

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No. 1514/Del/2022
Assessment Year: 2019-20**

GoTo Technologies Ireland Unlimited Company(formerly known as LogMein Ireland Unlimited Company), Dublin. PAN: AACCL4273H (Appellant)	Versus	ACIT, Circle 2(2)(1) International Taxation, New Delhi. (Respondent)
---	--------	---

**ITA No. 793/Del/2023
Assessment Year: 2020-21**

GoTo Technologies Ireland Unlimited Company(formerly known as LogMein Ireland Unlimited Company),Ireland. PAN: AACCL4273H (Appellant)	Versus	ACIT, Circle 1(3)(1) International Taxation, New Delhi. (Respondent)
---	--------	---

Assessee by : Sh. Chavali Narayan, CA
Revenue by : Sh. Vizay B. Vasanta, CIT-DR

Date of hearing : 20.09.2023
Date of pronouncement: 25.09.2023

ORDER

Captioned appeals have been filed by the assessee, challenging the final assessment orders, passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 pertaining to

assessment years 2019-20 and 2020-21, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. At the outset, learned counsel appearing for the assessee submitted that the additional grounds raised in assessment year 2019-20, on instructions, are not to be pressed. Accordingly, we dismiss the additional grounds as not pressed. Be that as it may, the only surviving issue in both the appeals relates to taxability of subscription received from Cloud Services as royalty.

3. The assessee hitherto is a non-resident corporate entity incorporated under the laws of Ireland and a tax resident of Ireland. The assessee is stated to be engaged in the business of sale of software subscription in various countries including India. The assessee operates software as a Service (SaaS) business model, wherein, the customers are allowed to access the application software developed by the assessee from various devices through Cloud Computing Technology. The subscription receipts from Cloud Services permitted to customers was not offered to tax in India, as the assessee was of the view that they are not in the nature of royalty, but business receipts and in absence of PE in India, they are not taxable under India-Ireland Double Taxation Avoidance Agreement (DTAA).

However, the Assessing Officer was not convinced with the submissions of the assessee and proceeded to assess subscription receipts as royalty income both under the Act as well as under the treaty provisions and accordingly, framed draft assessment orders. Learned DRP also upheld the decision of the Assessing Officer.

4. Learned counsel for the assessee submitted that the issue is squarely covered by the decision of Hon'ble Delhi High Court in case of CIT vs. MOL Corporation vs. DCIT in ITA No. 99/2023- order dated 16.02.2023. He further relied upon the decision of coordinate Bench in case of Amazon Web Services, Inc. vs. ACIT in ITA Nos. 522 & 523/Del/2023.

5. Learned Departmental Representative fairly submitted that the issue is covered by the decisions cited by learned counsel for the assessee. However, he dutifully relied upon the observations of the Assessing Officer and learned DRP.

6. We have considered rival submissions and perused materials on record. The short issue arising for consideration is whether the subscription received from Cloud Services is taxable as royalty income. As we find, while considering identical issue in case of CIT vs. MOL Corporation (supra), Hon'ble jurisdictional High Court has upheld

the decision of the Tribunal holding that no substantial question of law arises out of the order of the Tribunal in accepting that subscription receipts from Cloud Services is not taxable as royalty. In case of Amazon Web Services Inc (supra), the coordinate Bench of the Tribunal has also expressed identical view holding that subscription received from Cloud Services is not taxable as royalty. Thus, in our view, the issue is squarely covered by the aforesaid decisions. Accordingly, we hold that the income received by the assessee from Cloud Services is not taxable in India, as they cannot be treated as royalty income. Accordingly, we direct the Assessing Officer to delete the additions. Grounds are allowed.

7. In the result, appeals are allowed.

Order pronounced in the open court on 25/09/2023.

Sd/-

(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated:

*aks/-