IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI

Before Sh. H.S. Sidhu, JM and Shri Prashant Maharishi, AM

ITA No. 1867/Del/2016 : Asstt. Year : 2013-14
ITA No. 1869/Del/2016 : Asstt. Year : 2013-14
ITA No. 1883/Del/2016 : Asstt. Year : 2014-15
ITA No. 1885/Del/2016 : Asstt. Year : 2015-16
ITA No. 1887/Del/2016 : Asstt. Year : 2015-16
ITA No. 1891/Del/2016 : Asstt. Year : 2015-16

M/s Independent News Service Pvt. Ltd., B-39, Okhla Industrial Area, 310, Phase-I, New Delhi-110020	Vs	Income Tax Officer (International Taxation), Ward-2(1)(2), New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. AAACI3024R		

Assessee by : Sh. M. P. Rastogi, Adv.,
Sh. Parveen Aggarwal, CA
Revenue by : Sh. Surinder Pal, Sr. DR. (Intl.)

ORDER

PER H.S. SIDHU, JM :

These are the bunch of 06 appeals filed by the assessee against the order of the Ld. CIT(A), wherein it has been held that provision of section 195 applies on monies remitted by the assessee to M/s Intelsat Corporation, USA for the use of transponder facility. Various grounds raised in this appeal are as under:-

1. The lower authorities have erred in holding that the provisions of Section 195 of the Income Tax Act, 1961 are applicable to the monies remitted by the appellant to the non-resident payee, viz. M/s Intelsat Corporation, USA.

2. The monies remitted to M/s Intelsat Corporation, USA for use of transponder facility is not chargeable to tax under the provisions of Section 195 of the Act.
3. The monies remitted to M/s Intelsat Corporation, USA for use of transponder facility is not chargeable to tax under Article 12 of the Double Taxation Avoidance Agreement (DTAA) between India and the USA.
4. It is contended that the monies remitted to M/s Intelsat Corporation, USA for use of transponder facility, not being royalty or fees for technical services under Article 12 of the DTAA between India and the USA, the provisions of Explanation 6 to Section 9(1)(vi) of the Act are not applicable at all.
5. The Commissioner (Appeals) has erred in applying the provisions of sub-Article (2) of Article 3 of the DTAA between India and the USA to the impugned sum remitted to M/s Intelsat Corporation, USA.
6. It is contended that in the absence of an amendment in the DTAA between India and the USA, the provisions of Explanation 6 to Section 9(1)(vi) of the Act cannot be applied to the monies remitted to M/s Intelsat Corporation, USA.
7. It is contended that the impend sum of Rs. 25,12,851/- being business profits of M/s Intelsat Corporation, USA who does not carry on business in India, is not taxable under the provisions of Sections 4 and 5 of the Act.
8. It is contended that the impugned sum of Rs. 25,14,851/- being business profits of M/s Intelsat Corporation, USA within the meaning of Article 7 of the DTAA between India and the USA, no part of the same is taxable in India.

9. That the above grounds of appeal are independent and without prejudice to one another.

Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing.

2. The grounds for Assessment Year 2013-14 are extracted and grounds for all other appeals are similar.

3. Brief facts of the case shows that the appellant-assessee has paid sum to M/s Intelsat Corporation, USA towards transponder facility and no tax has been deducted thereon for the reasons that, according to the assessee, there is no income chargeable to tax and provisions of section 195 does not apply. The assessee supports its case by stating that according to Article 12 of Indo-USA DTAA, the above facility is neither royalty nor fees for technical services, but a business income. The claim of the Revenue is that tax deducted thereon, as income of the recipient is chargeable to tax in India as 'Royalty'. Therefore, the AO passed the order u/s. 195(2) of the Act. The same was challenged by the assessee before the Ld. CIT(A), who upheld the finding of the AO.

4. At the time of commencement of hearing, Ld. AR submitted that the issue in dispute is squarely covered in favour of the assessee by the decision of the Coordinate Bench dated 25.01.2018 in assesse's own case passed in ITA No. 1868/Del/2016 AY 2014-15 & Ors. title 'Independent News Services Pvt. Ltd. vs. ITO(Intl. Taxation)' wherein relying on the decision of the Hon'ble Delhi High Court in the case of Asia Satellite Telecommunication Co. Ltd. vs. DIT reported at 332 ITR 340, it was held that the impugned sum was not the 'royalty' and therefore, the same was not chargeable to tax in India, according to Article 12 of DTAA.

5. On the other hand, Ld. DR vehemently objected and stated that the decision of the Coordinate Bench has not considered the decision of the Hon'ble Delhi High Court in the case of DIT vs. TV Today Network Ltd. (2014) 41 taxmann.com 192 (Delhi).

6. We have carefully considered the rival contentions and also perused the orders of the lower authorities. We also perused the order of the Coordinate Bench dated 25.01.2018 in assessee's own case passed in ITA No. 1868/Del/2016 & Ors. (AY 2014-15) wherein categorically it has been held that impugned sum is not a royalty, as per Indo-USA DTAA and therefore there is no requirement of deduction of tax at source u/s. 195 of the Act. At Page no. 5 of the Order, the Coordinate Bench has recorded that the decision of Hon'ble Delhi High Court in the case of DIT vs. TV Today Network Ltd. (Supra) was cited. Coordinate Bench relying upon the decision of the Hon'ble Delhi High Court in the case of Asia Satellite Telecommunication Co. Ltd. vs. DIT (Supra) has decided the issue in favour of the assessee. Attention of the Coordinate Bench was brought towards the decision of TV Today Network Ltd. (Supra), hence, it cannot be said that the same was not considered by the Coordinate Bench. Further, even otherwise, the Ld. DR, if he so sure, that decision could have changed the decision of the Coordinate Bench, the Revenue has not filed any Application for rectification of apparent error, if any. As we are bound by the judicial precedent and therefore, following the decision of the Coordinate Bench dated 25.01.2018 in assessee's own case, we also hold that the income of M/s Intalset Corporation, USA is not a 'royalty' in terms of Article 12 of the Indo-USA DTAA and therefore, assessee was not obliged to deduct tax at source under the provisions of section 195 of the Act. Accordingly, the issue in dispute is decided in favour of the assessee and appeals of the assessee are allowed.

6.1 In other appeals, the facts are identical and even the rival contention were similar, therefore, our aforesaid findings shall apply *mutatis mutandis* for all other appeals.

7. In the result, all the 06 appeals of the assessee are allowed.

Order Pronounced on 04/07/2018.

Sd/- Sd/-

(PRASHANT MAHARISHI) **(H.S. SIDHU)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Dated: 04/07/2018
SR BHATNAGAR

Copy forwarded to:

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

ASSISTANT REGISTRAR