

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

Before Sh. Saktijit Dey, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1654/Del/2022 : Asstt. Year: 2018-19

ITA No. 1655/Del/2022 : Asstt. Year: 2019-20

Telstra Singapore Pte. Ltd., 8 Cross Street, 22-00, Manulife Towers, Singapore, SG-048424	Vs.	DCIT, Circle-3(1)(1), International Taxation, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AADCT5366N		

Assessee by : Sh. S. K. Agarwal, CA

Revenue by : Sh. Vizay Vasanta, CIT DR

Date of Hearing: 18.04.2023

Date of Pronouncement: 17.07.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders dated 26.05.2022 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Since, the issues involved in both the appeals are similar, they were heard together and being adjudicated by a common order.

3. In ITA No. 1654/Del/2022, the only effective grounds raised by the assessee:

"1. Based on the facts and circumstances of the case and in law, the Id. AO has erred in alleging that payments amounting to INR 22,48,34,656/- received by the Appellant from Indian customers

("customers/service recipient"/ "payer') for the provision of Telecommunication connectivity services (International Private Leased Circuits ("IPLC), Multiprotocol Label Switching (MPLS) etc., hereinafter referred to as "bandwidth services") as consideration for the use of or the right to use of an equipment and/or use of a process and/ or transfer of rights in a process and/ or imparting of any information is taxable as a Royalty under section 9(1)(vi) of the Income Tax Act, 1961 (the Act) and under the Article 12(3) of the India Singapore Tax Treaty (Tax Treaty') in contravention of the following well-established facts and legal positions:"

3. The assessee is a company incorporated in Singapore and is a tax resident of Singapore. It is engaged in the business of providing digital transmission of data through international private line (IPL) or multi-protocol label switching (MPLS"), etc, to facilitate high-speed data connectivity (hereinafter referred to as 'bandwidth services").

4. The assessee provides bandwidth services outside India to its customers. It has entered into Global Business Service Agreement (GBSA) with various customers. In the case where services are provided by an Indian telecom operator like Bharti Airtel in India and the services outside India are provided by the assessee, it enters into a One Stop Shopping Service Agreement (OSS) with Bharti Airtel or any other Indian telecom operator, to facilitate single billing facility to the customer. Refer to Annexure 1 of this synopsis for an overview of the business process chart and details of services rendered by the assessee.

5. As per the GBSA between the assessee and the customer, the customer enjoys an uninterrupted 24X7 service and such

service would be available 99.60% of the time. If the service is unavailable or is not available as per the agreed speed, the customer shall be entitled to a rebate as per the rates agreed in clause 8.11 of the GBSA.

6. For the AY 2018-19, the assessee had filed its return of income declaring NIL income. The assessment was concluded under Section 143(3) r.w.s. 144C(1) of the Income-tax Act, 1961 wherein the AO has considered the amount received from Indian customers for the provision of bandwidth services outside India as equipment process royalty under section 9(1)(vi) of the Act read with Article 12(3) of the India Singapore Tax Treaty (Tax Treaty").

7. Further Id. Dispute Resolution Panel (DRP) upheld the finding of the AO.

8. The Co-ordinate Bench of ITAT Delhi in assessee's own case for AY 2015-16 and 2016-17 in ITA Nos. 5880/Del/2018 and 5479/Del/2019 for A.Y. 2011-12, 2012-13 and A.Y. 2014-15 and noted that the controversy regarding amendment in the Act being read into the treaty has been settled by Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Limited. Para 10 and 11 of Delhi ITAT's ruling have been reproduced below:

"10. This controversy is now well settled by the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Limited in 432 ITR 471.

11. Respectfully following the findings of the coordinate Bench, in the light of the decision of Hon'ble Jurisdictional High Court

of Delhi (supra) and the Hon'ble Supreme Court (supra) we direct the AO to delete the impugned additions from both the assessment years."

9. Further, the Delhi ITAT in assessee's own case for A.Y. 2017-18 in ITA Nos. 599/Del/2021 has followed the decision of the ITAT in assessee's own case for AY 2011-12, 2012-13, 2015-16 and 2016-17 and held that:

"9. The above order of the Tribunal for AY 2011-12 and 2012-13 was followed by the Co-ordinate Bench of the Tribunal for the assessment years 2015-16 and 2016-17 in ITA Nos. 5880/Del/2018 and 5479/Del/2019 dated 13.07.2022

10 Facts being identical. Respectfully following the decision of the Tribunal in assessee own case we allow the grounds of appeal raised by the assessee and direct the Assessing Officer to delete the additions made on account of "Royalty."

10. We find that the observation of Id. DRP for the instant year also is identical to earlier years:

Order	Relevant extract
Para 3.2 on page of the DRP directions	"The above decision of the DRP was upheld in AY 2017-18 also. The Panel notes that The factual and legal matrix remains the same for AY 2018-19 also. The Panel finds no reasons in digress from the directions given by the DRP in earlier years. The action of the AD is therefore upheld and the objections are rejected."

11. In the absence of any change in the factual matrix and legal proposition, following the order of the Co-ordinate Bench in assessee's own case for the earlier years, the appeal of the assessee is hereby allowed.

12. In the result, both the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 17/07/2023.

Sd/-

(Saktijit Dey)
Vice President

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 17/07/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR