Tax alert: No separate CG approval required for lower FTS rate

8 July 2026

The Mumbai Bench of the Income-tax Appellate Tribunal (ITAT) has held that absence of a separate approval from the Central Government cannot be grounds to deny the concessional tax rate of 10% on Fees for Technical Services (FTS).

In a nutshell

In the absence of any requirement under the applicable FEMA provisions or RBI guidelines for obtaining prior approval, the taxpayer cannot be expected to obtain an approval which was not contemplated under the governing regulations. The expression "approved by the Central Government" occurring in section 115A(1)(b) had to be interpreted in a practical and reasonable manner so as to give effect to the legislative intent and cannot be construed in a manner which makes the provision impossible to comply with.

The mere absence of a separate approval letter from the Central Government cannot be grounds to deny the concessional rate of tax, particularly when the transaction was permitted under the automatic route prescribed by the RBI.

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Background:

- The taxpayer[1] is a company incorporated in the United States of America (USA) and a tax resident of USA. It is engaged in the business of providing gem trading services and other allied and technical services.
- During the year under consideration, the taxpayer in its return of income computed tax at the rate of 10% in terms of section 115A(b) of the Income-tax Act, 1961, (ITA) [corresponding to section 207(2) of the Income-tax Act, 2025] as the said provision was more beneficial to the taxpayer as compared to the tax rate of 15% prescribed under the India-USA tax Treaty.
- During the course of audit proceedings, the Assessing Officer (AO), observed that the applicable tax rate for Fees for Technical Services (FTS) under section 115A of the ITA was 26.265%, whereas the rate prescribed under the tax treaty was 15%. Accordingly, the AO computed tax on the FTS income at 15% under the India-USA tax treaty.
- Aggrieved, the taxpayer filed objections before the Dispute Resolution Panel (DRP) which held that:
  - Section 115A(b) of the ITA would be applicable only where the foreign company had entered into an agreement with an Indian concern and such agreement had been approved by the Central Government (CG), or where the agreement related to a matter covered under the industrial policy and was in accordance with such policy.
  - Since the taxpayer failed to establish fulfilment of the conditions prescribed under section 115A(1)(b), the benefit of the said provision could not be extended to it.
  - Accordingly, the DRP upheld the action of the AO in applying the tax rate of 15% as per the India-USA tax treaty.
- Aggrieved the taxpayer filed an appeal against the final order passed by the AO (pursuant to DRP directions) before the Mumbai Bench of the Income-tax Appellate Tribunal (ITAT), which held that:
  - Though, there were certain conditions set out in section 115A(1) of the ITA, however, it was to be considered whether such conditions were mandatorily required to be fulfilled, even, in a case where specific approval was neither required nor contemplated as per the extant rules/regulations/guidelines of RBI or CG. In case the Government has not laid down any guidelines or procedure for approval for the subject transactions, the taxpayer could not be expected perform an impossible task.

  The ITAT restored the issue to the file of the AO for fresh adjudication – the AO was directed to examine the applicability of the Master Directions issued by the Reserve Bank of India (RBI) and any other rules/regulations framed by the RBI/Central Government, and also to consider the judicial precedents relied upon by the taxpayer.

  The AO as well as the DRP once again rejected the claim of the taxpayer and held that the receipts were liable to be taxed at the rate of 15% in terms of the India-USA tax treaty. The taxpayer filed an appeal before the ITAT against the AOs final assessment order.

Relevant provisions of Section 115A of the ITA

115. Tax on dividends, royalty and technical service fees in the case of foreign companies

(1) Where the total income of—

....

*(b) **a non-resident (not being a company) or a foreign company, includes any income by way of** royalty or **fees for technical services** other than income referred to in sub-section (1) of section 44DA **received from** Government or **an Indian concern in pursuance of an agreement made by the foreign company***

[1] ITA No.-1290/Mum/2025 (Mumbai-Trib.)

***with** Government or **the Indian concern** after the 31st day of March, 1976, **and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy**, then, subject to the provisions of sub-sections (1A) and (2), the income-tax payable shall be the aggregate of,—*

Decision of the ITAT:

The ITAT acknowledged that the issue for consideration was whether the receipts earned taxpayer were liable to be taxed at 15% under India-USA tax treaty or at 10% under section 115A(1)(b) of the ITA.

In this regard, the ITAT noted as follows:

- The Revenue had disputed that the concessional tax rate was not applicable on the grounds that the agreement entered into by the taxpayer with the Indian concern was not approved by the CG and that the arrangement was merely an internal arrangement between group entities pursuant to the group policy.
- As per the guidelines prescribed under the Master Direction dated 1 January 2016 issued by the RBI, prior approval was required only in respect of remittances exceeding US$ 1 million per project towards consultancy services procured from outside India.

  In the present case, the total receipts earned by the taxpayer towards FTS was below the aforesaid prescribed threshold limit.
- In the absence of any requirement under the applicable Foreign Exchange Management Act, 1999 (FEMA) provisions or RBI guidelines for obtaining prior approval in respect of such remittance, the taxpayer could not be expected to obtain an approval which was not contemplated under the governing regulations. The expression **"approved by the Central Government"** occurring in section 115A(1)(b) had to be interpreted in a practical and reasonable manner so as to give effect to the legislative intent and cannot be construed in a manner which makes the provision impossible to comply with.
- Where the regulatory framework itself permits a transaction under the automatic route, the same evidenced approval of the transaction mechanism by the competent authority. Therefore, insisting upon a separate approval from the Central Government, where none was prescribed under the applicable regulations, would result in reading an additional condition into the provision.

  The remittances in present case were made pursuant to an agreement entered between the taxpayer and the Indian concern and were admittedly towards FTS.
- Hence, the taxpayer had substantially complied with the conditions prescribed under section 115A(1)(b) of the ITA. The mere absence of a separate approval letter from the CG could not be grounds to deny the concessional rate of tax, particularly when the transaction was permitted under the automatic route prescribed by the RBI.
- While Article 12 of the India–USA tax treaty provided for taxation of FTS at the rate of 15%, the domestic law, under section 115A(1)(b) of the ITA, provided for a lower rate of tax of 10%, subject to fulfilment of the prescribed conditions. Since the conditions contemplated under section 115A(1)(b) stand satisfied in the present case, the remittance was permitted under the applicable RBI framework and no separate approval was required.

Comments:

Certain provisions of the Income-tax Act, such as section 115A(1)(b), may require approval of the CG or require that the taxpayer is compliant with the relevant government policy / relevant law.

In such a case it is needed to examine the relevant law. Further, there may be amendments to the relevant law from time to time which may require that the ITA provisions be read in a liberal / forward looking / purposive manner (in case the ITA provisions are not amended in parallel).

In the case under consideration, while the ITA requires that the lower rate of tax is subject to CG approval / matter being in accordance with the industrial policy, the applicable FEMA and RBI framework permits transaction without prior approval. Hence, a question arises as to whether the taxpayer can be denied the lower tax rate benefit merely for absence of a separate approval that was not contemplated under the regulatory regime.

The ITAT in this ruling, has *inter-alia*, held the following:

- In the absence of any requirement under the applicable FEMA provisions or RBI guidelines for obtaining prior approval, the taxpayer cannot be expected to obtain an approval which was not contemplated under the governing regulations. The expression **"approved by the Central Government"** occurring in section 115A(1)(b) had to be interpreted in a practical and reasonable manner so as to give effect to the legislative intent and cannot be construed in a manner which makes the provision impossible to comply with.
- The mere absence of a separate approval letter from the CG cannot be grounds to deny the concessional rate of tax, particularly when the transaction was permitted under the automatic route prescribed by the RBI.

It may be pertinent to note that the said lower rate has been prescribed for payments in the nature of FTS as well as royalties. Further, the said rate has been increased to 20% by the Finance Act, 2023 with effect from 1 April 2024.

Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.