

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "L", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA NOS. 4502/MUM/2006 & : (A.Ys : 2000-01 & 2001-02)
6974/MUM/2006

DDIT (IT)-3(1), Vs. M/s. Inmarsat Ltd.,
Mumbai (Appellant) C/o. S.R. Batliboi & Co.
14th floor, The Ruby,
29, Senapati Bapat Marg,
Dadar (W), Mumbai 400 028.
PAN : AAACI6098K (Respondent)

ITA NO. 7105/MUM/2007 : (A.Y : 2002-03)

ADIT (IT)-3(1), Vs. M/s. Inmarsat Ltd.,
Mumbai (Appellant) C/o. S.R. Batliboi & Co.
14th floor, The Ruby,
29, Senapati Bapat Marg,
Dadar (W), Mumbai 400 028.
PAN : AAACI6098K (Respondent)

ITA NO. 2229/MUM/2008 : (A.Y : 2003-04)

ADIT (IT)-3(1), Vs. M/s. Inmarsat Ltd. (now known as
Mumbai (Appellant) Inmarsat Global Ltd.)
C/o. S.R. Batliboi & Co.
18th floor, Express Towers,
Nariman Point, Mumbai 400 021.
PAN : AAACI6098K (Respondent)

Appellant by : Shri Samuel Darse

Respondent by : Ms. Aarati Sathe

Date of Hearing : 30/07/2018

Date of Pronouncement : 30/07/2018

ORDER**PER G.S. PANNU, AM :**

The captioned are four appeals by the Revenue pertaining to Assessment Years 2000-01 to 2003-04 invoking a common issue of levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act').

2. It was a common ground between the parties that in all the appeals, the facts and circumstances leading upto the imposition of penalty u/s 271(1)(c) of the Act are identical. Pertinently, the respondent-assessee before us is incorporated in the United Kingdom and is a tax resident of the United Kingdom. The respondent-assessee is engaged in the business of providing telecommunication services by a network system which, *inter-alia*, includes resources such as satellite, network co-ordinating station, network operation centre, etc. In the course of its activities, assessee entered into a Land Earth Station operator agreement with Videsh Sanchar Nigam Ltd. (VSNL), an Indian entity, for providing telecommunication services. The amounts received by the assessee from VSNL was treated as not taxable in India on the ground that it was in the nature of business profits covered by Article 7 of the Double Taxation Avoidance Agreement entered into between India and the United Kingdom and that the assessee does not have a Permanent Establishment (PE) in India. Be that as it may, the Assessing Officer treated the receipts from the Indian entity to be in the nature of 'Royalty'. In the quantum assessment proceedings, the CIT(A) also upheld the said stand. For the said reason, the Assessing Officer also imposed penalty u/s 271(1)(c) of the Act, which has since been deleted by the CIT(A)

in the impugned proceedings on the ground that assessee had neither concealed nor furnished inaccurate particulars of income for the purposes of Sec. 271(1)(c) of the Act. In this background, Revenue is in appeal before us for all the captioned assessment years.

3. At the time of hearing, it was a common ground between the parties that in the quantum proceedings, the Tribunal vide its order in ITA Nos. 5102/Mum/2004, 423 & 7555/Mum/2005 & 3426/Mum/2007 dated 14.07.2017 has considered the issue and held that the impugned receipts were not liable to be taxed in India as 'Royalty' and deleted the addition made by the Assessing Officer. As a consequence, the order of CIT(A) deleting the penalty would survive, albeit on a different ground.

4. Ostensibly, the very basis on which the penalty has been levied no longer survives in view of the order of the Tribunal dated 14.07.2017 (supra); therefore, we uphold the action of CIT(A) in deleting the penalty in all the assessment years, albeit on a different ground.

5. In the result, all the appeals of the Revenue are dismissed as above.

The above decision was pronounced in the open court in the presence of both the parties at the conclusion of the hearing on 30th July, 2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 30th July, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "L" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai