

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.236/Del/2016
Assessment Year: 2012-13**

Intelsat Corporation, C/o Pricewater House Cooper P.Ltd. Gate No.2, 1 st floor, 11A Vishnu Digamber Marg, New Delhi. PAN: AADCP6533D	vs	DCIT, Circle – 2(1)(1) New Delhi.
--	----	--------------------------------------

Assessee by Revenue by	Shri Ravi Sharma, CA Sh. G.K. Dhall, CIT DR
---------------------------	--

Date of Hearing	07.3.2019
Date of Pronouncement	26.3.2019

ORDER

PER NARASIMHA K. CHARY, JM

Challenging the order dated 18.12.2015 u/s 143(3) read with Section 144C(13) of the Income-tax Act, 1961 (“the Act”) passed by the learned AO pursuant to the directions dated 9.10.2015 issued by the Dispute Resolution Panel (DRP), assessee preferred this appeal aggrieved by the action of the authorities below to bring the receipts as royalty in India.

2. Brief facts of the case are that the Intelsat Corporation (IC)(assessee) is a tax resident of USA with its registered office in

Washington. Assessee qualifies as a tax resident of USA in terms of Article 4 of the Double Taxation Avoidance Agreement (DTAA) and the provisions of such DTAA are applicable to the case of the assessee.

3. Assessee is the owner and operator of global network of telecommunication satellites located in outer space and is engaged in active business of transmitting telecommunication signals to/from its customers and various TV channels, NICNET and Internet Service providers are using the satellites for various purposes including telecommunication, broadcasting etc; that for such purpose the assessee enters into contract with various parties around the world; and that during the FY 2011-12, the assessee leased out the transponders/bandwidth to various customers in India and customers outside India, who are using the transponder for their business in India and they as a part of their business, the assessee provided capacity on its existing satellites in order to enable the customers to upload and download information. For the AY 2012-13, the assessee filed their return of income on 28.9.2012 declaring an income of Rs.18,24,926/- and claiming a refund on account of claim of TDS amounting to Rs.65,90,960/-.

4. Learned AO after recording the assessment history of the assessee from AY 1996-97 to 2011-12 and also while referring to the provisions of OECD Commentary on Article 12 and also the decision of PanAm Sat International Systems Inc.(7 Intl. Tax Law Report 419) held that the consideration received by the assessee from the provision of satellite transmission services to its customers fall under the royalty

definition as given in Section 9(1)(vi) of the Act and Article 12 of the India USA tax treaty and hence taxable in India and accordingly found that incomes of the assessee are taxable as royalty both under the Act and the DTAA after insertion of retrospective clarificatory explanations to Section 9(1)(vi) of the Act. He also recorded a finding that since the Department had not accepted the order of the Hon'ble High Court in the case of Asia Satellite , 332 ITR 340 (Del), held that the payments received by the assessee are taxable in India as royalty both as per the provisions of the Act as well as the tax treaty and at the same time payments made by way of non resident were also considered as deemed to accrue or arise in India as per the provisions of Section 9(1)(vi)(c) of the Act and Article 12(7)(b) of the tax treaty and are taxable @ 10% of the gross amount. On this premise, learned AO summarized the following amounts to tax:

Particulars	Total Revenue (Rs.)	Attributed Revenue (Rs.)	Tax (Rs.)
Indian Customers (100%)	75,61,01,260/-	75,61,01,260/-	7,56,10,126/-
Global Customers (Attribution @ 90%)	12,36,83,972/-	11,13,15,575/-	1,11,31,557/-
Global Customers (Attribution @ 50%)	6,44,62,617/-	3,22,31,309/-	32,23,131/-
Global Customers (Attribution @ 5%)	26,94,69,086/-	1,34,73,454/-	13,47,345/-
Total attributed Income	1,21,37,16,936/-	91,31,21,598/-	9,13,12,160/-

5. After the learned DRP passed the directions dated 18.12.2015, learned AO brought the amount of Rs.91.31,21,598/- to tax and also charged interest as per law by giving credit of prepaid taxes. Hence,

the assessee is in appeal before us challenging the taxability of the receipts u/s 9(1)(vi)(c) of the Indo Us DTAA.

6. At the outset, it is brought to our notice by the learned AR that in assessee's own case for the AYs 2005-06 and 2009-10 to 2011-12 in ITA Nos.2234/Del/2009, 6041/Del/2012, 451 & 6312/Del/2014, after considering the circumstances and contentions of the parties, a Coordinate Bench of this Tribunal decided the issue in favour of the assessee. The Tribunal followed the decision of the Hon'ble jurisdictional High Court in the case of Asia Satellites (supra) and DIT vs New Skies Satellite BV, 382 ITR 114 (Del). Learned AR further submitted that since there is no change in the fundamental facts permeating all these years including the Asstt. Year 2012-13, the consistent view taken by the Tribunal as well as the Hon'ble High Court has to be followed and the issue has to be answered in favour of the assessee.

7. Learned DR placed heavy reliance on the orders of the authorities below and reiterated the arguments advanced in the above batch of appeals as could be culled out from para 10 of the said order. In view of the similarity of the facts and the nature of arguments, we do not deem it necessary to reiterate all the contentions of the parties here again.

8. It could be seen from the order dated 26.2.2018 in ITA No.2234/Del/2009 and batch, the contention of the assessee is that the impugned receipts cannot be held to be royalty and consequently cannot be brought to tax in India, so upheld by a coordinate bench of

this Tribunal while referring to the decisions of the Hon'ble jurisdictional High Court in the case of Asia Satellite (supra) and New Skies Satellite BV (supra). It is not the case of the revenue that any change of fundamental facts happened for these assessment year so as to distinguish the same from those of the earlier years.

9. In the case of Asia Satellites (supra), the Hon'ble jurisdictional High Court vide order dated 28.9.2012 upheld the contention of the assessee and even subsequent to the amendment of Section 9(1)(vi) by the Finance Act, 2012 with retrospective effect by way of Finance Act, 2012, when the revenue filed the review petition, the Hon'ble High Court dismissed the review petition also. Further, post retrospective amendment by way of Finance Act, 2012 in Section 9(1)(vi) in the case of New Skies Satellite BV, the Hon'ble jurisdictional High Court held that the condition with respect to taxability of satellite transmission services in India would remain the same for the DTAA and amendment to the Act with a retrospective or prospective cannot be read in a manner so as to extend the operation to the terms of international treaty.

10. It is, therefore, clear that the issue involved in this appeal remains squarely covered by the judgments of the Hon'ble jurisdictional High Court. When the issue no longer remains res integra and there is no change in the fundamental facts permeating all these years, we are of the considered opinion, there would be no justification to take a different view from the consistent view taken for the earlier years. We, therefore, while respectfully following the above lines of

decisions, held the issue in favour of the assessee and answer the issue stating that the income received by the assessee cannot be taxed as royalty in India. Needless to say, that the question of interest is only consequential in nature.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 26th March, 2019.

Sd/-

**(G.D. AGARWAL)
VICE PRESIDENT**

sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 26th March, 2019/VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Draft dictated on	18.3..2019
Draft placed before author	26.3..2019
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
Date of uploading order on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	