

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI**

**BEFORE**

**SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA Nos. 9405 & 9406/Del/2019  
Asstt. Years: 2013-14 & 2014-15

ACIT (International Taxation), Circle-1(3)(1), New Delhi.	Vs.	Godaddy.com LLC USA C/O Deloitte Haskins & Sells Building no. 10B, 7 <sup>th</sup> Floor, DLF Cyber City phase-2, Gurgaon State Haryana Pin 122010 PAN AAECG7133K
(Appellant)		(Respondent)

Assessee by:	Shri Rishabh Melhotra, AR
Department by:	Shri Sanjay Kumar, Sr. DR
Date of Hearing:	01.05.2023
Date of pronouncement:	26.05.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The two appeals filed by the Revenue are directed against two separate orders both dated 30.09.2019 of the Ld. Commissioner of Income Tax (Appeals) - 42, New Delhi (**"CIT(A)"**) whereby he deleted the penalty of Rs. 1,97,31,721/- and Rs. 4,95,98,366/- imposed under section 271(1)(c) of the Income Tax Act, 1961 (**the "Act"**) for Assessment Years (**"AYs"**) 2013-14 and 2014-15 respectively. Since the common issue is involved, both the appeals are being disposed of by this common order.

2. The Revenue has raised the following common ground of appeal:-

“1. *Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) has erred in holding that the issue of royalty income in the hands of entity providing service in registration of domain name is still not settled even though the Supreme Court in the case of Satyam Infoway Ltd. Vs. Sifynet Solutions Pvt. Ltd. have held that domain name was intellectual property similar to trade mark.*”

3. Briefly stated, the facts are that Godaddy.com LLC, assessee registered in the USA, is a domain name registrar and provides other web services to customers across the world. It is engaged in the business of providing facilitation of domain name registration, web-hosting, web designing and other services through its web site, godaddy.com. For AY 2013-14 and 2014-15, the assessee furnished its return declaring total income of Rs. 20,42,77,864/- and Rs. 41,19,81,166/- generated by it from provision of web hosting services/on sale demand and web designing/SSL certification services and offered it to tax as income from royalty. The Ld. AO however assessed it as Fees for Technical Services (“**FTS**”) which was affirmed by the Ld. Dispute Resolution Panel (“**DRP**”). The revenue generated from the domain registration services amounting to Rs. 17,41,54,636/- in AY 2013-14 and Rs. 43,77,61,396/- in AY 2014-15 was not offered to tax by the assessee on its bonafide reasons to believe that such income is not chargeable to tax in India as per the provisions of the Act. However, the Ld. Assessing Officer (“**AO**”) while passing the final assessment order under section 144C(13) r.w.s 143(3) of the Act, assessed income from domain name registration services as ‘royalty’ under section 9(1)(vi) r.w.s 115A of the Act as well as under Article 12 of the India-USA Double Taxation Avoidance Agreement (“**India-USA DTAA**”) by holding that the income was received by the assessee on account of granting to the customers, the right to use its server and thus is in the nature of right to use industrial, commercial or scientific equipment which was affirmed by the Ld. DRP. The Ld. AO therefore completed the assessment for AY 2013-14 and 2014-15 on total income of Rs. 37,84,32,500/- and Rs. 84,97,42,562/- vide his order dated 03.01.2017 and 26.10.2017 respectively under section 144C(13) r.w.s.143(3) of the Act and initiated penalty proceedings under

section 271(1)(c) of the Act for concealment of particulars of income and filing of inaccurate particulars thereof.

3.1 Aggrieved, the assessee filed appeal before the Tribunal which vide its order dated 03.04.2018 for AY 2013-14 and order dated 24.07.2018 for AY 2014-15 upheld the order(s) of the Ld. AO and confirmed that domain registration fee amounting to Rs. 17,41,54,636/- in AY 2013-14 and Rs. 43,77,61,396/- in AY 2014-15 was in the nature of royalty. The Tribunal held that rendering of services for domain registration amounts to rendering of services in connection with the use of an intangible property which is similar to trade mark. Therefore, the charges received by the assessee for services rendered in respect of domain name are royalty within the meaning of clause (vi) r.w. clause (iii) of Explanation 2 to section 9(1) of the Act.

3.2 Consequent to the above, the Ld. AO issued show cause notices to the assessee under section 274 r.w.s 271(1)(c) of the Act asking it to explain as to why penalty should not be levied. In response thereto, the assessee filed written submissions stating that the assessee is in appeal before the Hon'ble High Court against the order of the Tribunal and therefore the penalty proceedings should be kept in abeyance. The submissions of the assessee were not acceptable to the Ld. AO who proceeded to levy penalty of Rs. 1,97,31,721/- for AY 2013-14 and penalty of Rs. 4,95,98,366/-for AY 2014-15 under section 271(1)(c) of the Act.

4. Dissatisfied, the assessee carried the matter before the Ld. CIT(A). The Ld. CIT(A) recorded the detailed submissions filed by the assessee in para 5.1 of his appellate order(s) and deleted the impugned penalty for the observations and findings recorded in para 5.2 to 5.18 which is reproduced below:-

*“5.2 The relevant facts of the case are that the assessee took a position that the receipts from domain name registration are non-taxable in India. However, the Assessing Officer ("AO") while passing the assessment order under section 143(3) of the Income-tax Act, 1961 ("Act"), assessed income from domain name registration services as 'royalty' under section 9(1)(vi) of the Act by holding*

*that the income was received by the Appellant on account of granting to the customers, the right to use its server and thus is in the nature of right to use industrial, commercial or scientific equipment. Relevant extract of the AO's order is reproduced below:*

*"Domain registration partakes the character of web hosting charges since without domain registration being in place, web hosting is not possible. As domain registration charges have been essentially charged for granting right to use the servers of the assessee, domain registration being the precondition to web hosting etc and the same being highly technical process and because of its inherent quality, the same squarely falls under the definition of royalty under the provisions of the Act and Double Taxation Avoidance Agreement."*

*5.3 The Appellant filed an appeal against the final assessment order before Hon'ble Delhi Tribunal. The Hon'ble Delhi Tribunal while passing its order held that the domain name registration services provided by the Appellant to be in the nature of rendition of services in connection with the use of an intangible property, which is similar to trademark within the meaning of clause (vi) read with clause (iii) of Explanation 2 to section 9(1)(vi) of the Act and hence in the nature of royalty.*

*5.4 The Appellant has further filed an appeal against the order of the Hon'ble Tribunal before the Hon'ble Delhi High Court. The said appeal has been admitted by the Hon'ble High Court vide order dated 29 July 2019 wherein the Court has framed the substantial question of law as under:*

*"Whether, in the facts of the case and in law, the Tribunal erred in holding that the income received by the Appellant as a consideration for providing domain registration services amounted to royalty under Section 9(1)(vi) of the Income Tax Act, 1961?"*

*5.5 Meanwhile the AO initiated penalty under section 271(1)(c) of the act for concealment of income and furnishing of inaccurate particulars of income. The AO issued show cause notice as to why the penalty may not be imposed in this case? The AO did not accept the contention of the assessee and imposed penalty under section 271(1)(c) of the act for concealment of income and furnishing of inaccurate particulars of income.*

*5.6 The appellant pointed out that while taking the positions in the return of income regarding non changeability of tax on receipts and while furnishing response to the queries raised by the Ld. AO, the appellant company neither concealed any particulars of income nor furnished any inaccurate particulars of income. Further, the appellant argued that during the course of assessment proceedings, complete details of the same were furnished by the appellant company. The AO while concluding the assessment held based on the information supplied by the assessee that the receipts are in the nature of Royalty.*

5.7 As regards the taxation of services, the appellant explained that the services provided by the Appellant are similar to services provided by professionals who help in registering a company's name with the Registrar of Companies (ROC). As per the appellant, simply providing services in connection with a trade mark is not sufficient to invite the application of clause (vi). The appellant submitted that if simply providing services in connection with trademark, patent etc. is taken to be covered within the definition of 'royalty' (without their additionally being the grant of a license thereto), the consequences would be absurd. In such a situation, even an advocate drafting an Intellectual Property Right ("IPR") transfer agreement will be receiving 'royalty' for his services as they will be in connection with the IPR. The appellant added that for the service fee to be characterized as royalty, the entity which provides services in connection with the right to use an IPR must also be in a position to grant the license to use such IPR. Clause (vi) can never apply independently.

5.8 It is a settled position that for imposing penalty under Section 271(1)(c), the AO has to be satisfied that:

- (a) assessee has concealed the particulars of income or
- (b) assessee has furnished inaccurate particulars of such income.

5.9 From the various judicial precedents, it is seen that the facts and circumstances in each case has to be seen in the context and then penalty provision should be applied to see whether there was the concealment of particulars of income or the appellant has furnished inaccurate particulars so as to call for the penal action under Section 271(1)(c).

5.10 The appellant emphasized that at the time of the hearing in the assessment proceeding, the appellant made due disclosure of the relevant facts. Accordingly, it was requested that the conduct of the appellant during the course of assessment proceeding was not for concealment of facts and requested that the same may also be considered while deciding the levy of penalty.

5.11 Further, the appellant submitted that the penalty in this case is not warranted on account of the following facts and arguments:

- The appellant submitted that issue of taxability of domain name registration services (for a non-resident like Appellant) is a debatable issue. In this regard, the appellant highlighted that the basis of treating the income in the nature of Royalty by the AO vis-a-vis Hon'ble ITAT was different. The appellant submitted that the AO held domain name registration services as 'royalty' under section 9(1)(vi) of the Act by invoking clause (iva) of Explanation 2 to section 9(1)(vi) of the Act and held income from domain name registration services as payment for the use industrial, commercial or scientific equipment and hence taxable as royalty. As against this, Hon'ble ITAT invoked clause (vi) read with clause (iii) of Explanation 2 to section 9(1)(vi) of the Act to hold that domain name registration services is in the nature of

*rendition of services in connection with the use of an intangible property which is similar to trademark and hence taxable as royalty.*

- *As regards reliance of the AO on the decision of Apex Court in the case of Satyam Infoway Ltd., Delhi High Court in the case of Tata Sons Limited and Bombay High Court in the case of Rediff Communications Ltd, the appellant highlighted that in fact, the said decisions have examined the issue of whether the domain names can be considered as intellectual properties such as trade mark under the Trade Marks Act, 1999. The appellant averred that the aforesaid decisions were not on the issue of taxability of domain name registration services. The appellant also contended that if these judicial precedents including the decision of Supreme Court was applicable on this issue, then the Hon'ble Delhi High Court would not have admitted the Appellant's case.*

- *It is reiterated, that bonafide difference of opinion between the Appellant and the AO / Tribunal on the characterization of the above income, does not imply that the Appellant has concealed particulars of income or furnished inaccurate particulars.*

- *Neither the Appellant has failed to offer explanation on the issue of taxability of receipts from domain name registration services nor the explanation given by the Appellant can be said to be false. All the details/ information (such as the relevant agreements, time to time submissions on the facts as required by the AO) in support of the claims, as was required by the AO were furnished by the Appellant during the assessment proceedings.*

- *The issue of taxability of domain name registration services involves a question of law and is clearly a debatable issue. It is further submitted that the Appellant at the time of filing of return of income and even now, is under the bonafide belief that receipts from domain name registration services are not taxable in India.*

*5.12 I find that the AO has not determined as to whether it is a case of concealment of income or furnishing of inaccurate particulars of income. The relevant extracts of the assessment order of the AO are reproduced as under:*

*"Since the assessee has concealed the particulars of its income and has filed inaccurate particulars thereof it is a fit case for initiating penalty proceedings u/s 271(1)(c) of the Act and therefore, the same is being initiated separately."*

*5.13 Further, the AO while imposing penalty has treated it to be a case of furnishing of inaccurate particulars of income and concealment of income. The relevant extracts of the penalty order are reproduced as under:*

*"In view of above, it is held that since the assessee has concealed its income and has filed inaccurate particulars of its income, therefore it is a fit case for levy of penalty under section 271(1)(C) of the Act.*

*Accordingly, penalty u/s on an amount ranging from 100% to 300% of the tax sought to be evaded, is leviable."*

5.14 *I find that the issue regarding taxability of domain name registration in the nature of Royalty is not a settled issue. It is a fact that Hon'ble APEX court has held domain name as trade mark. However, the issue of royalty income in the hands of entity providing service in registration of domain name is still not settled. Accordingly, Hon'ble Delhi High Court has admitted the substantial question of law in this case.*

5.15 *It is now settled that act of mere making of the claim by itself will not amount to furnishing inaccurate particulars regarding the income of the appellant. This position has been upheld by Hon'ble Supreme Court in the case of Reliance Petro products wherein it is held as under:*

*"Therefore, it is obvious that it must be shown that the conditions under section 271(1) (c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the appellant can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise.*

*A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the appellant. Such claim made in the return cannot amount to the inaccurate particulars.*

*It was tried to be argued by the Revenue that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the appellant had furnished all the details of its expenditure as well as income in its return, which details in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the appellant had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the appellant will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature."*

5.16 *It is clear from the above extracts that the legislature does not intend to impose penalty on every assessee whose claim is rejected by the assessing officer. What is sought to be covered under Section 271(1)(c) is concealment of*

*"particulars of income" or furnishing of "inaccurate particulars of income" and not making of an untenable claim. The claim made by the assessee has not been demonstrated to be false by the assessing officer.*

5.17 Further, as regards the penalty in a case involving debatable issue, Hon'ble High Court of Delhi in the case of Commissioner of Income Tax vs. Shervani Hospitalities Ltd. reported in [(2013) 261 CTR 449 (Del)] observed: *"Disallowance of claim for deduction was made. Issue raised by the assessee was debatable and capable of two views. Assessee had an arguable case or had taken a bonafide plea. Assessee had given its explanation and categorically and clearly stated the true and full facts in the return itself. It did not try to camouflage or cover up the expenses claimed. Every addition or disallowance made does not justify and mandate levy of penalty for concealment u/s 271(1)(c) of the Act. Levy of penalty is not automatic consequence when an addition is made by disallowance of expenses and by not accepting the explanation given by the assessee. Merely making a claim which is held as not sustainable under law should not lead to penalization. When the assessee had furnished full details in the Return itself and the claim is debatable, reasonably plausible or may well have been accepted. Penalty u/s 271(1)(c) of the Act was not justified."*

5.18 Keeping in view the above discussion, in my considered view, the appellant's explanation in the matter is held to be bonafide and acceptable. Accordingly the order of penalty is cancelled."

5. Aggrieved, the Revenue is in appeal before the Tribunal.

6. Before us, the Ld. AR reiterated the submissions made before the Ld. CIT(A) and pleaded that the penalty should not be levied as the issue in relation to which the impugned penalty has been sought to be levied by the Ld. AO is a debatable issue and the Hon'ble Delhi High Court has admitted the assessee's appeal on the issue and has framed the following question of law vide its order dated 25.02.2019 in ITA 891/2018, a copy of which was placed on record:-

*"Whether, in the facts of the case and in law, the Tribunal erred in holding that the income received by the Appellant as a consideration for providing domain registration services amounted to 'royalty' under section 9(1)(vi) of the Income Tax Act, 1961 ?"*

6.1. The Ld. AR, in support of his above contention, placed reliance on the decision of Hon'ble Delhi High Court dated 05.10.2010 in CIT vs. Liquid Investment and Trading Co. (ITA No. 240/2009) and decision of the Indore

Bench of the Tribunal dated 12.03.2013 in Shri Yugal Kishore Jajoo vs. Dy. CIT (ITA No. 272/Ind/2011).

7. The Ld. DR, on the other hand, relied on the order of the Ld. AO and submitted that the pendency of the issue before the Hon'ble Delhi High Court in the quantum appeal of the assessee will not render the imposition of the impugned penalty vulnerable.

8. We have heard the Ld. Representative of the parties and perused the material on records. We have also considered the decision of the Hon'ble Delhi High Court in Liquid Investment and Trading Co. (supra) and decision of Indore Bench of the Tribunal in Yugal Kishore Jajoo (supra) relied upon by the assessee. It is an undisputed fact that the assessee earned revenues from two streams i.e. web hosting and domain registration charges and offered revenue from web hosting services to tax in the return filed for the relevant AYs. However, the assessee did not offer to tax its income from domain registration services for the reason that it was under a bonafide belief that this income is not chargeable to tax under the provisions of the Act. The said income has been held to be taxable as "royalty" by the appellate authorities including the Tribunal in the quantum appeal of the assessee. In this view of the matter, the Ld. AO imposed the impugned penalty which was deleted by the Ld. CIT(A) for the detailed observations and findings recorded by him in his appellate order(s) with which we are inclined to agree.

9. We notice that in the quantum appeal filed by the assessee before the Hon'ble Delhi High Court, the Hon'ble Court has framed a substantial question of law as mentioned earlier. We are, therefore, of the view that the issue involved in the present appeals is a debatable issue and the position in law is not yet settled. The impugned penalty in both the AYs is therefore not exigible.

10. In Liquid Investment Trading Co. (supra) the Hon'ble Delhi High Court dismissed the appeal of the Revenue and held as under:-

*“Both the CIT(A) as well as the ITAT have set aside the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 on the ground that the issue of deduction under Section 14A of the Act was a debatable issue. We may also note that against the quantum assessment where under deduction under Section 14A of the Act was prescribed to the assessee, the assessee has preferred an appeal in this Court under Section 260A of the Act which has also been admitted and substantial question of law framed. This itself shows that the issue is debatable. For these reasons, we are of the opinion that no question of law arises in the present case.”*

11. In Yugal Kishore Jajoo (supra) the Indore Bench of the Tribunal while taking cognizance of the above decision of the Hon'ble Delhi High Court and also relying on the decision of the Hon'ble Supreme Court in the case of Santosh Hosiery, Civil Appeal No. 1117 of 2001 dated 03.02.2001 held as under:-

*“9. Furthermore, Hon'ble Delhi High Court in the case of CIT vs. Liquid Investment Limited, I.T.A.No. 240/2009 vide its order dated 5.10.2010 has clearly held that where High Court accepted substantial question of law u/s 260A, this itself shows that issue is debatable. Accordingly, no penalty was imposable u/s 271(1)(c) of the Income-tax Act, 1961. Hon'ble Supreme Court in the case of Santosh Hosiery, Civil Appeal No. 1117 of 2001 in its order dated 3<sup>rd</sup> February, 2001, observed that “To be substantial, a question of law must be debatable.” Hon'ble Supreme Court while deciding as to what is substantial question of law has held that same must be debatable.*

*10. In the instant case, the appeal against quantum additions was admitted by Hon'ble M.P. High Court vide order dated 6.9.2005, on the following substantial questions of law :-*

*1) Whether in the facts and circumstances of the case the Tribunal was right in law in directing depreciation on the estimated value of Rs. 18,00,000/- as against actual purchase value of Rs. 26,05,000/- on which assessee took over the asset ignoring basic valuation report of the Chartered Engineer ?*

*2) Whether in the facts and circumstances of the case the Tribunal was right in law in directing the outstanding liabilities against purchases of Rs. 8,34,690/- as income and the order of the Tribunal is perverse in law when purchases are assessed as genuine ?*

3) *Whether in the facts and circumstances of the case the Tribunal was right in directing the outstanding liabilities of job works of Rs. 3,490,395/- as income ignoring the detailed facts considered by CIT(A) and facts on records and the order of the Tribunal is perverse and bad in law ?*

11. *In view of the above, respectfully following the decision of Coordinate Bench as well as propositions laid down by Hon'ble High Court and Supreme Court, as narrated above, we direct the Assessing Officer to cancel the penalty imposed u/s 271(1)(c) with respect to the additions so made by Assessing Officer which were deleted by CIT(A), and for which substantial question of law has been accepted by Hon'ble High Court. Agreeing with the contentions of Mr. Shah, we do not find any merit in the order of Assessing Officer for levying the penalty u/s 271(1)(c) of the Income-tax Act, 1961."*

12. On the facts and in the circumstances of the case and in the light of the decisions (supra), we hold that the Ld. CIT(A) has rightly deleted the penalty. Accordingly, we reject the appeals of the Revenue.

13. In the result, both the appeals of the Revenue for AY 2013-14 and 2014-15 are dismissed.

**Order pronounced in the open court on 26<sup>th</sup> May, 2023.**

**sd/-  
(G.S. PANNU)  
PRESIDENT**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 26/05/2023

***Veena***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT 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	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	