'ble ITAT has recently passed favorable order in the case of the assessee in the previous years. Without going into much details and particulars of the case, the DRP is of the view that it shall not deviate from its earlier stand made for the previous years. However, without deviating from the earlier direction, the Panel for the AY under consideration is of the view that the need of the next line of action is that the office of the AO must verify the assessee's claim in terms of acceptance or otherwise of the Hon'ble Tribunal's impugned order and to complete the assessment keeping in view the department's stand on acceptance of the Hon'ble Tribunal's impugned order or preferring the litigation against Hon'ble Tribunal's impugned order. As a result the draft order passed by the AO is upheld, the AO is directed to pass a well reasoned speaking final order. The assessee has stated in ground of objection 2 that the AO has erroneously taken the receipts from Indian enterprise customers as INR 892,861,219 in place of INR 860,965,031/-, in this regard, the AO is directed to verify the above contention of the assessee while passing the final assessment order. Grounds of objections number 2, 2.1 & 2.2 in this regard, are disposed off accordingly.

(vi) Ground of objection number 3 is related to initiation of penalty proceedings u/s 270A.

This ground is consequential in nature and hence, rejected being premature.

7. Directions of DRP under section 144C of the Income Tax Act

(i) TPO/AO are directed to complete the assessment as per the above directions of the Dispute Resolution Panel.

(ii) In view of Section 144C(13), quoted below, TPO/AO are directed not to make any further inquiries with the assessee:-

> "(13)Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received."
>
> (iii) The TPO/AO shall place a copy of these directions as annexure to the final order, to be read as a part of the order.
>
> (iv) While passing the final order, TPO/AO shall incorporate the reasons given by the Dispute Resolution Panel in respect of various objections, at appropriate places in the final order."

10. Thus, the DRP has maintained its view as taken for the Assessment Years 2020-21 & 2021-22 and consequently rejected the objection of the assessee despite the decision of this Tribunal reversing the finding of the DRP and consequential assessment order for AY: 2020-21 & 2021-22. The reasons assigned by the DRP as well as the AO while passing the final assessment order are that the revenue has not accepted the decision of this Tribunal for Assessment Year 2020-21 & 2021-22 and filed the appeals before the Hon'ble jurisdictional High Court. Now the appeal of the department has been dismissed by the Hon'ble jurisdictional High Court vide its judgment dated 19.05.2025 and upheld the composite order of this Tribunal dated 21.08.2024 in para 13 to 16 as under:

> "13. As could be seen from the highlighted portion of the observation of Assessing Officer, without properly implementing the directions of learned DRP, he has merely stated that the agreement with Gandhi Institute of Technology and Management has been discussed in the draft assessment order. By these observations what the Assessing Officer implies is, learned DRP has issued directions without proper application of mind. This, in our view, is highly objectionable and against the provision contained under section 144C(13) of the Act.
>
> 14. Be that as it may, Assessing Officer's findings/observations on the role of assessee are self-contradictory. While on one hand, the Assessing Officer has acknowledged the fact that the assessee is an aggregation service provider and

not a content creator, in the same breath, he says that assessee's contention that it is a mere aggregator of educational courses is not correct. The Assessing Officer has not brought on record any material to establish the fact that the assessee provides technical services through its online platform. Merely because the assessee has a customized landing page, it does not mean that the assessee provides technical services, that too, through human intervention.
The Assessing Officer, in our view, has not been able to prove such fact. Even, assuming for argument's sake, the services provided by the assessee is of technical nature, that by itself would not be enough to bring such receipts within the purview of Article 12(4) of India – USA DTAA, unless the make available condition is satisfied. Burden is entirely on the Revenue to prove that in course of rendition of services, the assessee has transferred technical knowledge, know-how, skill etc. to the service recipient, which enables him to utilize such technical knowledge, know-how, skill etc. independently without aid and assistance of the service provider.

15. In case of Elsevier Information Systems GmbH Vs. DCIT (supra), wherein identical nature of dispute was involved, the Coordinate Bench has held as under:

> "15. A customer/subscriber can access the data stored in the database by paying subscription. The Department held the subscription paid to Dun & Brad Street Espana, S.A., for accessing the data to be in the nature of royalty. The Authority for Advance Ruling after dealing with the issue ultimately concluded that the subscription received by Dun & Brad Street Espana, S.A., for allowing access to the database is not in the nature of royalty/fees for technical services. Following the aforesaid decision, the Tribunal, Ahmedabad Bench, in ITO v/s Cedilla Healthcare Ltd. [2017] 77 taxmann.com 309, while considering the nature of subscription paid to a U.S. based company viz. Chemical Abstract Services, which is in the same line of business and is stated to be the competitor of the assessee, held that the subscription paid for online access to the database system "scifinder" is not in the nature of royalty. The observations of the Tribunal, while deciding the issue in favour of the assessee, are as under:-
>
> > "17. We find that as the treaty provision unambiguously requires, it is only when the use is of the copyright that the taxability can be triggered in the source country. In the present case, the payment is for the use of copyrighted material rather than for the use of copyright. The distinction between the copyright and copyrighted article has been very well pointed out by the decisions of Hon'ble Delhi High Court in the case of DIT v. Nokia Networks OY [2013] 358 ITR 259/212 Taxman 68/25 taxmann.com 225. In this case all that the assessee gets right is to access the copyrighted material and there is no dispute about. As a matter of fact, the AO righty noted that 'royalty' has been defined as "payment of any kind received as a consideration for the use of, or right to use of, any copyright of literary, artistic or scientific work" and that the expression "literary work", under section 2(o) of the

> Copyright Act, includes 'literary database' but then he fell in error of reasoning inasmuch as the payment was not for use of copyright of literary database but only for access to the literary database under limited non exclusive and non transferable licence. Even during the course of hearing before us, learned Departmental Representative could not demonstrate as to how there was use of copyright. In our considered view, it was simply a case of copyrighted material and therefore the impugned payments cannot be treated as royalty payments. This view is also supported by Hon'ble Bombay High Court's judgment in the case of DIT (International Taxation) v. Dun & Bradstreet Information Services India (P.) Ltd.

16. The same view was again expressed by the Tribunal in DCIT v/s Welspun Corporation Ltd., [2017] 77 taxmann.com 165. If we examine the facts of the present appeal in juxtaposition to the facts of the decisions referred to herein before, it can be seen that the facts are almost identical and akin. In the referred cases the assessees were also maintaining databases of information collated from various journals and articles and allowed access to the users to use such material as required by them. Keeping in view the ratio laid down in the decisions (supra), the payment received by the assessee has to be held to have been received for use of copyrighted article rather than for use of or right to use of copyright.

17. Having held so, the next issue which arises for consideration is, whether the subscription fee can be treated as fees for technical services. As discussed earlier, it is evident that the assessee has collated data from various journals and articles and put them in a structured manner in the database to make it more user friendly and beneficial to the users/customers who want to access the database. The assessee has neither employed any technical/skilled person to provide any managerial or technical service nor there is any direct interaction between the customer/user of the database and the employees of the assessee. The customer/user is allowed access to the online database through various search engines provided through internet connection. There is no material on record to demonstrate that while providing access to the database there is any human intervention. As held by the Hon'ble Supreme Court in CIT v/s Bharati Cellular Ltd., [2010] 193 taxman 97 (SC) and DIT v/s A.P. Moller Maersk A.S., [2017] 392 ITR 186 (SC), for providing technical / managerial service human intervention is a sin qua non. Further, Article-12(4) of India-Germany Tax Treaty provides that payment for the service of managerial, technical or consultancy nature including the provisions of services by technical or other personnel can be termed as fees for technical services. None of the features of fees for technical services as provided under Article 12(4) of the India- Germany Tax Treaty can be found in the subscription fee received by the assessee. Further, the Department has not brought any material on record to demonstrate that the assessee has employed any skilled personnel having knowledge of chemical industry either to assist in collating

articles from journals / magazines which are publicly available or through them the assessee provides instructions to subscribers for accessing the online database. The assessee even does not alter or modify in any manner the articles collated and stored in the database. In the aforesaid view of the matter, the subscription fee received cannot be considered as a fee for technical services as well. By way of illustration we may further observe, online databases are provided by Taxman, CTR online, etc. which are accessible on subscription not only to professionals but also any person who may be having interest in the subject of law. When a subscriber accesses the online database maintained by Taxman/CTR online etc. he only gets access to a copyrighted article or judgment and not the copyright. Similar is the case with the assessee. Therefore, in the facts of the present case, the subscription fee received by the assessee cannot be treated as royalty under Artile-12(3) of India-Germany Tax Treaty."

16. Similar view was expressed by another Coordinate Bench in case of Relx Inc. Vs. ACIT (supra). In our view, the ratio laid down in these decisions squarely apply to the facts of the present appeal. In view of the aforesaid, we hold that the receipts do not qualify as FIS under Article 12(4) of India – USA tax treaty."

11. Accordingly, the issue involved in this appeal is now covered by the earlier decision of this Tribunal as well as the judgment of Hon'ble jurisdictional High Court for the Assessment Year 2020-21 & 2021-22. To maintain the rule of consistency we follow the earlier decision of this Tribunal as well as the binding president of the Hon'ble jurisdictional High Court in assessee's own case for the preceding assessment years and consequently the addition made by the AO is deleted.

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

Order pronounced in the open court on 29.05.2025

Sd/-	Sd/-
Naveen Chandra	Vijay Pal Rao
(ACCOUNTANT MEMBER)	(VICE PRESIDENT)

Dated 29.05.2025
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI