

SATURDAY INTERNATIONAL TAX GYAN !!!



SITG No.
136

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PDR Solutions FZC

Vs

Deputy Commissioner of Income Tax

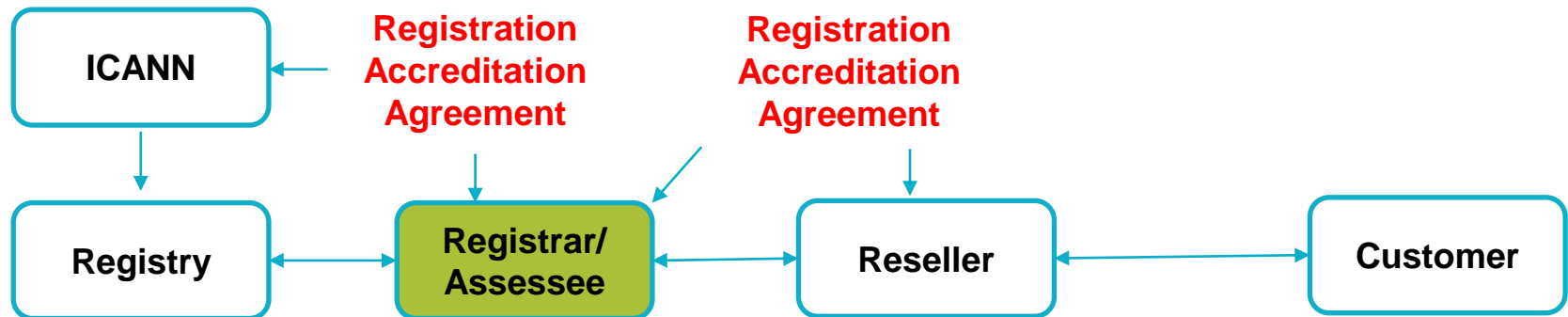
Amount received by a registrar during the process of registering Domain Name, could not be considered to royalty as per the DTAA



Date: 14.01.2023

Facts of the Case

- ❖ Assessee is the tax resident of United Arab Emirates (UAE), engaged in the business of web presence and sale of domain names to global customers through its B2B brands.
- ❖ Assessee has received income from provisions of various services to India, out of these, services like Date center income, Domain sale Income & Sponsorship income were considered taxable in India as Royalty.
- ❖ The diagrammatic representation of the domain name registration service is as under:



Revenue's Contention

- ❖ Assessing Officer contended that the domain name registration would be taxable in India as royalty, as the same is an 'intangible asset' which is in the nature of Trademark.
- ❖ AO also stated that the assessee is giving the client the right to use its domain name for a fixed period of time. Further, it was stated that the assessee is not selling the domain name, but registering or renewing it.
- ❖ AO contended that web hosting is interlinked with the domain name and therefore the amount received by the assessee in respect of web hosting/data Centre services is in nature of royalty.
- ❖ AO further contended that web hosting service is a type of internet hosting service that allows individuals and organization to provide their own website accessible via the World Wide Web and the payment is received on account of imparting the right to access the website which is valuable right falling within the purview of royalty.

Assessee's Contention

- ❖ Assessee contended that it is just an intermediary, authorised by ICANN(Internet Corporation for Assigned Name & Numbers) throughout the process of registering domain name. Assessee also furnished the Registrar Accreditation Agreement between itself & ICANN.
- ❖ It also presented the Reseller Master Agreement, which indicates that the assessee neither grants domain name nor has the right to customer data.
- ❖ Assessee contended that the consideration received was only for use of the server space and therefore, neither independent right to use the server space nor any physical access was granted to the customer.

Legal provisions

As per Section 9(1)(vi) of Income Tax Act, 1961 –

income by way of royalty payable by—

(c) a person who is a **non-resident**, where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

What is the meaning of Royalty: For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—

- i. Transfer of Rights(patents, licenses etc.)
- ii. Imparting of information related to patents, licenses etc.
- iii. The use of patents, inventions, etc.
- iv. Imparting & making use of information concerning technical, industrial, commercial and other skills
- v. Transfer of rights in respect of Copyrights, artistic or scientific knowledge, etc.
- vi. Rendering of any services related to the above.

Legal provisions

❖ **As per the Article 12- Royalties of India-UAE DTAA:**

➤ The term "**royalties**" as used in this article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematography films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience but do not include royalties or other payments in respect of the operation of mines or quarries or exploitation of petroleum or other natural resources.

Ruling

- ❖ The Appellant appealed against the revenue on the following two grounds:
 - Objection against addition on account of income from domain registration services, &
 - Objection against addition on account of income from web hosting services.

- ❖ During the assessment proceedings, assessee submitted that registrar neither own the domain name nor the trademark associated to the domain name.

- ❖ The domain name means the simple identification labels which indicate ownership or control of a resource. Organizations can choose a domain name that corresponds to their name, helping internet users to reach them easily.

- ❖ In the entire process of registering Domain Name, only the customer has the right over it. Registrar only facilitate the registration of domain names to customers that after checking the availability in the database maintained by the registry.

Ruling

- ❖ Hon'ble high court have held in a similar judgement that the entire process of registering the domain name is automated and is not controlled by person(s).
- ❖ From above, it was evident that the assessee was just acting as the intermediary in the process. Thus, it cannot be held that the registrar/assessee has any right in the domain name.
- ❖ It was, therefore, **held** that since the assessee has no right in the domain name, the income received by the assessee from domain name registration does not fall in the category of royalty under the Article 12(3) of the India-UAE DTAA.
- ❖ **Web hosting** refers to the Web server that stores lots of data files. Web hosting provider normally has servers and network connection to the end users or the resellers. Whereas, **web host** are companies that provide space on a server they own or lease for use by the clients as well as providing Internet connectivity, typically a data centre.
- ❖ Therefore it was **held** that in the absence of a grant of any control over the equipment belonging to the assessee to its customer, the **amount received shall not be considered as royalty**.

Our Comments

- ❖ As per Section 9(1)(vi), **Royalty income constitutes** only when such income is received by way of transfer of rights or imparting information in respect of patents, licenses, copyrights, artistic work or scientific knowledge, or use of such patents or inventions and making use of such information related to skills concerning technical, industrial, commercial skills etc. Hence, while considering any amount as Royalty we need to check what is being transferred during a transaction and whether it is an item covered under the definition of Royalty.
- ❖ Therefore, drawing conclusions from the above, the registrar in registration of domain name does not enjoy any right over the domain name, neither does the assessee imparts or makes use of any information related to such domain name related to various skills as explained earlier nor does it uses such domain name for deriving income from business or profession, therefore the **fees received for providing such service of registration is not liable to tax under the ‘Royalty’ provision** under section 9(1)(vi) of Income Tax Act, 1961.
- ❖ Thus, it is very important to check the material which is being transferred in such digital transaction as the digital world is very wide and hence it is important to check if the service/goods being transferred is an item mentioned in the definition of Royalty or not.

Court	Mumbai Tribunal
Date of decision	30.12.2022
Section/Article	Section 9(1)(vi) of Income Tax Act & Article 12 Of DTAA
DTAA/Country	India-UAE

Note: Case law name in **Red**- in favour of the revenue, **Green**-In favour of the Assessee, **Orange** = Partial



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