

IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1855/Mum./2022
(Assessment Year : 2017-18)

ITA no.1856/Mum./2022
(Assessment Year : 2018-19)

PDR Solutions FZC
501, 5th Floor, I.T. Building no.3
NESCO IT Park, SESCO Building
Western Express Highway
Goregaon (East), Mumbai 400 063
PAN – AAGCP5504K

..... Appellant

v/s

Dy. Commissioner of Income Tax
International Taxation
Circle-3(3)(2), Mumbai

.....Respondent

Assessee by : Shri Porus Kaka a/w
Shri Divesh Chawla
Revenue by : Shri Amit Kumar Soni

Date of Hearing – 21/12/2022

Date of Order – 30/12/2022

ORDER

PER BENCH

The present appeals have been filed by the assessee against the separate impugned final assessment orders dated 31/05/2022 and 23/05/2022, passed under section 143(3) r/w section 144C(13) of the Income Tax Act, 1961 (*'the Act'*) by the Assessing Officer (*'AO'*), pursuant to the separate directions issued by the learned Dispute Resolution Panel-I, (*'learned*

DRP), under section 144C(5) of the Act for the assessment year 2017-18 and 2018-19, respectively.

2. Since both appeals pertain to the same assessee and the issues involved are also common, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2017-18 is taken up as a lead case.

ITA no.1855/Mum./2022
Assessee's Appeal – A.Y. 2017-18

3. In its appeal, the assessee has raised following grounds:-

"On the facts, and in the circumstances of the case, and in law, the Appellant craves to prefer an appeal against the order dated 31 May 2022 passed by the Deputy Commissioner of Income- tax (Int. Tax)-3(3)(2) (hereinafter referred to as the 'learned AO) under Section 143(3) read with Section 144C(13) of the Income-tax Act, 1961 on the grounds as set out herein:

The following grounds are independent of, and without prejudice to, one another:

GROUND 1: OBJECTION AGAINST ADDITION ON ACCOUNT OF INCOME FROM DOMAIN REGISTRATION SERVICES

On the facts and circumstances of the case and in law, the Assessing Officer (AO) erred in alleging that income from Domain Name Registration services is taxable as 'Royalty' under Section 9(1)(vi) of the Income Tax Act, 1961 (Act') and under the India- UAE treaty (tax treaty)".). The AO based on his conclusion contended that the Appellant is the owner of the domain name and is imparting the right to use in respect of a domain name thus erroneously considering it as a 'Trademark'.

The Assessing Officer (AO) erred in understanding the fact that the domain name does not lie with the appellant, and accordingly, there is no question of imparting rights for further consideration, thus it cannot be classified as the trademark and cannot be termed as 'Royalty'.

GROUND II: OBJECTION AGAINST ADDITION ON ACCOUNT OF INCOME FROM WEB HOSTING SERVICES

On the facts and circumstances of the case and in law, the Assessing Officer ('AO') erred in proposing that income from web hosting services is taxable as 'Royalty under Section 9(1Xvi) of the Income Tax Act, 1961 (Act') and under the India- UAE treaty (tax treaty') in the absence of any physical access or control or possession or independent right being granted by the appellant to the payer.

The Assessing Officer (AO) erred in concluding that the income from web hosting is interlinked to income from domain registration services and considered as royalty despite the fact that the said services are mutually exclusive and independent.

GROUND III: OBJECTION AGAINST ADDITION ON ACCOUNT OF SPONSORSHIP INCOME

On the facts and circumstances of the case and in law, the Assessing Officer ('AO") erred in concluding that the assessee did not provide substantial documents and information regarding the treatment of sponsorship and other income, as a business income in computation and alleging that it is clearly evident that assessee is hiding the fact with respect to same and claimed that the same should be added to the income of the assessee.

The Assessing Officer (AO) erred in ignoring the fact that the assessee had made sufficient disclosures and submitted proper evidence in support of its contention that there shall not be any addition made on account of Sponsorship Income due to the absence of Permanent Establishment in India.

The assessing officer (AO) erred in law and in the fact that the income from Sponsorship is taxable as 'Business income' under the India-UAE tax treaty ('tax treaty') treating it as PE in India without giving adequate reasoning / explanation for treating it as PE in India.

The Appellant craves leave to add to, or alter, by deletion, substitution, modification, or otherwise, the above grounds of appeal, either before or during the hearing of the appeal."

4. The brief facts of the case are: The assessee is incorporated in United Arab Emirates ('UAE') and is a tax resident of UAE. The assessee is engaged in the business of web presence, and sale of domain names to global customers through its B2B brands 'Logic Boxes', 'Reseller Club', and B2C brand 'Big Rock'. The B2B business represents the sale of domain names to domain name resellers, whereas B2C represents the sale of domains to third-party ultimate customers. The business of the assessee also comprises of providing web hosting services whereby server spaces are given on lease/hire to clients. For

the year under consideration, the assessee e-filed its return of income on 30/11/2017 declaring a total income of Rs. 8,10,94,810. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Act were issued. In view of the international transactions entered into by the assessee with its associated enterprises, reference was made to the Transfer Pricing Officer for the determination of arm's length price in respect of the said international transactions. The Transfer Pricing Officer drew no adverse inference in respect of the international transactions undertaken by the assessee during the year under consideration. During the year, the assessee received the following income from India:

<i>Sr. No.</i>	<i>Nature of Revenue</i>	<i>Amount (in INR)</i>
1.	<i>Licensing of Orderbox platform to a group entity</i>	<i>1,03,05,528/-</i>
2.	<i>Licensing of brand and trademark</i>	<i>2,01,16,542/-</i>
3.	<i>Receipt for sale of customer list and customer contracts</i>	<i>5,06,72,737/-</i>
4.	<i>Date centre income</i>	<i>3,05,20,419/-</i>
5.	<i>Domain sale income</i>	<i>27,41,96,969/-</i>
6.	<i>Sponsorship income</i>	<i>64,91,659/-</i>

The receipts at serial No. 4, 5, and 6 were considered taxable by the Revenue and thus, the assessee is in appeal before us.

5. The issue arising in ground No. I, raised in assessee's appeal, is pertaining to the addition on account of income from domain registration services.

6. The brief facts of the case pertaining to this issue are: During the assessment proceedings, the assessee was asked to show cause as to why the income from domain sale income, inter-alia, should not be treated as royalty. In response thereto the assessee submitted that the domain name is an internet network address that is readable in human language and can be obtained on first-come first-served basis. The assessee further submitted that assessee is not the owner of the domain name and therefore the question of transfer of any right in the said domain name cannot arise. It was further submitted that the domain name registration services are provided by Registrars who are accredited by Internet Corporation for Assigned Names and Numbers ('ICANN'), which is a non-profit organisation authorised by the United States Department of Commerce. It was submitted that the assessee is a Registrar and is merely a facilitator of the domain name registration and not the user of the domain name. By referring to the Uniform Domain Name Dispute Resolution Policy, 1999, the assessee submitted that the Registrar or the Resellers do not own the domain name or the trademark associated with the domain name and the rights if any vest with the registered domain name holder i.e. registrant and the trademark owner. Further, the domain name registration service is a standard facility, which can be availed by anyone on payment of nominal fees. And, domain registration services are akin to the provision of registration services for registering the name of a Company with the Registrar of Companies, or more commonly, registering a motor vehicle with the Regional Transport Authority. It was further submitted that in the event of trademark infringement suits filed by parties with regard to the use of domain names with mala fide intention, the Registrars/Reseller cannot be sued

since they did not have any right in the domain name which was registered by them as a mere facilitator.

7. The AO vide draft assessment order dated 26/09/2021 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that domain name registration is taxable in India as royalty because domain name is an '*intangible asset*' in the nature of '*trademark*'. The AO further held that the assessee is giving the client right to use its domain name for a fixed period and for a fixed amount of time. Further, the assessee is not selling the domain name but registering or renewing it, which clearly indicates that the assessee as a domain name services provider is the owner of the domain name and it is only providing the right to use the domain name to its clients. Accordingly, the AO treated the sum of Rs. 27,41,96,969 received by the assessee on account of domain name registration as royalty under the provisions of the Act as well as the India UAE Double Taxation Avoidance Agreement ('DTAA') and added the same to the total income of the assessee.

8. The assessee filed detailed objections before the learned DRP, inter-alia, against the addition made by the AO. Vide directions dated 07/03/2022, issued under section 144C(5) of the Act, the learned DRP rejected the objections filed by the assessee. In conformity with the directions issued by the learned DRP, the AO passed the impugned final assessment order dated 31/05/2022, and assessed the income from domain name registration as royalty. Being aggrieved, the assessee is in appeal before us.

9. During the hearing, the learned Sr. Counsel, appearing for the assessee, submitted that the assessee is a Registrar, who is authorised by ICANN and acts as an intermediary in the entire process of domain name registration. Learned Sr. Counsel by referring to the Registrar Accreditation Agreement between the assessee and ICANN as well as the Reseller Master Agreement between the assessee and the reseller submitted that the assessee neither grants domain names nor has any right to customer data given to the Registry. Further, it was submitted that the domain name is not an intellectual property right of the assessee and the right, of any sort, is only with the customer/registrant. The learned Sr. Counsel submitted that the role of the assessee is merely to check the domain name sought to be registered by the customer in the database maintained by the Registry.

10. On the contrary, the learned Departmental Representative (*'learned DR'*) vehemently relied upon the order passed by the lower authorities.

11. We have considered the rival submissions and perused the material available on record. The issue to be considered is whether the income earned by the assessee, who is a Registrar, from domain name registration will be taxable as royalty under the provisions of the Act or DTAA. The domain name is an internet network address that is readable in human language. Domain names are formed by the rules and procedures of the Domain Name System (*'DNS'*). Any name registered in the DNS is a domain name. In general, a domain name represents an Internet Protocol (*'IP'*) resource. Computers or any other internet resources communicate by using numbers, called IP addresses, to contact each other. Domain names serve to identify such

internet resources with a text base label that is easier to memorise than the numerical addresses used in the Internet Protocols. Domain names are also used as simple identification labels to indicate ownership or control of a resource. Organisations can choose a domain name that corresponds to their name, helping internet users to reach them easily. Thus, with the domain name, an organisation named ABC can state its website as 'abc.com' instead of 123.876.321/abc/.

12. The domain name registration process involves ICANN, Registry, Registrar, and Reseller. The role of each party in this process is as under:

(a) ICANN is an organisation charged with overseeing the name and number systems of the Internet. In addition to ICANN, each Top-Level Domain ('TLD') is maintained and serviced technically by an administrative organisation operating a registry.

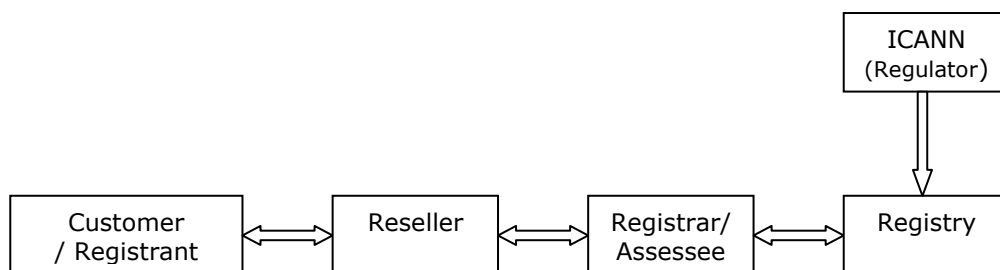
(b) The Registry is responsible for maintaining the database of names registered with the TLD it administers. ICANN manages the TLD with the help of hundreds of domain name Registries spread throughout the world. Each of these Registries is certified by and subject to the direct supervision of ICANN. The role of the Registry operators within the internet ecosystem includes accepting registration requests and keeping the master database of all domain names registered in each TLDs. The Registry receives registration information from each domain name Registrar authorised to assign names in the corresponding TLD and publishes the information using a special service.

(c) The Registrar is an entity that offers domain name registration services to registrants in generic top-level domains. The relationship between ICANN and every ICANN-accredited Registrar is governed by the Registrar Accreditation Agreements, which sets out the obligation of

both parties. The Registries and Registrars usually charge an annual fee for the service of delegating a domain name to a user and providing a default set of name servers.

(d) The reseller is a third party company that offers domain name registration services through a Registrar.

The diagrammatic representation of the domain registration process is as under:



13. In the present case, the assessee provided domain name registration to various customers under the brand name 'Logic Boxes', 'Big Rock', 'Reseller Club', and other categories to resellers and retail customers. The assessee functions as the 'Registrar' in the domain name registration process and its group companies act as 'Reseller' which procures domain registration services from the assessee, as the case may be, and provides it the ultimate customers. As per the assessee, the customer will access the reseller to check the availability of the domain name, which request will be forwarded to the Registry through the Registrar, and then the result shall be communicated to the customer. If the domain name as requested by the customer is not already registered then upon receipt of payment from the customer, the reseller shall liaise with the Registrar/assessee for assistance and registration of the domain name for that specific customer. Thus, it is pertinent to note that prior to registration by the customer the domain name does not exist in the database.

Further, the right in the domain name came into existence in favour of the customer only upon registration and the same belongs to the customer only during the period of registration, which is generally for one year. If after the expiry of the period of registration, the customer does not renew the registration then the same domain name would be available to another customer to be registered in its name. Such registration can also be done through a different Registrar for the same domain name. The purpose of registration of a domain name is primarily to have exclusivity of domain name vis-à-vis the customer during the period of registration since the internet allows for access to the domain name without any geography limitation. Thus, the domain name is registered on a first-come-first-serve basis. However, in this entire process, the only person who can claim the right over the domain name can only be the customer. As the activity of the Registrar does not result in transferring of any right in the domain name since its scope of activities is restricted only to facilitate the registration of the domain name after checking its availability in the database maintained by the Registry, under the supervision of ICANN.

14. In the present case, the AO has treated the amount received from domain name registration taxable in India as royalty on the basis that the domain name is an '*intangible asset*' in the nature of '*trademark*'. In order to come to the conclusion, the AO, inter-alia, has placed reliance upon the decision of the Hon'ble Supreme Court in Satyam Infoway Ltd. vs Sifynet Solutions (P) Ltd., (2004) 6 SCC 145. We find that while coming to the conclusion that a domain name may have all the characteristics of a

trademark, the Hon'ble Supreme Court, in the peculiar facts of that case took into consideration the factors, namely, the volume of sales, extent of advertisement, misrepresentation by the defendant to the public and likelihood of confusion in the minds of the public, and accordingly came to the conclusion that the Appellant has been able to establish the goodwill and reputation claimed by it in connection with the trademark. In this regard, it is relevant to note that the Hon'ble Jurisdictional High Court in People Interactive (India) Private Ltd vs Vivek Pahwa, 2016 SCC OnLine Bom 7351 held that every domain name that incorporates a trademark enjoys the same protection as the mark, neither more nor less.

15. Thus, it is pertinent to note that the particular name *per se* may tantamount to trademark, in certain cases, only with the continuous efforts of an entity. Even in such a case, if another customer approaches the Reseller / Registrar for registration of that name as its domain name, the same shall be registered provided the domain name is available in the database maintained by the Registry. In such a situation, the entity having the trademark can initiate '*passing off*' proceedings in respect of the trademark only against the aforesaid registrant. However, in such an action, no relief can be sought against the Registrar since they do not have any right in the domain name which was registered by them merely as a facilitator. Further, the Registrar also doesn't have any right in the data submitted by the customer for registration of the domain name. We find that the Hon'ble Jurisdictional High Court in Hindustan Unilever Ltd vs Endurance Domains Technology LLP, 2020 SCC OnLine Bom 809, wherein the relief was sought against the Registrar held

that it is entirely unworkable to ask the domain name Registrar to 'block access' to domain name as the Registrar can only be asked to suspend registration. The Hon'ble High Court further held that the entire process of registration itself is entirely automated/machine driven and therefore the notion that the domain name Registrar has a person or a team of person scanning and checking every domain name application betrays a wholesale lack of understanding of how domain name registration actually works. Thus, the registration will continue until suspension or expiry.

16. Therefore, from the above, it is evident that apart from acting as an intermediary in the entire process of domain name registration, the Registrar has no other role to play. Thus, it cannot be held that the assessee functioning as a domain name Registrar had any right in the domain name registered in the name of the customer/registrant, least intellectual property right/intangible asset in the nature of 'trademark'. In the present case, there is no dispute regarding the fact that the assessee is a resident of UAE and therefore the assessee is entitled to the provisions of the India UAE DTAA. The Tax Residency Certificate ('TRC') for the year under consideration also forms part of the paper book filed by the assessee. Under Article 12(3) of the India UAE DTAA, the term 'royalty' has been defined as under:

"3. The term "royalties" as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematography films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience but do not include royalties or other payments in respect of the operation of mines or quarries or exploitation of petroleum or other natural resources."

17. In view of the above, we are of the considered opinion that since the assessee had no right in the domain name, the income received by the assessee from domain name registration does not fall in the category of royalty as defined under Article 12(3) of the India UAE DTAA. Further, once the taxability fails in terms of the treaty provisions, there is no occasion to refer to the provisions of the Act, as in terms of section 90(2) the provisions of the Act or the DTAA, whichever is more beneficial to the assessee shall be applicable. We find that the decision of the coordinate bench of the Tribunal in *Godaddy.com vs ACIT*, (2018) 170 ITD 217 (Delhi-Trib.), relied upon by the AO, is factually distinguishable as in that case the taxpayer did not claim any benefit under the tax treaty. Hence, the AO is directed to delete the addition on account of income from domain registration services. Accordingly, ground No. I raised in assessee's appeal is allowed.

18. The issue arising in ground No. II, raised in assessee's appeal, is pertaining to the addition on account of income from web hosting services.

19. The brief facts of the case pertaining to this issue are: During the year under consideration, the assessee earned an income of Rs.3,05,20,419, from providing web hosting services to customers. During the assessment proceedings, the assessee was asked to show cause as to why income from web hosting services should not be treated as royalty. In response thereto the assessee submitted that it is engaged in the business of web presence, including inter-alia, providing web hosting services. It was further submitted that the assessee also manages to procure servers on lease in respect of

providing web hosting services to the end customers. Therefore, the assessee provides web space to various customers to host their websites on its third-party servers either owned or leased. The assessee further submitted that the consideration paid is for the use of the server space, and the customers neither have an independent right to use the server space nor have any physical access to it. Further, there is no right to use the technology platform nor there is any grant of license to use the platform. The AO vide draft assessment order did not agree with the submissions of the assessee and held that customers of the assessee are using the server of the assessee and paying the fees for the same. The AO further held that web hosting is interlinked with the domain name and therefore the amount received by the assessee in respect of web hosting/data centre services is in nature of royalty under the Act as well as under the provisions of the India UAE DTAA. Accordingly, the AO made an addition of Rs. 3,05,20,419 to the total income of the assessee.

20. The assessee filed detailed objections before the learned DRP, inter-alia, against the addition made by the AO. Vide directions dated 07/03/2022, issued under section 144C(5) of the Act, the learned DRP rejected the objections filed by the assessee and held that web hosting services is a type of internet hosting service that allows individuals and organisation to provide their own website accessible via the World Wide Web and the payment is received on account of imparting the right to access the website which is valuable right falling within the purview of royalty under the domestic law of India as well as India UAE DTAA. In conformity with the directions issued by the learned DRP,

the AO passed the impugned final assessment order dated 31/05/2022 and assessed the income from web hosting services as royalty. Being aggrieved, the assessee is in appeal before us.

21. During the hearing, the learned Sr. Counsel submitted that the consideration received by the assessee was only for use of the server space and neither independent right to use the server space nor any physical access was granted to the customer. Therefore, the amount received by the assessee on account of web hosting services is not in the nature of royalty.

22. On the contrary, the learned DR vehemently relied upon the orders passed by the lower authorities.

23. We have considered the rival submissions and perused the material available on record. Web hosting normally refers to the Web server that stores lots of data files. Web hosting provider normally has servers and network connection to the end users or the resellers. Web hosts are companies that provide space on a server they own or lease for use by the clients as well as providing Internet connectivity, typically a data centre. As per the assessee, the consideration paid is for use of the server space and the customers neither have an independent right to use the server space nor have physical access to it. Further, there is no right to use the technology platform nor there is any grant of license to use the platform. We find that the term '*royalty*' is not as widely defined in the India UAE DTAA as the same has been defined under the provisions of the Act. We further find that after the insertion of Explanation 5 to section 9(1)(vi) of the Act by Finance Act 2012, the possession or control or

location of the right, property, or information is not relevant under the provisions of the Act. However, we find that similar amendment has not been carried out in the provisions of India UAE DTAA. In DIT vs New Skies Satellite BV, [2016] 382 ITR 114 (Delhi), the Hon'ble Delhi High Court held that unless the DTAA is amended jointly by both parties, Finance Act, 2012 which inserted Explanations 4, 5 and 6 to section 9(1)(vi) by itself would not affect the meaning of term 'royalty' as mentioned in the DTAA. Therefore, in absence of a grant of any control over the equipment belonging to the assessee to its customers, the findings of the AO that the amount so received will constitute royalty is not acceptable in view of the provisions of Article 12(3) the India UAE DTAA. Further, we find no basis in linking the taxability of income from web hosting services with income from domain registration services by the AO, as both are independent and mutually exclusive. Hence, the AO is directed to delete the addition on account of income from web hosting services. Accordingly, ground No. II raised in assessee's appeal is allowed.

24. The issue arising in ground No. III, raised in assessee's appeal, is pertaining to the addition on account of sponsorship income.

25. The brief facts of the case pertaining to this issue are: During the year under consideration, the assessee received sponsorship income of Rs. 64,91,659 for conducting two days conference in India. As per the assessee, the event was primarily organised to advertise the assessee's service offering to potential customers and to educate its customers. The AO vide draft assessment order did not agree with the submissions of the assessee and added the sponsorship income to the total income of the assessee.

26. The assessee filed detailed objections before the learned DRP, inter-alia, against the addition made by the AO. Vide directions dated 07/03/2022 issued under section 144C(5) of the Act, the learned DRP, after noting that the AO has not dealt with the issue of permanent establishment in India, directed the AO to pass a speaking order with regard to the existence of assessee's permanent establishment in India. In conformity with the directions issued by the learned DRP, the AO passed the impugned final assessment order dated 31/05/2022 and held that the assessee has a permanent establishment in India and income of Rs.64,91,659, on account of sponsorship income is taxable as business income. Being aggrieved, the assessee is in appeal before us.

27. During the hearing, the learned Sr. Counsel submitted that the details regarding the sponsorship income were submitted before the AO during the assessment proceedings. The learned Sr. Counsel further submitted that the impugned sponsorship income was earned by the assessee from the solitary conference of 2 days in India and in the absence of permanent establishment in India such an income cannot be taxed as business income in India under Article 7 of the India UAE DTAA.

28. On the other hand, the learned DR vehemently relied upon the orders passed by the lower authorities.

29. We have considered the rival submissions and perused the material available on record. The principal business of the assessee is providing web hosting and domain name registration services. The assessee also claims to

organise various conferences in India and outside India to advertise its service offering to potential customers. As per the assessee, it uses this forum to educate its customers and no sale is undertaken during such conferences. Further, during such conferences, the assessee provides space to set up stalls/booths to various third parties to market their brands and products through which it earns income. During the year, the assessee conducted a conference in India only for 2 days and from which it earned sponsorship income, which has been held to be taxable as business income by the Revenue. We find that vide its submission dated 09/03/2021, the assessee provided the details of sponsorship to the AO, which forms part of the paper book on page 69. However, without commenting on the same, the AO made the impugned addition. In further proceedings, the learned DRP directed the AO to pass a speaking order with regard to the existence of assessee's permanent establishment in India. At the outset, it is pertinent to note that under section 144C(8) of the Act the DRP may confirm, reduce or enhance the variation proposed in the draft assessment order, however, it cannot set aside any proposed variation or issue any direction for further enquiry and passing of the assessment order. Thus, we find that the directions issued by the DRP to the AO to pass a speaking order in respect of the existence of permanent establishment is completely contrary to the provisions of section 144C(8) of the Act.

30. Even on merits, we find that earning sponsorship income from the sponsors was consequential to the advertising event in the 2 days conference. In the present case, there cannot be any dispute that organising such an event

is not the core business activity of the assessee. Further, under Article 5 of India UAE DTAA, the term 'permanent establishment' means of a fixed place of business through which the business of an enterprise is wholly or partly carried on. In the present case, firstly mere conducting of a conference only for 2 days in India cannot be said to be a fixed place of business, and secondly, as noted above conducting a conference is not the core business activity of the assessee. Even if, at all, it can only be considered to be in the nature of the preparatory or auxiliary activity, which has been specifically excluded from the definition of permanent establishment under Article 5(3) of the India UAE DTAA. Thus, in absence of the permanent establishment of assessee in India, the sponsorship income cannot be taxed in India as business income. Accordingly, in view of aforesaid findings, the AO is directed to delete the addition on account of sponsorship income. As a result, ground No. III raised in assessee's appeal is allowed.

31. In the result, the appeal by the assessee is allowed.

ITA no.1856/Mum./2022
Assessee's Appeal – A.Y. 2018–19

32. In its appeal, the assessee has raised the following grounds:–

"On the facts, and in the circumstances of the case, and in law, the Appellant craves to prefer an appeal against the order dated 23 May 2022 passed by the Deputy Commissioner of Income- tax (Int. Tax)-3(3)(2) (hereinafter referred to as the 'learned AO') under Section 144C(13) read with Section 143(3) of the Income-tax Act, 1961 on the grounds as set out herein:

The following grounds are independent of, and without prejudice to, one another:

GROUND I: OBJECTION AGAINST ADDITION ON ACCOUNT OF INCOME FROM DOMAIN REGISTRATION SERVICES

On the facts and circumstances of the case and in law, the Assessing Officer (AO) erred in alleging that income from Domain Name Registration services is taxable as 'Royalty' under Section 9(1)(vi) of the Income Tax Act, 1961 (Act') and under the India- UAE treaty (tax treaty)". The AO based on his conclusion contended that the Appellant is the owner of the domain name and is imparting the right to use in respect of a domain name thus erroneously considering it as a 'Trademark'.

The Assessing Officer (AO') erred in understanding the fact that the domain name does not lie with the appellant, and accordingly, there is no question of imparting rights for further consideration, thus it cannot be classified as the trademark and cannot be termed as "Royalty"

GROUND II: OBJECTION AGAINST ADDITION ON ACCOUNT OF INCOME FROM WEB HOSTING SERVICES

On the facts and circumstances of the case and in law, the Assessing Officer ('AO') erred in proposing that income from web hosting services is taxable as 'Royalty' under Section 9(1)(vi) of the Income Tax Act, 1961 (Act') and under the India- UAE treaty (tax treaty') in the absence of any physical access or control or possession or independent right being granted by the appellant to the payer.

The Assessing Officer ('AO') erred in concluding that the income from web hosting is interlinked to income from domain registration services and considered as royalty despite the fact that the said services are mutually exclusive and independent.

GROUND III: OBJECTION AGAINST ADDITION ON ACCOUNT OF SPONSORSHIP INCOME

On the facts and circumstances of the case and in law, the Assessing Officer (AO) erred in concluding that the assessee did not provide substantial documents and information regarding the treatment of sponsorship and other income, as a business income in computation and alleging that it is clearly evident that assessee is hiding the fact with respect to same and claimed that the same should be added to the income of the assessee.

The Assessing Officer (AO) erred in ignoring the fact that the assessee had made sufficient disclosures and submitted proper evidence in support of its contention that there shall not be any addition made on account of Sponsorship Income due to the absence of Permanent Establishment in India.

The assessing officer (AO) erred in law and in the fact that the income from Sponsorship is taxable as 'Business income' under the India-UAE tax treaty (tax treaty") treating it as PE in India without giving adequate reasoning/explanation for treating it as PE in India.

The Appellant craves leave to add to, or alter, by deletion, substitution, modification or otherwise, the above grounds of appeal, either before or during the hearing of the appeal."

33. During the hearing, both parties agreed that the facts for the year under consideration are similar to the preceding assessment year. Since similar issues have been decided in assessee's appeal being ITA No. 1855/Mum./2022, for the assessment year 2017-18, therefore, our findings/conclusion rendered in the said appeal shall apply *mutatis mutandis*. Accordingly, all the grounds raised by the assessee in this appeal are allowed.

34. In the result, the appeal by the assessee is allowed.

35. To sum up, both appeals by the assessee are allowed.

Order pronounced in the open Court on 30/12/2022

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 30/12/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai