

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA No.87/PUN/2017**

**निर्धारण वर्ष / Assessment Year : 2013-14**

EPRSS Prepaid Recharge  
Services India P. Ltd.,  
207, KPCT Commercial Complex,  
Fatima Nagar, Wanowrie,  
Pune – 411013

.... अपीलार्थी/Appellant

PAN:AABCE5025H

Vs.

The Income Tax Officer,  
Ward – 1(3), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishore Phadke

प्रत्यर्थी की ओर से / Respondent by : Shri Sanjeev Ghei

सुनवाई की तारीख / <b>Date of Hearing : 28.03.2019</b>	घोषणा की तारीख / <b>Date of Pronouncement: 04.04.2019</b>
--	--

**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by assessee is against order of CIT(A)-1, Pune, dated 06.10.2016 relating to assessment year 2013-14 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT(A)-I, Pune erred in law and on facts in confirming the learned AO's decision of disallowing payment towards web hosting charges to Amazon Web Services LLC (USA) amounting to Rs.57,67,188/- and Rs.2,53,655/- respectively u/s 40(a)(i) of ITA, 1961,*

*on the analogy that, the payment is in the nature of royalty as per newly inserted Explanation-2 to section 9(1)(vi) of ITA, 1961, having retrospective effect.*

2. *The learned CIT(A)-1, Pune & the learned AO erred in law and on facts in holding that payment towards web hosting charges to Amazon Web Services LLC (USA) and Peer-1 amounting to Rs.57,67,188/- and Rs.2,53,655/- respectively accrues as taxable income of the said party in India, without dealing with the applicability of Indo-USA DTAA. The learned I-T authorities ought to have appreciated that the DTAA overrides the provisions of ITA, 1961 anyway and as per DTAA, no any such income accrues in India in absence of PE.*

3. The learned Authorized Representative for the assessee at the outset pointed out that the issue raised in the present appeal of payment made towards web hosting charges to Amazon Web Services LLC (USA) (in short 'AWS') and Peer-1 amounting to ₹ 57,67,188/- and 2,53,655/-, respectively is not in the nature of 'royalty' and the issue is squarely covered by the order of Tribunal in assessee's own case starting from assessment year 2010-11. The learned Authorized Representative for the assessee pointed out that hence, no disallowance is to be made under section 40(a)(i) of the Act.

4. The learned Departmental Representative for the Revenue fairly stated that the issue was decided by the Tribunal in assessee's own case.

5. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, the assessee was engaged in the business of distribution of recharge pins of various DTH providers to its distributors via online network. The assessee had claimed web hosting charges as deductible. The assessee explained that it required servers to run various online recharges and these servers were taken on hire from Amazon Web Services LLC, in its cloud units. The assessee had entered into Web Agreement with the said party. The case of Revenue on the other hand, was that in line with the agreement, the

assessee was granted limited license and site access to AWS website for conduct of its activities, for which charges were raised on monthly basis. The case of assessee was that there was no obligation to deduct withhold tax on payments made as the said payment did not fall either within the category of 'technical fees' or 'royalty'. However, the case of Revenue was that due to subsequent amendment to section 9 of the Act by the Finance Act, 2012, the payments made by the assessee towards web hosting charges were amounts to 'royalty', especially in view of Explanation 2 to section 9(1)(vi) of the Act. The Assessing Officer was of the view that as per definition of 'web hosting charges', payment was for the use of space on server of AWS. It also enlarged the scope and held that payment made to AWS was for the use of equipment or services rendered in connection to the same and the same would not alter the situation and the payment shall still be regarded as 'royalty'. The Assessing Officer also distinguished the case laws relied upon by the assessee and held that the payment made by assessee towards web hosting charges for use of scientific equipment to AWS falls within definition of 'royalty' as defined in section 9(1)(vi) of the Act read with Explanations 2 and 5 of the said section. Since the nature of payment was 'royalty', then there was requirement to deduct tax under section 195 of the Act read with DTAA and since the assessee has failed to deduct the said tax, then the expenditure was disallowed under section 40(a)(i) of the Act of ₹ 57,67,188/-. In respect of second payment, the Assessing Officer vide para 4.1 also noted that the assessee had made payment of web hosting charges to Peer-1 amounting to ₹ 2,53,655/- and since no tax was deducted at source, the same was also to be disallowed in the hands of assessee. The CIT(A) has upheld the order of Assessing Officer.

6. We find that the Tribunal in assessee's own case with lead order in ITA No.1204/PUN/2016, relating to assessment year 2010-11, order dated 24.10.2018 has deliberated upon the issues vide para 11 onwards and decided various aspects of the issues raised. The relevant findings are in paras 11 to 21 of the said order. Following the same parity of reasoning, we hold that the payment made by assessee for web hosting charges to AWS is not case of payment of 'royalty' under any of the provisions of section 9(1)(vi) of the Act and hence, the assessee is not liable to deduct tax at source out of such payments.

7. The Tribunal has decided the issue of payment of web hosting charges to AWS and the perusal of order of Assessing Officer for the year under consideration reflects that the assessee in addition, had paid web hosting charges to Peer-1 also. The Assessing Officer noted as such in para 4.1 of assessment order. Accordingly, applying the same parity of reasoning, we hold that payment made by assessee for web hosting charges is to be allowed as deduction in the hands of assessee in entirety. The grounds of appeal raised by assessee are thus, allowed.

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

Order pronounced on this 4<sup>th</sup> day of April, 2019.

**Sd/-**  
**(ANIL CHATURVEDI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 4<sup>th</sup> April, 2019.

GCVSR

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR  
'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune