

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 3199/DEL/2018
[Assessment Year: 2015-16]

Intelsat Corporation
C/o Pricewater house Coopers Pvt Ltd
Sucheta Bhawan, Gate No. 2, 1st Floor
11A, Vishnu Digamber Marg, New Delhi

Vs.

The A.C.I.T
Circle 21(2)
[Inttl Taxation]

PAN : AADCP 6533 D

[Appellant]

[Respondent]

Date of Hearing : 11.10.2021
Date of Pronouncement : 11.10.2021

Assessee by : Shri Vishal Kalra, Adv
Revenue by : Shri Gangadhar Panda, CIT-DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 14.03.2018 framed u/s 143(3) r.w.s 144C(13) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

2. Grievances of the assessee read as under:

"1. That on the facts and in the circumstances of the case and in law, the Learned Assessing Officer ("Ld. AO") has erred in assessing the income of the appellant at INR 1,05,13,94,035/- for the subject year.

1.1. That on the facts and in the circumstances of the case and in law, the Hon'ble Dispute Resolution Panel ("Hon'ble Panel") erred in not directing the Ld. AO to hold that the appellant is not liable to tax in India.

2. That on the facts and in the circumstances of the case and in law, the Hon'ble Panel erred in not directing the Ld. AO to follow the orders issued by the Hon'ble High Court of Delhi in the appellant's own case for AY 2006-07 to AY 2008-09, wherein the Hon'ble Delhi High Court has dismissed the appeals filed by the Revenue Department against the favourable orders of the Hon'ble Income Tax Appellate Tribunal, New Delhi ("Hon'ble ITAT").

3. That on the facts and circumstances of the case and in law, the Hon'ble Panel and the Ld. AO erred in holding that the receipts of the appellant are in the nature of "Royalties" within the ambit of Explanation 2 to section 9(i)(vi) of the Income-tax Act, 1961 ("the Act") and Article 12(3) of the India-USA Double Taxation Avoidance Agreement ("DTAA").

4. That without prejudice to the above, on facts and circumstances of the case and in law, the Hon'ble Panel and the Ld. AO erred in not appreciating that appellant being a resident of USA is covered by the beneficial provisions of DTAA between India and USA and accordingly, could not be taxed under the provisions of the Act.

5. That without prejudice to the above, on facts and circumstances of the case and in law, the Hon'ble Panel and the Ld. AO erred inferring that the expanded definition of "Royalties" contained in section g(i)(vi) of the Act as retrospectively amended by Finance Act, 2012, is applicable on the definition of "Royalties" as provided under Article 12(3) of the India-USA DTAA, whereas it is a settled position in law that amendment in the Act cannot automatically impact the interpretation of a DTAA.

6. That without prejudice to the above, on the facts and in the circumstances of the case and in law, the Hon'ble Panel and Ld. AO erred in holding that the receipts of appellant from its non resident customers are also chargeable to tax in India as per the provisions of section 9(i)(vi)(c) of the Act and Article 12(7) of the India-USA DTAA.

6.1 That without prejudice to the above, on the facts and circumstances of the case and in law, the Hon'ble Panel and Ld. AO erred in categorizing the receipts of appellant from its non resident customers into three categories without giving a reasonable basis and accordingly, taxing 90 percent, 50 percent

and 5 percent of the revenue from such non-resident customers.

7. That the Ld. AO erred in initiating penalty proceedings under section 271(i)(c) of the Act.

The above grounds are without prejudice to each other.

That the appellant reserves its right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal."

3. Briefly stated, the facts of the case are that the appellant is a company of United States of America and as such, qualified as a tax resident of USA in terms of Article 4 of the Double Taxation Avoidance Agreement between India and USA. The appellant is the owner and operator of global network telecommunication satellites located in outer space and is engaged in active business of transmitting telecommunication signals to/from its customers. Various TV channels, NICNET and internet service providers are using the satellites for various purposes including telecommunication, broadcasting etc.

4. During the course of scrutiny assessment proceedings, the Assessing Officer dismissed the contention of the assessee that it is not taxable in India.

5. The assessee has placed strong reliance on its past assessment history, but the same was not accepted by the Assessing Officer on the basis that the department has filed SLP before the Hon'ble Supreme Court against the order of the Hon'ble High Court by which the issue has been decided in favour of the assessee and against the revenue.

6. The Assessing Officer further observed that the department's SLP in the case of Asia Satellite Telecommunication Co. Ltd is also pending before the Hon'ble Supreme Court on which the Hon'ble High Court has based its decision.

7. The DRP also followed its directions given in earlier year holding that there is no change in the factual matrix. Therefore, there is no reason to deviate from the directions given earlier.

8. We have carefully considered the orders of the authorities below. In our considered opinion and after going through the decisions of the Hon'ble High Court of Delhi in the case of the appellant, we find that the quarrel has now been well settled in favour of the assessee and against the Revenue by the decision of the Hon'ble High Court of Delhi in ITA No. 530/2012 and 545/2012 order dated 28.09.2012. The

Hon'ble High Court of Delhi, again in ITA no. 900/2019, order dated 15.12.2019 had the occasion to consider similar quarrel and held as under:

"The present appeal is directed against the order dated 26.03.2019 passed by the Income Tax Appellate Tribunal Delhi Bench (ITAT): „G“, New Delhi in ITA No. 236/Del/2016 in respect of the assessment year 2012-13. The Tribunal has placed reliance on the decisions of this Court in *M/s Asia Satellite Telecommunications Co. Ltd. Vs. DIT* (2011) 332 ITR 340 (Del) and *Director of International Taxation Vs. New Skies Satellite BV*, (2016) 382 ITR 114 Del.

Since the issues raised by the Revenue are squarely covered by the aforesaid decisions of this Court, in our view, no question of law arises for our consideration. Dismissed."

9. Similar view was taken in Assessment Year 2013-14 by this Tribunal in ITA No. 5534/DEL/2016 wherein the Tribunal has placed strong reliance on the decision of the Hon'ble High Court of Delhi in the case of *Asia Satellite Telecommunications Co. Ltd* 332 ITR 340 and *New Sky Satellite* 382 ITR 114 and since the order of the Tribunal was based on these decisions of the Hon'ble Jurisdictional High Court of Delhi, the

Hon'ble High Court dismissed the appeal of the Revenue holding that no question of law arises.

10. Considering the facts of the case in light of the decisions of the Hon'ble Jurisdictional High Court [supra] in the appellant's own case, we direct the Assessing Officer to treat the income of the assessee as not liable to tax in India.

11. In the result the appeal of the assessee in ITA No. 3199/DEL/2018 is allowed.

The order is pronounced in the open court in the presence of both the representatives on 11.10.2021.

Sd/-

[AMIT SHUKLA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated : 11th October, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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