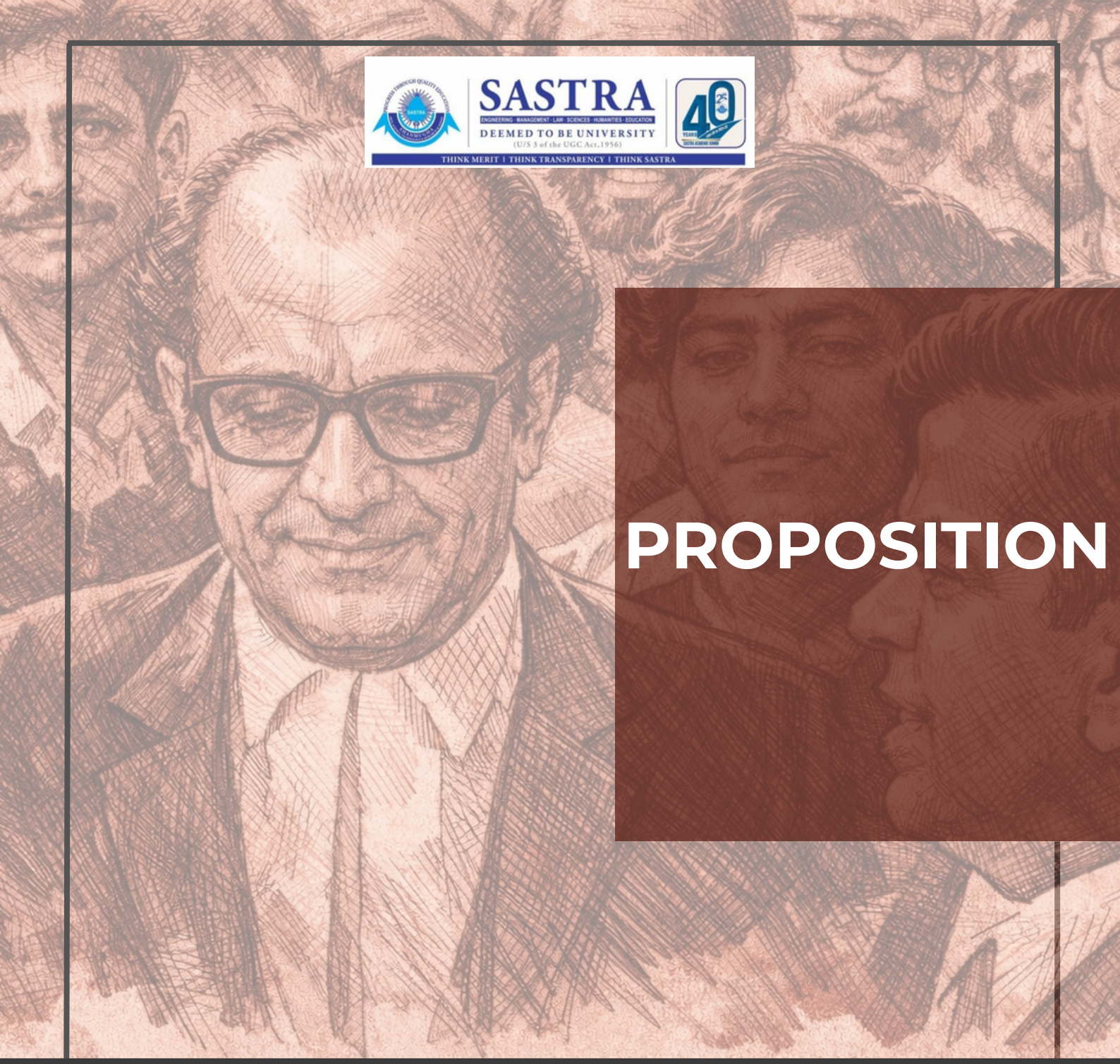

SASTRA
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PROPOSITION

21st NANI PALKHIVALA MEMORIAL VIRTUAL TAX MOOT COURT COMPETITION, 2026

COMPREHENSIVE MOOT PROPOSITION

1. Care Biolinks Private Limited ("Care Bio") is a company incorporated in Country A, whose Income Tax Act, 1961 and Income Tax Rules, 1962 are similar to the Indian Income Tax Act, 1961 and Indian Income Tax Rules, 1962. It manufactures and distributes specialised diagnostic reagents and laboratory consumables used in gemological and Industrial testing.

2. Care Biolinks Global AG ("Care Global") is a company incorporated in Country B and is the ultimate holding company of the Care Group; it owns proprietary testing methodologies, confidential analytical databases, and advanced material-analysis protocols.

3. **Business Re-organisation:**

- In the relevant period, the Care Group undertook a consolidation of reagent manufacturing capabilities by entering into an agreement with Intuitive Technologies Limited ("Intuitive Tech").

- On 1st April 2018, Care Bio, Intuitive Tech, and Care Global executed a Business Transfer and Collaboration Agreement ("BTCA") under which Intuitive Tech agreed to withdraw from the manufacture and commercial exploitation of diagnostic reagents for gemological use.

- Care Bio acquired certain tangible assets, inventories, and customer-facing contracts connected with that business line. Care Global undertook to provide standard operating procedures, testing protocols, and periodic analytical support to bring Care Bio's laboratory operations in line with group standards.

4. The BTCA contained a non-compete covenant by which Intuitive Tech agreed, for a period of five years, to refrain from engaging, directly or indirectly, in the manufacture or commercial exploitation of gemological diagnostic reagents within A and Southeast Asia. In consideration thereof, Care Bio paid a lump-sum non-compete fee of INR 18 Crores during the year. The BTCA did not apportion consideration between restrictive covenants, but Care Bio's internal board notes recorded that the payment was "critical to protecting market share during consolidation".

TSDA with Care Global

5. Independently, Care Bio entered into a Technical Services and Data Access Agreement ("TSDA") with Care Global. Under this agreement, Care Global granted Care Bio controlled, password-protected access to its proprietary analytical database used for interpreting test results, provided online training and troubleshooting support, and periodically reviewed and validated test outcomes produced by Care Bio's laboratories.

6. During the year, Care Bio paid EUR 1.2 Million to Care Global for services under the TSDA. The TSDA expressly withheld any right in Care Bio to commercially exploit, reproduce, sub-license, or modify the database or the underlying intellectual property.

7. To supplement the remote training contemplated by the TSDA, Care Global deputed one of its senior technical specialists to Country A for an aggregate period of ninety-five days.

8. The specialist:
a. conducted intensive in-house training at Country A's local facility,
b. provided hands-on guidance on interpretation of test results using Care Global's analytical protocols,
c. had no authority to negotiate or conclude contracts on behalf of Care Global, and
d. returned to Country B upon completion of the programme.

9. There was no separate consideration charged for the specialist's visit. Care Bio treated it as ancillary to the TSDA. Please note that the Double Tax Avoidance Agreement ("DTAA") between Country A and B is similar to the DTAA between India and Switzerland. For the avoidance of doubt, it must be noted that the DTAA between Country A and Country B contains a Service Permanent Establishment ("PE") clause which deems a permanent establishment where an enterprise furnishes technical services in the other State through employees or other personnel for periods aggregating more than ninety days in any twelve-month period (or more than thirty days if the services are performed for a related enterprise). It also defines "royalty" to include consideration for the use of, or the right to use, a copyright, patent, secret formula or process, or for information concerning industrial, commercial, or scientific experience, and provides that profits attributable to a permanent establishment are taxable in the source State.

10. In its return of income for Assessment Year ("AY") 2018–19, Care Bio claimed the entire INR 18 crores as a revenue deduction under Section 37(1) of the Income-tax Act, 1961 ("the Act"), contending that the payment was protective and facilitative in nature and did not result in the acquisition of a profit-earning apparatus. It also asserted that the TSDA payments were not "royalty" within the meaning of Section 9(1)(vi) or Article 12 of the DTAA, given the limited, non-exclusive, non-transferable access to a database and the absence of any grant to exploit the underlying intellectual property. Accordingly, no tax was deductible at source under Section 195 of the Act.

11. Additionally, during the year Care Bio rendered certain testing/analytical services to customers in the Country C wherein Federal taxes were withheld on remittances. Care Bio offered the corresponding income to tax in Country A; however, after set-off of brought-forward business losses, its returned total income was NIL. Care Bio nevertheless claimed Foreign Tax Credit ("FTC") in Country A under Section 90 read with Rule 128 of the Income-tax Rules, 1962, invoking the credit method provided in Article 25 of the relevant DTAA, and sought a refund of pre-paid taxes of Rs.32 Lakhs.

12. The return was selected for scrutiny. Care Bio produced the BTCA and TSDA; internal notes and explanations regarding the non-compete; TSDA, withholding tax; and the FTC claim. The assessment order under Section 143(3) of the Act accepted the returned income without discussing the allowability of the non-compete fee, the character of the TSDA payments, the existence of any taxable presence of Care Global in Bio, or the method of granting FTC.

13. Subsequently, on 15th June 2023, the Revenue issued a notice under Section 148A(b) of the Act proposing to reopen the assessment for AY 2018–19, citing flagging in risk management system and audit inputs. The notice recorded prima facie beliefs that (i) the non-compete payment yielded an enduring benefit and was capital in nature; (ii) the TSDA consideration was "royalty" and/or that Care Global had a PE in Country A; and (iii) the FTC and refund were irregular in view of Care Bio's NIL income after set-off. Care Bio objected that all primary facts had been fully disclosed; that the reopening was a mere change of opinion; that as regards the TSDA payments and any alleged PE, the DTAA prevailed and had to be applied correctly; and that its FTC claim was in accordance with Section 90 of the Act and Rule 128 of the Income Tax Rules, 1962 as well as the DTAA. The objections were rejected under Section 148A(d) of the Act, and a notice under Section 148 of the Act was issued with approval under Section 151 of the Act.

14. In the reassessment order under Sections 147/143(3) of the Act, the Assessing Officer ("AO") held, firstly, that the INR 18 Crores is to be treated as capital and disallowed under Section 37(1) of the Act on the basis that

a. the five-year non-compete eliminated competition and conferred a long-term strategic advantage on Care Bio,

b. and that the one-time, non-recurring nature of the outgo indicated an enduring benefit;

15. Secondly, as regards the TSDA,
a. the AO concluded that controlled access to Care Global's proprietary analytical database constituted the use, or right to use, intellectual property, with validation and training being ancillary; the consideration was thus held to be "royalty" within Section 9(1)(vi) of the Act and Article 12 of DTAA.

b. The AO further held that the specialist's ninety-five-day presence crossed the Service-PE threshold specified in Article 5(2)(l) of the DTAA, or in the alternative resulted in a fixed-place PE, and hence business profits were taxable in Country A under Article 7 of the DTAA

c. Since no withholding under Section 195 of the IT Act was made by Care Bio, a disallowance under Section 40(a)(i) of the IT Act was warranted.

16. Thirdly, the AO rejected the FTC/refund claim, reasoning:
a. that Rule 128(5) limits credit to the tax payable on the doubly-taxed income, and where that is NIL by virtue of loss set-off, no FTC can be granted;

b. that foreign tax exceeding treaty-permissible amounts must in any event be ignored;

17. On jurisdiction, the AO held that risk-based inputs constitute "information" within the meaning of Explanation 1 to Section 148 of the Act, that the original order did not reflect application of mind on the impugned issues, and that the reopening conformed to Sections 148A and 151 of the Act.

18. The Commissioner of Income-tax (Appeals) ("CIT(A)") affirmed the reassessment. The Appellate Order sustained the capital treatment of the non-compete; upheld the royalty character and Service PE on the footing that the ninety-five-day presence satisfied Article 5(2)(l) and that profits were attributable under Article 7 of the DTAA; and maintained the Section 40(a)(i) disallowance. On FTC, the Commissioner held that Rule 128(5) of the Income Tax Rules, 1962 barred credit where tax on such income was nil, that excess foreign tax must be ignored.

19. On further appeal, the Income-tax Appellate Tribunal ("ITAT") dismissed Care Bio's appeal. The Tribunal ruled that the reassessment did not amount to a change of opinion; that the non-compete fee yielded an enduring commercial advantage and was capital; and that, on facts, the Service PE threshold was crossed and profits were attributable under Article 7 of the DTAA. The ITAT addressed Care Bio's reliance on judicial developments distinguishing use of a copyrighted work from access to a copyrighted article—for reason that facts here reflected integrated on-site protocol training and continuous validation that went beyond mere read-only database access. The Tribunal consequently sustained the Section 40(a)(i) disallowance. As to the FTC, it upheld the Rule 128(5) limitation and upheld denial of claim of FTC.

20. Care Bio has filed the present Appeal under Section 260A of the Act before the jurisdictional High Court, urging that substantial questions of law arise from the ITAT's order. The Revenue supports the orders below and prays for dismissal of the appeal.

Substantial Questions of Law

1. Whether, on a correct application of the test of enduring benefit to the facts and circumstances of the present case, the non-compete fee of INR 18 Crores paid by Care Bio to Intuitive Tech under the BTCA is deductible as revenue expenditure under Section 37(1) of the Act, or whether it is capital in nature?

2. Whether the consideration paid by Care Bio to Care Global under the TSDA is, in law, "royalty" within the meaning of Section 9(1)(vi) of the Act and/or Article 12 of the DTAA, having regard to the limited, non-exclusive, non-transferable database access without rights to reproduce, sub-license, or commercially exploit the underlying intellectual property, and in light of the legal distinction between the use of copyright and access to a copyrighted article recognised by Courts and tribunals?

3. Whether, on a true and proper construction of Article 5(2)(l) of the DTAA, Care Global constituted a Service PE in Country A during the relevant period on account of the specialist's ninety-five-day presence, and, if so, what principles govern the attribution of profits to such PE under Article 7 of the DTAA?

4. Whether, in facts and in law, Care Bio was under an obligation to deduct tax at source under Section 195 of the Act on the TSDA payments in view of Section 90(2) of the Act and the applicable DTAA provisions, and whether the consequent disallowance under Section 40(a)(i) of the Act has been correctly upheld?

5. Whether, where the Assessee's tax on the doubly-taxed income is NIL after set-off of brought-forward losses, FTC is admissible under Section 90 of the Act read with Rule 128 of the Income Tax Rules, 1962 and Article 25 of the DTAA; and, in particular, whether Rule 128(5) operates to bar the grant of credit and refund in a nil-tax situation and requires the ignoring of foreign tax to the extent it exceeds treaty-permissible amounts?

6. Whether the reassessment proceedings for AY 2018–19 were validly initiated and concluded in conformity with Sections 148A and 151 of the Act, and whether the "risk management system and audit inputs" relied upon by the Revenue constitute "information" within the meaning of Explanation 1 to Section 148 of the Act so as to displace the plea of change of opinion?