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SITG No.  
176

## GoDaddy.Com LLC Vs DCIT

**Amount received for domain name registration is considered as Royalty and amount received for web hosting service will be considered as FTS as per DTAA as well.**

21.10.2023  
Jain Shrimal & Co.

# Facts of the Case

- The assessee, a U.S. company, was one of the accredited domain name registrar of world's largest Internet Corporation for Assigned Names and Numbers (ICANN).
- For the assessment year under dispute, the assessee filed its return of income on 30-9-2015 declaring Rs. 68,91,93,348/- from web hosting services, web designing, SSL certification services and sale of on demand products as income from **royalty**.
- Assessing Officer noticed that in the year under consideration the assessee had received an amount of Rs. 74,50,66,973/- towards **domain name registration services**, which was not offered to tax.
- Assessee acts as channel between the customers and ICANN for domain name registration. Assessee enabled the customers to get their names registered with ICANN for which it charges a fee from such customers.
- Assessee did not take benefit of DTAA or provided TRC in relation to the issue of income from domain name registration service.

# Assessee's Contention

- Issue 1: Taxability of issuing Domain name:
- Receipts from domain name registration amounting to INR 745,066,973 should **not be** charged to tax as royalty as per the provisions of section 9(1)(vi) read with section 115A of the Act.
- It's role in the entire process relating to registration of domain name is very limited. Assessee is neither the owner nor does it have the right to use the domain names which are registered by the registrants/customers. The assessee is authorized by ICANN to take domain name requests from registrants/customers.
- Assessee submitted, there is a significant difference between licensing of IPR and facilitating the process of registering the IPR.
- Assessee simply helps the customers in the process of registration of domain name and does not engage itself in the business of licensing of such domain name.
- Further, services provided by the assessee are similar to services provided by professionals who help in registering a company's name with the Registrar of Companies (ROC).
- Assessee also mentioned that the decisions of the Tribunal in preceding assessment years can be considered to be per incuriam.

# Assessee's Contention

- Issue 2: Taxability of web hosting service:
- Assessee has characterized income from web hosting services as royalty and already offered the same to tax as per the provisions of section 9(1)(vi) read with section 115A of the Act and web hosting services provided/rendered by the Appellant are **should not be** taxable as Fee for Technical services under section 9(1)(vii) of the Act as well as article 12(4)(a) of the India-USA Tax Treaty as it is neither managerial, technical or consultancy in nature.
- Assessee has offered web hosting services/web designing services through standard facilities without any human intervention. Therefore, it cannot be regarded as FTS under section 9(1)(vii) of the Act



# Revenue's Contention

- **Issue 1: Taxability of issuing Domain name:**

- Domain name is an intangible asset which is similar to trademark. The assessee is rendering services in connection with such domain name registration and therefore, the charges received by the assessee clearly fall within the definition of royalty as provided in Section 9(1)(vi) of the Income- tax Act.
- Assessee is not merely a facilitator between the registrants/customers and ICANN for registration of the domain name. Revenue submitted, in a given case the assessee also defends the right of domain name.
- Further, once the Tribunal has examined the issue at length and held that the amount received by the assessee for registration of domain name is in the nature of royalty under section 9(1)(vi) of the act, the issue stands covered against the assessee.

- **Issue 2: Taxability of web hosting service:**

- Assessing Officer held that since the web hosting service is ancillary and incidental to the service rendered for domain name registration, it will be treated as FTS/FIS under Article 12(4)(a) of the India-USA Tax Treaty.

# Legal Provisions

**Explanation 2 to Section 9(1)(vi) of the Income Tax Act defines Royalty as under:**

Explanation 2.—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) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;
- (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property ;
- (iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;
- (iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;
- (iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;
- (v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting; or
- (vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v).

# Legal Provisions

As per article 12 of India USA DTAA, Fees for technical service is defined as under:

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) **are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received ; 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

# Ruling

## ▪ Issue 1: Issue 1: Taxability of issuing Domain name:

- Undoubtedly, the assessee registers domain names of the customers who approach the assessee for registering a particular domain name for them.
- The Revenue's case while treating the amount received by the assessee as royalty is, domain name is an intangible asset similar to trade mark and while registering the domain name in favour of a customer the assessee transfers the right to use the trade mark.
- Identical issue came up for consideration before the Coordinate Bench in assessee's own case in assessment year 2013-14. The Tribunal, decided the issue in *Godaddy.com LLC v. Asstt. CIT [2018] 92 taxmann.com 241/170 ITD 217 (Delhi - Trib.)* wherein it was held that domain names or Internet sites are entitled to protection as a trade mark because they are more than a mere address.
- It is apparent therefore that a domain name may have all the characteristics of a trademark and could found an action for passing off.
- The Bench has further held that since the assessee has transferred the right to use the domain name, which is in the nature of trademark, the consideration received by the assessee for transferring such right to use qualifies as royalty under Explanation 2 to section 9(1)(vi) of the Act.



# Ruling

- Hon'ble Bench has also distinguished the facts of the case of assessee with that of Hindustan Unilever Ltd. v. Endurance Domains Technology LLP (Interim Application No. 1 of 2020, dated 12-6-2020) with the facts of present case and stated that such judgement is not applicable to case of assessee.
- Thus, respectfully following the consistent view of the Coordinate Benches in assessee's own case, as discussed above, we hold that the consideration received by the assessee from registration of domain names is in the nature of royalty under section 9(1)(vi) of the Act and is taxable as such. Ground is dismissed.
- **Issue 2: Taxability of web hosting service:**
- It is observed, identical issue came up for consideration before the Coordinate Bench in assessee's own case in assessment year 2013-14. Since the issue did not have any tax implication, the ground was not pressed. Similar decision was taken in assessment year 2014-15 as well. Be that as it may, while deciding ground no. 2 raised by the assessee, we have held that the consideration received by the assessee from domain name registration services is in the nature of royalty. In our view, the amount received by the assessee from web hosting services is ancillary to domain name registration services.
- In any case, the assessee has not contested the issue in assessment year 2013-14 and 2014-15 as the issue is of mere academic interest considering that the tax rate of royalty and FTS under the Act is similar.

# Our Comments

- While registering trademark do we deduct TDS on amount paid to registrar who is registering trademark? Do persons registering domain name have to deduct TDS on same as it is difficult to get TRC or other documents from such online service providers.
- Even if domain name is a trademark is registrar who is registering a domain name, transferring the right to use such trademark or is he just facilitating the client as an agent?
- The important point to note here is that the registrar such as Godaddy do not hold any exclusive right over a domain name as one could purchase same domain name if not registered from different service providers. Since, the registrar do not hold any right on domain name. Is it correct that can they be considered to have earned royalty for transferring or registering domain name?
- Would there be a difference if assessee would have opted for taking benefit of DTAA in relation to the income of domain name registration?
- Further, Mumbai tribunal in another judgement of PDR Solutions FZC Vs Deputy Commissioner of Income Tax [2023] 146 taxmann.com 84 (Mumbai Trib.) had held that service of registering domain name cannot be considered as Royalty.
- Hence, we need to wait for a High Court to pass the judgement as there are different views of two different Tribunal's.

<b>Section/Article</b>	Section 9(1)(vi) and Article 12 of DTAA
<b>DTAA/Country</b>	India- USA DTAA
<b>Court</b>	Delhi Tribunal
<b>Date of decision</b>	23.09.2022



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The image shows a promotional graphic for a WhatsApp group. At the top, there is a logo with the letters 'CA' in a blue circle. Below the logo, the text 'International Tax Gyan' is written in black, followed by 'WhatsApp group' in a smaller font. To the right of the text are several small icons: a blue speech bubble, a green document, a black scale of justice, and a blue book. In the center of the graphic is a large QR code with a white WhatsApp logo in the middle. The background of the graphic is white with a green horizontal bar at the top.

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