



SATURDAY INTERNATIONAL TAX GYAN!!!

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SITG No. 257

GoDaddy.com LLC

v.

ACIT

Whether a fiscally transparent entity which is not directly liable to be taxed in a country be considered as a resident of that country for the purpose of DTAA.

10.05.2025



[2025] 174 taxmann.com 103 (Delhi - Trib.)

Jain Shrimal & Co.

Facts of the Case

- ❖ The assessee being a USA based limited liability company (LLC) is one of the world's largest **Internet Corporation, for Assigned Names and Numbers ("ICANN")** accredited domain name registrars and provided other web services to its customers across the world.
- ❖ During the FY 2021-22 (AY 2022-23), the assessee had rendered services of **Domain Name Registration and Web Hosting, Web Designing, SSL Certification, sale of on-demand products (together "non domain services)** amounting to an aggregate of Rs. 4,65,32,43,941 to its Indian customers.
- ❖ In order to avoid taxation in India, the assessee claimed the **status of non-resident** in India under **article 4 of India-USA DTAA** which discusses the definition of "resident of a Contracting State".
- ❖ However, the AO decided that the assessee is not entitled to the benefits under the India-USA DTAA. And therefore, the AO added the entire amount to the assessee's income taxable in India.
- ❖ Aggrieved with the draft assessment order, the assessee filed its objection before the DRP. But the DRP, in turn, endorsed the findings and conclusion in the draft assessment order. Consequently, the AO passed the final assessment order. Aggrieved, the assessee filed appeal before the Hon'ble Tribunal.

Assessee's Contention

- ❖ The assessee contended that rendering domain services and non-domain services would not be taxable in India under the provisions of the India-USA DTAA.
- ❖ To support this claim, the **assessee claimed a non-resident status** for India under article 4 of the DTAA. Article 4 of the India-USA DTAA defines "resident" as someone who is **liable to tax** in their country based on domicile, residence, place of management, etc.
- ❖ In this context, the assessee made reference to the decision in the case of its sister concern, **Wild West Domains, LLC vs. ACIT (ITA No. 1774/Del/2022)** where the co-ordinate bench had ruled that fiscally transparent entities are entitled to benefits under the relevant DTAA.

Revenue's Contention

- ❖ The revenue asserted that the assessee is not entitled to benefits under article 4 of the India-USA tax treaty as only persons or entities that are '**liable to tax**' under the laws of that country are considered to be residents for the purpose of tax treaties and since LLCs are **fiscally transparent** entities according to tax laws of the USA, their income is not 'subject to tax in their own hands in the USA and should not qualify as 'residents' of USA in terms of Article 4 of the India-USA DTAA.
- ❖ In simple words, the AO meant to imply that LLCs in USA are fiscally transparent because they do not pay income tax at the entity level. Instead, the income is passed through the owners/members/partners who report it through their personal income tax returns. Therefore, an LLC is not itself 'liable to tax' in its own hands but via its owners.
- ❖ Thus, as per the AO's contention, if the entity itself is not subject to tax, it cannot be treated as a "resident" of USA under the treaty and hence it is not entitled to claim the said benefit.

Legal provisions

❖ Article 4 of India-USA Double Taxation Avoidance Agreement:

*1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is **liable to tax** therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:*

- (a) This term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and*
- (b) In the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.*

Ruling

- ❖ The Hon'ble Tribunal referred to the decision of co-ordinate bench in the appellant's sister concern, Wild west domains, LLC v. ACIT (ITA No. 1774/Del/2022) and assessee's own case in ITA No. 1558 to 1561 /Del/2022 and 3027/Del/2023 noted that the term 'liability to taxation' does not mean only the actual payment of taxation but the larger power to taxing an income.
- ❖ In the referred case on which the bench relied, it was ruled that, "The law in this regard is quite settled as it is now settled that the term, 'liability to taxation' has to be distinguished from actual payment of taxation. 'Liability to taxation' indicates the powers of taxing an income though the incidence of taxation and actual payment may be different."
- ❖ In the wake of the aforesaid discussion, the Hon'ble Tribunal held that **the assessee should qualify as a non-resident of India** under article 4 of India-USA DTAA and is entitled to avail the benefits arising from such qualification.
- ❖ Through this, the income of Rs. 4,65,32,43,941 that was added by the AO as taxable in India on the pretext of assumed Indian residential status could no longer be taxable.

Our Comments

- ❖ It is an important aspect which has been discussed as such transparent entity is not defined or discussed in Indian law.
- ❖ In a recent decision of co-ordinate bench in case of General Motors Company USA ITA No.2359/Del/2022 it referred to Publication 34022 of Department of the Treasury, Internal Revenue Service of USA and noted that LLC is a business entity recognized by the US under State law; for federal income-tax purposes, LLC with single member is considered as a disregarded entity unless the LLC elects to be treated as Corporation, while LLC with at least 2 members is classified as a partnership. Where LLC is disregarded as separate from its owner for federal income-tax purposes, its income, deductions, gains, losses and credits are reported in the income-tax return of the owner; in other words, the owner of a disregarded LLC pays tax on the owner's share of the taxable income attributed from the LLC.

Our Comments

- ❖ In view of the aforesaid, the Tribunal held that LLC is essentially 'liable to tax' in USA; tax on its income is, however, imposed upon and paid by its owner who merely discharges the tax that is assessable in the hands of the LLC. Further the TRC of US also certifies that it is a tax resident.
- ❖ Further, it will be interesting to see as to how would taxation work in a case where there is a fiscally transparent entity and the owners are not themselves resident of same country because in the judgement of Linklaters & Paines [2014] 49 taxmann.com 66 (Mumbai - Trib.) it was held that DTAA benefits will be available as long as partnership or partner is paying tax in the said country for which treaty benefit is availed.

Section/Article	Article 4 of the DTAA
DTAA/Country	India-US DTAA
Court	Delhi – Tribunal
Date of decision	30.04.2025

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



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