



Saturday
International
Tax
Gyaan

SITG

SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG
No. 185

GoDaddy.com LLC

v.

ACIT (International Taxation)

Fees received for registering domain name from its customers does not amounts to 'Royalty'

From the Hon'ble Tribunal's desk....

After the assessee lost the case in DRP, it moved to Delhi ITAT, where also the Hon'ble Tribunal decided the case against the assessee, and the rationale used by Hon'ble Tribunal is elucidated below:

- Domain name and trademark is indifferent, and hence the consideration received by the assessee was in the nature of royalty, as it involves the right to use or use like a trademark. In arriving at this judgement tribunal relied on the judgement rendered in ***Satyam InfoWay***, and ***Tata Sons***.

We have presented our views on the judgement of Hon'ble Tribunal (pronounced on 23.09.2022) in the same case (i.e., GoDaddy LLC) in SITG- 176, released on 21.10.2023, ([Click here to read our earlier SITG](#)). ***Please do give it a read!!***

The assessee therefore moved to Delhi High Court for relief in the same case, and hence in today's edition of SITG we shall cover the arguments of both sides and the judicial judgement pronounced by Hon'ble Delhi Court.

Facts of the case

- An assessee company (GoDaddy.com LLC) is registered and based in United States (US), which does not have a PE in India. It is engaged in the business of providing domain name registration services, web designing, and web hosting.
- During the period under issue, the assessee company shown the income earned from web designing and web hosting service as income from royalty, however the A.O. treated such income as FTS and consequently brought to tax @10%, however the assessee didn't protest to the A.O.'s view since the tax rate under royalty and FTS were same i.e., 10%.
- The A.O. also brought to tax the fee received by the assessee for the domain registration services under the ambit of royalty u/s 9(1)(vi), as he believed that there is a right to use or use of servers maintained by the assessee and assessee has not offered such income to tax.

Assesse's contention

- **Who is the owner of Domain name:** It's the customer who owns the domain name, since he has an option to dissolve his engagement with the assessee (who renders the registration services) and move to another registrar. Had the assessee been an owner of domain name, the customer would have not been able to engage with another registrar.
- **Conditions to fall under the ambit of 'Royalty':** As per Explanation 2 to section 9(1)(vi), it must satisfy the following attributes:
 - i. A domain name (trademark) must exist.
 - ii. **The domain name ownership must vest in assessee.**
 - iii. The assessee must transfer all or any rights, including the right to use such domain name to its customers.
 - iv. The assessee must offer some services in connection with the primary transaction, concerning the use of such domain name.

In the present case, none of such attributes were satisfied. Hence the registration services for domain name shall not fall under 'Royalty'.

Revenue's contention

- **Inextricably linked:** The Ld. A.O. believes that the domain name services provided by the assessee are inseparable from the web hosting services, which the assessee offered. Since the assessee itself treated web hosting services as royalty, therefore it is imperative for the revenue to treat such fees from domain name registration as royalty.
- **Untenable in law:** The provision of section 9(1)(vi) shall be applicable in the present case. Also, the hon'ble tribunal correctly drawn the inference from the judgement rendered in ***Satyam Infoway Ltd. And Tata Sons.***

Judicial Pronouncement

- **Accreditation Agreement:** The agreement clearly establishes that the assessee is just acting as a registrar for domain name, and hence in the same capacity, it is providing domain registration services to its customers. The assessee also does not have proprietorship rights in the domain name. Even if there is any doubt on the assessee having ownership rights over the domain name, it shall be rested upon the perusal of the agreement, wherein it is clearly mentioned in a clause,
“registration of a domain name does not create any proprietary right for you, the registrar,..... and that the entry of a domain name in the registry shall not be construed as evidence or ownership of the domain name registered as a domain name”.
- **Reference of Satyam InfoTech:** In that case, InfoTech was concerned only with the rights of the domain name owner and not the registrar, however herewith the assessee is only acting as a registrar and offering its services to its customers. Hence the tribunal’s reliance on this judgement was misconceived.
- **What might have attracted the provisions of royalty:** If the assessee had granted or transferred rights to use its domain name, i.e., GoDaddy.com, to a third person. However, nothing of that sort happened in the given case. Hence, in the present case, the fees received for registration of domain names of its customers, cannot be treated as Royalty.

Thus, the Hon’ble Delhi High Court is of the view that the question of law has to be answered in favor of the assessee and against the revenue. Hence, appeals are allowed.

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The CS facilitates the clients/ entities to get the name of the company registered on MCA website, so that no other company can choose the same name. In this, CS is just a facilitator to the client, and hence the fees received by CS cannot constitute to be royalty in nature. Rather, it is just a professional fees, as there is no transfer of ownership of neither the company, nor its name.



Similarly, here GoDaddy helps the customers/ entity to register their domain name on ICANN, and therefore GoDaddy can not be said to be the owner of such Domain name, since it just provided the registration services to its customers, and it is a just a mere facilitator, rather than a owner.

Our Comments

- **What constitute 'royalty'**: We should be very cautious while identifying the transaction to be royalty, as in our observation, royalty is generally in relation to intangible asset, which is unique, and such asset is not readily available in general public space, and one has complete ownership rights over such intangible asset.
- It is not necessary that such asset is developed by the person holding such ownership rights, however it is mandatory that all the rights to use such asset is transferred, to constitute it as royalty.
- However, there are certain specific inclusions in the definition of Royalty under Income tax act like Computer Software, where the developer has the copyright of codes of a software and he has allowed the customer to use the software using such codes.
- In general parlance, such software is developed using the copyrighted material and hence the user of the software cannot exploit the such material but is actually using a material developed using that copyrighted material and user cannot make any change to the codes of software, rather can only use it in its present form.

Our Comments

- However, as per income tax act vide explanation 4 to section 9(1)(vi), such amount received by the developer for use of such software, is explicitly said to fall under the definition of 'Royalty' whereas the situation is different under DTAA.

Now, is it correct to constitute such use of computer software as 'royalty', because there is no exploitation of copyright?

- **'Make Available' clause:** Although the case law is in relation to the royalty on domain name, it is interesting to note that the Ld. A.O. has considered the service of web hosting and web development under FTS, whereas the assessee has considered the same as 'Royalty'.
- From the judgement, it could be make out that assessee did not contend on the taxability of the same as the tax rate in both would have been same, however it would have been interesting if assessee had requested to apply Article 12 of DTAA between India-USA, wherein it contains 'Make Available' clause, and because of which web hosting and web development service would fall outside the ambit of taxation in India.

Section/Article	Explanation 2 to Section 9(1)(vi)
DTAA/Country	India- USA DTAA
Court	High Court of Delhi
Date of decision	11.12.2023



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