

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.909/Del./2014
(ASSESSMENT YEAR : 2010-11)**

Agence France Presse (AFP), vs. DCIT, Circle 1 (1),
C/o Vishwanath, Singh & Associates, International Taxation,
Flat 10, Shanker Market, New Delhi.
Connaught Circus,
New Delhi – 110 001.

(PAN : AAFCA3976K)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Alkesh Babbar, Advocate
REVENUE BY : Shri Anuj Arora, CIT DR**

Date of Hearing : 11.04.2016

Date of Order : 29.04.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Agence France Presse (AFP) (hereinafter referred to as 'the assessee'), by filing the present appeal, sought to set aside the impugned order dated 17.12.2013 passed by DRP/TPO/AO qua the assessment year 2010-11 on the grounds inter alia that:-

"1. That the order of the learned Dispute Resolution Panel-1 [hereinafter referred to as DRP-1] is bad in law and on facts.

2. That the learned DRP-1 has erred on facts and in law in confirming the addition of Rs.7,34,06,339/- received by the appellant as Royalty without appreciating the fact that the payment has been received under the Agreements for sale of information and not for transfer of any copyright.

3. Without prejudice to Ground No.2 above, the learned DRP-1 has grossly erred in ignoring the settled position that news reporting is beyond the purview of copyright as stipulated in Section 52 of the Copyright Act.

4. Without prejudice to Grounds 2 and 3 above, the learned DRP-1 is not correct in law and in facts in holding that news reporting is covered under section 13 of the Copyright Act.

5. That the learned DRP-1 has erred in law in upholding the action of the Assessing Officer in charging interest under section 234B of the Act of Rs.29,65,937/- by referring to the Delhi High Court Judgement in the case of Alcatel Lucent USA Inc. though the facts in the assessee's case are entirely distinguishable.

6. That any consequential relief to which the assessee may be found entitled under the foregoing grounds of appeal may kindly be granted to the assessee.

7. That the assessee craves leave to add, amend, alter, delete, rescind, forego or withdraw any of the above grounds of appeal either before or during the course of the appellate proceedings in the interest of justice.”

2. Briefly Stated, the facts of this case are : during the scrutiny proceedings initiated against the assessee qua the return of income filed by it qua assessment year 2010-11, Mr. Alekesh Babbar, Partner of Vishwanath Singh & Associates, CAs put in appearance, filed requisite information and details. The assessee company (AFP) is an international news agency having its Headquarters situated at France, which being a foreign news agency required to adhere to the 1956 Cabinet Resolution providing that distribution of news in the text form within India needs to be affected through

the Indian news agency, such as, PTI, UNI, INS, etc., owned and managed by Indian having final authority in selection of foreign news for distribution. AFP has been distributing its text news along with photos in India through Indian agencies viz. Press Trust of India (PTI), INS India Pvt. Ltd. and the news on the webcam has directly been provided to the subscribers in India on their websites by AFP.

3. Assessee, during assessment proceedings, filed details of fees amounting to Rs.7,34,06,339/- as received from clients in India on account of distribution of news, texts and photo news and stated to be received by the assessee for providing reports of current news and not for transfer of any copyrights under the Copyrights Act nor the payment partake the nature of royalty in the context of the meaning of royalty in the common parlance. However, assessment was completed by holding that the payments received by the assessee are taxable in India as royalty. Assessee vide its reply confirmed that there was no change in the facts and business model during the assessment year under consideration as compared to the earlier years and the fee received by the assessee for the year under consideration is for the same type of information provided in AY 2006-07.

4. Assessee has carried the matter before the DRP, New Delhi who has affirmed the order passed by the AO. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1, 2, 3 & 4

6. The ld. AR for the assessee contended that the issue involved in this appeal is squarely covered by order dated 15.09.2014 passed by the ITAT, Delhi Bench 'A' in case entitled as **Agence France Presse vs. ADIT, Circle 1 (1), International Taxation, New Delhi- (2014) 51 taxmann.com 186 (Delhi – Trib.)**, in assessee's own case qua AYs 2002-03, 2005-06 and 2008-09 by conceding that vide order in **Agence France Presse vs. ADIT** (supra), ITAT, Delhi Bench 'A' of the Tribunal determined these grounds against the assessee which has been accepted and has not been further challenged in the Hon'ble Delhi High Court.

7. So, by respectfully following the findings returned by the coordinate Bench in the order in **Agence France Presse vs. ADIT** (supra), we hereby uphold that the AO/DRP have rightly made the

addition of Rs.7,34,06,339/- received by the assessee on account of royalty in terms of Clause 5 of Explanation 2 to Clause 6 of sub-section (1) of section 9 of the Act and also Article 13 (3) of the Indo France DTAA. Moreover, these findings have been accepted by the assessee as final.

GROUND NO.5

8. The coordinate Bench in the order passed in **Agence France Presse vs. ADIT** (supra), in assessee's own case, also dealt with this ground and ultimately decided against the assessee.

9. However, the ld. AR for the assessee relied upon the judgment delivered by Hon'ble Delhi High Court in case entitled as **Director of Income-tax vs. GE Packaged Power Inc. & Ors. Decided on 12.01.2015** and order passed by ITAT, Delhi Bench 'D', New Delhi on 11.02.2016 in case of **Kawasaki Heavy Industries Limited vs. ACIT** in ITA No.1321/Del/2015 by following the judgment of **GE Packaged Power Inc.** (supra).

10. The question arises out of this ground to be determined is **“as to whether the assessee is liable to pay the interest u/s 234B of the Act amounting to Rs.29,65,937/-?”**

11. The AO/DRP have charged the interest to the tune of Rs.29,65,937/- u/s 234B of the Act by relying upon the judgment

in case of **Alcatel Lucent USA Inc.** delivered by the Hon'ble jurisdictional High Court.

12. To proceed further, findings returned by the AO to charge the interest u/s 234B and 234C of the Act are reproduced for facility of reference as under :-

“4.2.1 The second objection raised by the assessee is in respect of chargeability of interest u/s 234B and 234C of the Act. The assessee has referred to the provisions of the Act and has relied upon case laws to contend that interest under these section is not chargeable in its case.”

13. The coordinate Bench in the case cited as **Kawasaki Heavy Industries Ltd.** (supra) by relying upon the judgment cited as **DIT vs. M/s Jacob Civil Inc. 330 ITR 578 (Delhi)** – 330 ITR 578 (Del.) and **DIT (International Taxation) vs. GE Packaged Power Inc. judgment dated 12.01.2015 in ITA 352/2014**, decided the issue in favour of the assessee meaning thereby interest levied u/s 234B is not sustainable. This issue has also been determined in favour of the assessee by the Hon'ble jurisdictional High Court in assessee's own case in ITA 222 to 225/2015 dated 23.03.2015 by following the judgment in **GE Packaged Power Inc. and Ors.** (supra) delivered by the Hon'ble jurisdictional High Court. In view of the law laid down by the Hon'ble jurisdictional High Court in judgments referred above, we are of the considered view that interest amounting to Rs.29,65,937/- levied u/s 234B by

the AO/DRP are not sustainable in the eyes of law, hence, we hereby determine ground no.5 in favour of the assessee.

GROUND NO.6 & 7

15. These grounds are general in nature, hence need no adjudication.

16. In view of what has been discussed above, the present appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in open court on this 29th day of April, 2016.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of April, 2016
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**