IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER

ITA No. 8085/DEL/2018
Asstt. Yr: _2015-16

GoDaddy.Com LLC, 14455N, Suite 219, Hayden Road, Scottsdale Arizona, USA, 85260 PAN- AAECG7133K	Vs	Deputy Commissioner of Income-tax, Circle 1(3)(1), Intl. Taxation, New Delhi.
APPELLANT		**RESPONDENT**
Appellant by	**Sh. G.C. Srivastava, Adv., Sh. Kalrav Mehrotra, Adv., and Sh. Mayank Patwari, CA**	
Respondent by	**Smt. Sapna Bhatia, CIT (DR)**	
Date of hearing	**27.06.2022**	
Date of pronouncement	23.09.2022	

O R D E R

PER SAKTIJIT DEY, JM:

The captioned appeal has been filed by the assessee assailing the final assessment order dated 29.10.2018 passed under Section 144C(13) read with

Section 143(3) of the income-tax Act, 1961 pertaining to the assessment year 2015-16, in pursuance to directions of learned Dispute Resolution Panel (DRP).

2. The assessee has raised following grounds of appeal:

"1. That on the facts and in the circumstances of the case and in law, the impugned order of assessment framed by the AO pursuant to the directions of the DRP is erroneous and bad in law as well as in facts.

2. That on the facts and in the circumstances of the case and in law, the AO/DRP has wrongly alleged that receipts from domain name registration amounting to INR 745,066,973 *should be charged to tax as royalty as per the provisions of section 9(l)(vi) read with section 115A of the Act.*

3. That on the facts and circumstances of the case and in law, the AO/DRP has erred in holding that the web hosting services provided/rendered by the Appellant are taxable as Fee for Technical services under Section 9(l)(vii) of the Act as well as Article 12(4)(a) of the India-USA Tax Treaty as it is ancillary and subsidiary to the application or enjoyment of domain registration.

4. That on the facts and circumstances of the case and in law, the AO/DRP has erred in not appreciating that the Appellant has characterized income from web hosting services as royalty and already offered the same to tax as per the provisions of section 9(l)(vi) read with section 115A of the Act.

5. That on the facts and circumstances of the case and in law, the AO/DRP has erred in holding that the Appellant has concealed its particulars of income and has filed inaccurate particulars of income and has therefore separately initiated penalty proceedings u/s 271(l)© of the Act.

6. That on the facts and circumstances of the case and in law, the AO/DRP has erred in charging interest under section 234B and 234C of the Act to the Appellant."

3. As could be seen from the grounds raised, ground no. 1 is general in nature, whereas ground nos. 5 & 6 are consequential. Therefore, these grounds do not require specific adjudication.

4. The issue raised in ground no. 2 relates to chargeability of receipt from domain name registration as royalty under the domestic law as well as India-USA Double Tax Avoidance Agreement (DTAA).

5. Brief facts relevant for adjudicating this issue are, the assessee, a non-resident corporate entity is incorporated in the State of Delaware, United State of America (USA). It is stated that the assessee is one of the accredited domain name registrar of world's largest Internet Corporation for Assigned Names and Numbers (ICANN) and also provides web hosting services, web designing and domain name registration services through its website GoDaddy.com. For the assessment year under dispute, the assessee filed its return of income on 30.09.2015 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. In course of assessment proceedings, the 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. Noticing this, the Assessing officer called upon the assessee to explain why the amount received

towards domain name registration services should not be treated as Fee for Technical Services (FTS). In response, the assessee furnished its submissions stating that while providing such services it had not offered any services which could be regarded as managerial/consultancy services, both, under the domestic law or under the India-USA Double Taxation Avoidance Agreement (DTAA), so as to treat the fee received for such activity as FTS. However, rejecting the contention of the assessee, the Assessing officer held that the assessee acts as channel between the customers and ICANN for domain name registration. He held that the assessee enabled the customers to get their names registered with ICANN for which it charges a fee from such customers. Though, the Assessing officer was ultimately convinced with the submission of the assessee that the fee received towards domain name registration cannot be regarded as FTS, however, he concluded that the amount received was in the nature of royalty as per Section 9(1)(vi) read with Section 115A of the Act. In the above line, he proposed a draft assessment order. Against the draft assessment order, the assessee filed objections before learned DRP. Primarily relying upon its own decision for assessment year 2014-15, learned DRP upheld the decision of the Assessing Officer in treating the amount received from domain name registration as royalty.

6. Before us, learned counsel appearing for the assessee submitted that royalty has been defined under Explanation 2 to Section 9(1)(vi) of the Act. Drawing our

attention to the definition of 'royalty', he submitted, any payment would be in the nature of royalty if it is received from imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience, skill or from rendering any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v) of Explanation2. He submitted, in case of the assessee the domain name requested by the registrants/ customers, if already not registered or not owned by anyone, they simply do not exist. Only when the registrants/ customers register the domain name, they come into existence. Once registration takes place, the registrants/ customers become the owner of the domain name and given an exclusive right to use them or licence or transfer them to third parties, in case, they desire to do so. He submitted, the right to use the domain name vests with the registrants/ customers and not with the assessee. He submitted, only when domain name is registered and brought into existence, it can be categorized as an Intellectual Property Right (IPR). That being the case, the consideration received by the assessee for registering a domain name cannot be considered as payment for the use of an IPR (domain name), since such IPR does not exist in the first place.

7. Drawing our attention to clause (iii) of Explanation 2, he submitted, for granting the right to use the IPR, the grantor should possess such right in the first place. He submitted, when the assessee is not the owner of IPR (domain name), it

cannot grant such right to anyone. In support of such contention he relied upon the following decisions:

- CIT vs. Davy Ashmore India Ltd. [1991] 190 ITR 626 (Cal.)
- Cushman & Wakefield (S) Pte. Ltd. [2008] 305 ITR 208 (AAR)
- CIT Vs. Neyveli Lignite Corpn. [2000] 109 Taxman 369 (Mad.)
- Continental construction Ltd. Vs. CIT [1991] 54 Taxman 412 (Del.)
- CIT vs. Ahmedabad Manufacturing and Calico printing Co. [1983] 139 ITR 806 (Guj.)
- Hilton Roulunds Ltd. vs. CIT [2018] 92 taxmann.com 368 (Del.)
- CIT vs. Vinzas solutions India (P.) Ltd. [2017] 392 ITR (Mad.)

8. He submitted, assessee's role in the entire process relating to registration of domain name is very limited. He submitted, 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. He submitted, once the registrant/ customer wants to register a particular domain name, in case, it is not already registered, the assessee only facilitates the process of such registration with ICANN for a fee.

9. Drawing our attention to clause 3.5 of the Registrar Accreditation Agreement between the assessee and ICANN he emphasized that the assessee does not have any right in the domain name. He submitted, there is a significant difference between licensing of IPR and facilitating the process of registering the

IPR. He submitted, though, the consideration for licensing of IPR may give rise to royalty but the act of facilitating the registration of IPR cannot be characterized as royalty. He submitted, the 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. He submitted, there are more than 2500 ICANN accredited Registrars in the world. A registrant/ customer desirous of registering a domain name can approach any one of these Registrars including the assessee to register its domain name. Therefore, it may be unreasonable to say that all these Registrars own all the domain names of the world. He submitted, once a customer is registered with Registrar, like the assessee, the customer has the option of switching to any other Registrar for the very same domain name at its own will. He submitted, had it been a case of right to license and assign a domain name with the Registrar, then it would have been at the discretion of the Registrar to transfer the domain name to any customer and not at the discretion of the customer to discontinue the services of the Registrar, which had registered its domain name. He submitted, 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). Thus, he submitted, amount received by the assessee is not in the nature of royalty.

10. However, learned counsel appearing for the assessee fairly submitted that while considering identical issue in assessee's own case for assessment years 2013-14 and 2014-15, the Tribunal has held that the domain names are similar to trademark and the services provided by the assessee are in connection with right to use of trademark. Therefore, the receipts of domain name registration is taxable as royalty under section 9(1)(vi) of the Act. Having said so, learned counsel submitted that the earlier orders of the Tribunal are distinguishable considering the fact that in a subsequent decision of the Hon'ble Bombay High court in the case of ***Hindustan Unilever Ltd. v. Endurance Domains Technology LLP*** 2020 SCC OnLine Bom. 809, the Hon'ble Hombay High Court has held that domain names are typically never owned. Thus, he submitted, the decisions of the Tribunal in preceding assessment years can be considered to be per incuriam.

11. The learned Departmental Representative strongly relying upon the observations of the Assessing officer and learned DRP, submitted that assessee is not merely a facilitator between the registrants/ customers and ICANN for registration of the domain name. She submitted, in a given case the assessee also defends the right of domain name. In this context, she extensively referred to the observations of the tribunal while deciding identical issue in assessment years 2013-4 and 2014-15. She submitted, 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. She submitted, the contention of the assessee that earlier decisions of the Tribunal are per incuriam cannot be accepted. More so, when the appeals filed by the assessee against the decisions of the Tribunal in earlier years are pending for adjudication before the Hon'ble High Court. Rebutting assessee's claim that the Accreditation Agreement between assessee and the ICANN was not brought to the notice of the Tribunal in assessment years 2013-14 and 2014-15, learned Departmental Representative submitted, the Tribunal having examined the agreement between assessee and ICANN has decided the issue. In this context, she drew our attention to the decisions of the Tribunal.

12. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. Before we proceed to decide the issue on merit, we must make it clear that learned counsel appearing for the assessee has categorically submitted before us that the assessee is not claiming any benefit under the India-USA Tax Treaty as regards the disputed issue. In view of the aforesaid submission of learned counsel appearing for the assessee, we confine ourselves to examine the issue, as to whether, the amount received by the assessee from registration of domain name amounts to royalty under section 9(1)(vi) of the Act.

13. As far as activities of the assessee are concerned, there is no dispute regarding the factual position that the assessee provide services in relation to registration of domain names of customers with ICANN. For such purpose the assessee has entered into an agreement with ICANN. The issue, which arises is, the fee received by the assessee while providing services to the registrants/ customers for registration of domain name whether will amount to royalty under section 9(1)(vi) of the Act. For this purpose it is necessary to look at the definition of royalty under Explanation 2 to Section 9(1)(vi) of the Act which is reproduced hereunder:

> "*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 equipments 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, literacy, 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)."

14. As could be seen from the aforesaid definition of royalty, any consideration received for 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, would be regarded as royalty. Further, consideration received for the use of any patent, invention, model, design, secret formula or process or trade mark or similar property, can also be regarded as royalty. 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. Therefore, it is in the nature of royalty under section 9(1)(vi) of the Act. Identical issue came up for consideration before the Coordinate Bench in assessee's own case in assessment year 2013-14. The Tribunal, while deciding the issue in ITA no. 1878/Del/2017 vide order dated 03.04.2018, has held as under:

"*8. We have carefully considered the arguments of both the sides and perused relevant material placed before us. The limited question before us is whether the domain registration fee received by the assessee can be termed as royalty. At the outset, we clarify that the appellant himself has mentioned that since it is not a tax resident of USA, therefore, it is not claiming any benefit under the provisions of India-US tax treaty. Accordingly, we have to examine within the meaning of Income-tax Act, more particularly, Section 9(l)(vi) to examine whether the receipt by the assessee on account of domain registration fee can be termed as royalty. Section 9(l)(vi) of the Income-tax Act reads as under :-*

> *"9.(1) The following incomes shall be deemed to accrue or arise in India:-*
>
> *(vi) income by way of royalty payable by -*
>
> *(a) The Government; or*
>
> *(b) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or*
>
> *(c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilised 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:*
>
> *Provided that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976, and the agreement is approved by the Central Government:*

[Provided further that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum payment made by a person, who is a resident, for the transfer of all or any rights (including the granting of a licence) in respect of computer software supplied by a non-resident manufacturer along with a computer or computer-based equipment under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 of the Government of India.]."

9. Explanation 2 after the sub-section defines the word "royalty",which reads 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, but not including consideration for the sale, distribution or exhibition of cinematographic films; or

(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to [(iv), (iva) and](v)"

10. The contention of the Revenue is that the 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(l)(vi) of the Income- tax Act. We find that Hon'ble Apex Court has considered the similar aspect in the case of Satyam Infoway Ltd. (supra). The question before Hon'ble Apex Court was whether internet domain names are subject to the legal norms applicable to other intellectual properties such as trademarks. Hon'ble Apex Court decided the issue in favour of the assessee. The relevant observation of their Lordships reads as under

"The use of the same or similar domain name may lead to a diversion of users which could result from such users, mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar web site which offers no such services. Such users could well conclude that the first domain name owner had mis-represented its goods or services through its promotional activities and the first domain owner would thereby lose their custom. It is apparent therefore that a domain name may have all the characteristics of a trademark and could found an action for passing off.

Over the last few years the increased user of the internet has led to a proliferation of disputes resulting in litigation before different High Courts in this country. The Courts have consistently applied the law relating to passing off to domain name disputes. Some disputes were between the trademark holders and domain name owners. Some were between domain name owners themselves. These decisions namely

Red iff Communication Ltd. v. Cyberbooth and Anr., AIR (2000) Bombay 27, Yahoo Inc. v. Akash Arora, (1999) PTC 19 201, Dr. Reddy's Laboratories Ltd. v. Manu Kosuri, (2001) PTC 859 (Dei), Tata Sons Ltd. v. Manu Kosuri, (2001) PTC 432 (Del.), Acqua Minerals Ltd. v. Pramod Borse & Anr., (2001) PTC 619 (Del.), and Info Edge (India) Pvt.Ltd. & Anr. 1/. Shai/esh Gupta & Anr., (2002) 24 PTC 355 (Del.) correctly reflect the law as enunciated by us. No decision of any court in India has been shown to us which has taken a contrary view. The question formulated at the outset is therefore answered in the affirmative and the submission of the respondent is rejected. "

(emphasis by underlining supplied by us)

11. That Hon'ble Jurisdictional High Court in the case of Tata SonsLimited (supra) has also examined the identical question and held as under:

"6. In Yahoo Inc! Vs Akash Arora 1999 PTC 201 while granting an injunction restraining the defendants from using Yahoo either as a part of its domain name or as a trademark, learned Single Judge of this Court applied the law relating to trademark to a dispute regarding internet, it was further held that considering the vast import of internet and its user, several Internet users are not sophisticated enough to distinguish between the domain names of the parties. It was also held that with the ease of access from all corners of the world, Courts should take a strict view of copying as the potentiality of the harm is far greater because of the easy access and reach by any one from every corner of the globe. The Court also held after analyzing Section 27 and Section 29 of the Trade & Merchandise Marks Act, that passing off action can be maintained in respect of services as well as goods.

In British Telecom Pic. Vs. One in a Million 1999 FSR 1 the Court held that in the case of a registration of domain names of third party trademarks of well-known names, there was jurisdiction to grant injunctive relief when the defendant was equipped with or was intending to equip another with an instrument of fraud. It was also held that a name which would by reason of similarly to the name of another, inherently lead to passing off, was such an instrument. It was held that in case it would not inherently lead to passing off but the

Court concluded on the facts without regard to the defendant's intention that the name was produced to enable passing off, was adapted to be used for passing off and, if used, was likely to be used fraudulently, an injunction would be appropriate.

In Rediff Communications Ltd. Vs. Cyberbooth AIR 2000 Bombay 27 the user of the Website "www.radiff.com" was injuncted as it was held deceptively similar to the plaintiff's website "www.rediff.com". In the above decision, the Court held that the Internet domain names are of importance and can be a valuable corporate asset and such domain name is more than an Internet address and is entitled to protection equal to a trade mark. It was held that with the advancement and progress in technology the services rendered by an internet site have also to be recognized and accepted and are being given protection from passing off.

In view of the above decisions, I am satisfied that it is now settled law that with the advent of modern technology particularly that relating to cyberspace, domain names or Internet sites are entitled to protection as a trade mark because they are more than a mere address. The rendering of Internet services is also entitled to protection in the same way as goods and services are, and trade mark law applies to activities on internet. "

(emphasis by underlining supplied by us)

12. Learned counsel for the assessee has also relied upon the decision of Hon'ble Jurisdictional High Court in the case of Asia SatelliteTelecommunications Co. Ltd. (supra). However, we find that the facts in that case were altogether different. In the said case, the assessee company carried on the business of private satellite communications and broadcasting facilities. During the relevant assessment year, it was the lessee of a satellite, called Asia-Sat 1 and was the owner of a satellite, called Asia Sat 2. Those satellites were launched by the assessee and were placed in a geostationary orbit in the orbital slots. Those satellites neither used the Indian orbital slots nor were they positioned over Indian airspace. However, the footprint area (the area of earth's surface over which a signal is relayed from satellite) of those satellites covered the territory of India. The assessee entered into an agreement with TV channels, communication companies or other companies who desired to utilize the transponder capacity available on its satellite to relay their signals. The customers had

their own relaying facilities, which were not situated in India. From those facilities, the signals were beamed into space where they were received by a transponder located in the assessee's satellite. The role of the assessee in this cycle was that of receiving the signals, amplifying them and after changing frequency relaying them over the entire footprint area. For that service, the TV channels made payments to the assessee. The question before the Hon'ble High Court was whether such payments can be said to be royalty chargeable to tax in India. Hon'ble High Court answered the question in the negative. However, the facts in the assessee's case are clearly different. In the case under appeal before us, the issue is whether the fees received by the assessee for rendering services for domain registration can be said to be royalty. Therefore, in our opinion, the above decision of Hon'ble Delhi High Court relied upon by the learned counsel for the assessee would have no application. The learned counsel has also relied upon the decision of Authority for Advance Rulings in the case of Dell International Services (India) Private Limited (supra). In that case also, the issue before the Authority for Advance Rulings was whether the payment for providing communication through telecom bandwidth can be termed as royalty within the meaning of Section 9(l)(vi) of the Income-tax Act. Thus, the facts in the above case were also different than the facts under appeal before us. On the other hand, the issue before Hon'ble Apex Court in the case of Satyam Infoway Ltd. (supra), Hon'ble Jurisdictional High Court in the case of Tata Sons Limited (supra) and Hon'ble Bombay High Court in the case of Rediff Communications Ltd. - AIR 2000 Bombay 27 was whether the domain names can be considered as intellectual properties such as trademark. Hon'ble Apex Court in the case of Satyam Infoway Ltd. (supra) has held that the domain name is a valuable commercial right and it has all the characteristics of a trademark and accordingly, it was held that the domain names are subject to legal norms applicable to trademark. Hon'ble Bombay High Court in the case of Rediff Communications Ltd. (supra) held that domain names are of importance and can be a valuable corporate asset and such domain name is more than an internet address and is entitled to protection equal to a trademark. Hon'ble Jurisdictional High Court in the case of Tata Sons Limited (supra) held that domain names are entitled to protection as a trademark because they are more than an address. Respectfully following the above decisions of Hon'ble Apex Court, Hon'ble Bombay High Court and Hon'ble Jurisdictional High Court, we hold that the rendering of services for domain registration is rendering of services in

connection with the use of an intangible property which is similar to trademark. Therefore, the charges received by the assessee for services rendered in respect of domain name is royalty within the meaning of Clause (vi) read with Clause (iii) of Explanation 2 to Section 9(1) of income-tax Act. In view of the above, we uphold the orders of the lower authorities on this point and reject ground no. 2 of the assessee's appeal."

15. A careful analysis of the aforesaid observations of the Coordinate Bench would reveal that after analyzing the entire gamut of factual position including the terms of agreement between the assessee and ICANN, the Tribunal has recorded a conclusive finding that the domain name is akin to trade mark as defined under the Trade Mark Act, 1999. 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. Identical view was expressed by the Tribunal while deciding assessee's appeal for assessment year 2014-15 vide ITA no. 7123/Del/2017 dated 24.07.2018. It is relevant to observe, against the aforesaid decisions of the Tribunal, the assessee has filed appeals under section 260A of the Act before the Hon'ble Jurisdictional High Court and the Hon'ble Jurisdictional High Court has admitted the appeals for adjudicating the substantial question of law arising in relation to chargeability of consideration received towards registration of domain name as royalty under

section 9(1)(vi) of the Act. The factual position relating to the issue in the impugned assessment year is identical to assessment years 2013-14 and 2014-15.

16. The main plank of argument of learned counsel appearing for the assessee not to follow the decisions of the Tribunal in earlier assessment years is with reference to the decision of the Hon'ble Bombay High Court in the case of ***Hindustan Unilever Ltd. v. Endurance Domains Technology LLP & Ors.*** (supra). On a careful examination of the aforesaid decision, we are of the humble opinion that the ratio laid down in the aforesaid decision cannot be made applicable to the facts of assessee's case as the inter-se dispute between the parties is with regard to registration of certain domain names. While deciding the dispute between the parties the Hon'ble Court has observed that the domain names are typically never owned. However, we are confronted with a situation of chargeability of consideration received as royalty in terms of Section 9(1)(vi) of the Act. Section 9(1)(vi) of the Act defines royalty and as per the said definition, right to use of trade mark also qualifies as royalty. In the case of ***Hindustan Unilever Ltd. v. Endurance Domains Technology LLP & Ors.*** (supra), the Hon'ble Court never had an occasion to examine the issue qua the definition of royalty as per Section 9(1)(vi) of the Act.

17. At this stage it is relevant to observe, on a query from the Bench in course of hearing, learned counsel appearing for the assessee fairly submitted that domain name is in the nature of a trade mark under the Trade Mark Act, 1999. Therefore, based on the decision of the Hon'ble Bombay High Court in the case of ***Hindustan Unilever Ltd. v. Endurance Domains Technology LLP & Ors.*** (supra), the decisions of the Coordinate Benches in assessee's own case for assessment years 2013-14 and 2014-15 cannot be declared as per incuriam, more so, when the Hon'ble Jurisdictional High Court is seized of the matter by admitting the substantial question of law on the issue in these assessment years. Thus, the issue in dispute as off now, stands concluded against the assessee by virtue of the decisions of the Tribunal in its own case in assessment years 2013-14 and 2014-1, as discussed earlier. Therefore, in absence of any material difference in factual position in the impugned assessment year and having regard to judicial discipline and propriety, we do not find any valid reason not to follow the earlier decisions of the Tribunal in assessment years 2013-14 and 2014-15. 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.

18. In ground nos. 3 and 4 the assessee has challenged the decision of the departmental authorities in treating the income from web hosting services as FTS under section 9(1)(vii) of the Act as well as Article 12(4)(a) of the India-USA Tax Treaty.

19. Brief facts are, in the return of income filed for the impugned assessment year, the assessee treated the consideration received from web hosting services as royalty under section 9(1)(vi) of the Act. However, while proposing the draft assessment order, the 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. The learned DRP relying upon the decision in assessee's own case for assessment year 2014-15, upheld the decision of the Assessing Officer.

20. Before us, learned counsel appearing for the assessee submitted that the issue in the impugned year stands on a slightly different footing as the assessee has received a Tax Residency Certificate (TRC). The learned counsel submitted that the issue has no tax impact as the assessee has already offered it to tax as royalty. However, he submitted, the departmental authorities have incorrectly re-characterized the services rendered as managerial/ technical services under section 9(1)(vii) read with Article 12(4)(a) of the Treaty. He submitted, the 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.

21. Learned Departmental Representative strongly relied on the observations of the Assessing Officer and learned DRP.

22. We have considered rival submissions and perused the material on record. As could be seen from the facts on record, the assessee has offered the consideration received from web hosting services/ web designing services as royalty under section 9(1)(vi) of the Act. Whereas, the Assessing officer has treated it as FTS/FIS under section 9(1)(vii) read with Article 12(4)(a) of the Tax Treaty, on the reasoning that such services are ancillary and incidental to the domain name registration services rendered by the assessee, the consideration received from which is in the nature of royalty. 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. That being the position emerging on record, the amount received has to be treated as FTS. 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. The situation is no different in the impugned assessment year. Thus, considering the aforesaid aspects, we do not find any reason to interfere with the decision of the departmental authorities. The grounds are dismissed.

23. In the result, appeal is dismissed.

Order pronounced in open court on 23.09.2022.

Sd/-	**Sd/-**
(DR. BRR KUMAR)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI