

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND  
SHRI AMARJIT SINGH (JUDICIAL MEMBER)**

**ITA No. 1177/MUM/2021  
Assessment Year: 2017-18  
&  
ITA No. 1178/MUM/2021  
Assessment Year: 2017-18**

ACIT (IT)-4(3)(1),  
Room No. 1613, 16<sup>th</sup> floor, Air  
India Building, Nariman Point,  
Mumbai-400020.

**Appellant**

**Vs.** M/s Viacom 18 Media Pvt. Ltd.,  
Zion Bizworld, Subhash Road-A, Near  
Garware Office, Ville Parle (East),  
Mumbai-400057  
**PAN No. AAACM 9164 E**  
**Respondent**

Revenue by : Mr. S.N. Kabra , DR  
Assessee by : Mr. Nimesh Vora, AR

Date of Hearing : 21/02/2022  
Date of pronouncement : 28/02/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

These appeals by the Revenue are directed against the two separate orders, each dated 16.09.2020, passed by the Ld. Commissioner of Income Tax (Appeals)-58, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2017-18 in relation to applicability of withholding tax on transponder service fees paid by the assessee. Identical grounds have been raised in same set of facts and

circumstances and therefore both these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of the facts. As common grounds have been raised except difference of transaction value, therefore, grounds of ITA No. 1177/M/2021 are only reproduced for brevity:

1. *"Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in holding that the assessee was not liable to deduct tax at source u/s 195 of the Act on payments made to Intelsat Corporation, USA/IGSM, UK/MEASAT, Malaysia for transponder charges on the ground that payment did not constitute royalty u/s 9(1)(vi) of the Act or under the relevant DTAA?"*
2. *Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in not taking into account that the payments made by the assessee to Intelsat for transponder charges are specifically covered by Explanation 6 to section 9(1)(vi) as being included in the expression 'process' and hence fall under definition of royalty as per Explanation 2 to section 9(1) vi) of the Act?*
3. *Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in not taking into account that Explanation 6 to section 9(1) (vi) of the Act was inserted by the Legislature by way of Finance Act, 2012 as a declaratory and clarificatory amendment with retrospective effect from the day the source rule on royalty came into effect to specify the intent of the law as it was always meant and understood?*
4. *Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in not taking into account that the term 'process' is*

*not defined in the relevant DTAA and hence its meaning has to be derived from the domestic law of India?*

2. Briefly stated, the facts of the case are that the assessee is engaged in the business of marketing/advertising air time of different television channels, distribution of these channels etc. During the year under consideration, the assessee made payment of transponder service fees to following entities:

1. *Intelsat Corporation, USA (Intelsat)*
2. *Intelsat Global Sales and Marketing, UK (IGSM)*
3. *MEAST Satellite System, Malaysia (MEASAT)*

2.1 The assessee applied for an order u/s 195(2) of the Act, 1961 (in short 'the Act') for nil withholding tax certificate on the payment of transponder services made to the above service providers. The Assessing Officer rejected the application of the assessee holding that payment falls under the definition of "Royalty" both under the provisions of the Act as well as under DTAA between India and relevant country and therefore, payments are liable for withholding tax. The relevant finding of the Ld. Assessing Officer is reproduced as under :

*"The submission of the applicant have been perused. The Finance Act 2012 has inserted a new explanation to section 9(1)(vi) which defines the term royalty'. As per the new Explanation 6, the term 'process', as referred to the definition of 'royalty' under the IT Act, includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal). The new explanation also*

*states that 'process' (which includes transmission by satellite) shall be royalty under the IT Act whether or not such process is secret. In light of the said explanation, it is held that payment of transponder service fees to Intelsat by Applicant is a 'process' and thus it is in the nature of royalty income taxable in India in terms of the provisions of Section 9(1) (vi) of the IT Act as well as treaty. The definition of Royalties as per Article 12 of the India - USA Tax Treaty includes the payment made for use of any 'process'. The terms 'process' is not defined in the India-USA Tax Treaty. Therefore, the definition of the term process has to be imposed from the Act. Thus, the payment made for transmission by satellite is a royalty even under the tax treaty. The reference to decision of the Hon'ble Delhi High Court made by the applicant has not been accepted by the department and the SLP has been preferred in this case. Also, the orders passed earlier, in the case of the applicant treating the transponder services fee as 'royalty income' has been upheld by the Ld. CIT(A) and ITAT."*

2.2 Accordingly, the Assessing Officer held those payments as 'royalty' and directed the assessee to withhold the tax as per provisions of the Act.

3. On further appeal by the assessee, the Ld. CIT(A) followed the decision of Hon'ble Bombay High Court in the case of **Neo Sports Broadcast Pvt. Ltd. (ITA No. 1487 of 2018)** wherein it is held that transponder charges paid to non-resident is not taxable as "royalty". While doing so the Hon'ble Bombay High Court has relied on the Hon'ble Delhi High Court in the case of Asia Satellite Communication Company Ltd. (2011) 332 ITR 340 and Skies Satellite BV (2016) 382 ITR 114. The Ld. CIT(A) has also considered the DTAA in the case of other

two parties and held that definition of the royalty in those treaties are also similar to the definition of Royalty in treaty between India and USA and thus concluded that transponder charges paid by the assessee to above referred three entities were not taxable in India. Similar finding has been given by the Ld. CIT(A) in the impugned order in ITA No. 1178/M/2021.

4. Aggrieved with the findings of the Ld. CIT(A), the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

5. Before us, the Ld. Departmental Representative (DR) relied on the order of the Assessing Officer and submitted that in view of Explanation to section 9(1)(vi), the term “process” referred in definition of Royalty includes transmission by satellite. Therefore, as per Act, the payment for transponder service is Royalty. The definition of Royalty according to DTAA also includes payment made for any “Process”. The term “Process” has not defined in DTAA and therefore the definition has to imposed from the Act. In such circumstances, the providing transponder service is Royalty as per DTAA also.

6. The Ld. AR on the other hand submitted that identical payments made for transponder services has been held by the Tribunal in ITA No. 523/M/2021, 1068/M/2021, 1072/M/2021, 1063/M/2021 and 1064/M/2021 as not liable for withholding tax.

7. We have heard rival submission of the parties on the issue in dispute and perused the relevant materials on record. The issue in dispute in these both appeal is whether the transponder charges paid by the assessee to three entities listed above is in the nature of the 'royalty' and liable for withholding tax. In respect of the three above listed entities, the Tribunal (supra) has held as under:

*"9. We have heard the rival submissions of the parties on the issue in dispute and perused the relevant material on record. In the appeal for assessment year 2015-16, the Ld. CIT(A) has considered the facts of one of the parties in whose case, the assessee sought determination of sum chargeable under the Act and consequential deduction of tax at source u/s 195(2) of the Act. The Ld. CIT(A) referred to master agreement between the assessee and Intelsat Corporation, USA to highlight the services of transponding facility provided by the party. The Ld. CIT(A) has noted that while passing the order dated 28/03/2014, 04/02/2015 and 10/02/2015 in assessee's own case, the Tribunal was not having any benefit of the decision of the Hon'ble Bombay High Court in the case of New Sports Broadcast Pvt Ltd (ITA 1487 of 2018) and, therefore, transponder payments were held to be royalty, taxable under the Act / Treaty. However, subsequently, in ITA Nos. 599 to 614/Mum/2016 for assessment year 2013-14 to 2015-16 in order dated 09/07/2018*

*following the decision of GE Technology Centre Pvt Ltd (supra) held that since no income was chargeable in the hands of the recipient, there was no liability on the part of the assessee to deduct tax at source on the similar payments for transponder facility. Further, the Ld. CIT(A) has followed binding precedents of jurisdictional High Court in the case of New Sports Broadcast Pvt Ltd (supra), wherein it is held that transponder charges are not in the nature of 'Royalty income in the hands of recipients despite amendment to section 9(1) (vi) of the Act.*

10. *In view of binding precedent of the Tribunal and Hon'ble High Court followed by the Ld. CIT(A) in respective impugned orders, we do not find any error or infirmity in the impugned orders passed by the Ld. CIT(A) on the issue in dispute relevant to the orders of Assessing Officer u/s 195(2) of the Act. Accordingly, we uphold the finding of the Ld. CIT(A) in impugned orders. Grounds raised by the Revenue in these appeals are accordingly dismissed."*

7.1 The issue being identical, respectfully following the finding of the Tribunal, the grounds raised by the Revenue are dismissed.

8. In the result, the appeals filed by the Revenue are dismissed.

**Order pronounced in the open Court on 28/02/2022.**

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER

Mumbai;  
Dated: **28/02/2022**  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**