

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

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT  
AND  
SHRI SAKTIJIT DEY, VICE-PRESIDENT**

**ITA Nos. 1980/Del/2017 & 3035/Del/2019  
Assessment Years: 2013-14 & 2015-16**

GSMA Limited,  
C/o Price Water House Coopers  
Pvt. Ltd., PwC House, Plot No.  
18/A, Gurunanak Road (Station  
Road), Bandra (West), Mumbai.  
**PAN: AAECG1610K**  
(Appellant)

Versus DCIT(International Taxation),  
Circle 1(3)(1), New Delhi.

(Respondent)

Assessee by : Sh. P.P. Singh, C.A.  
Revenue by : Sh. Sanjay Kumar, Sr. DR

Date of hearing : 15.09.2023  
Date of pronouncement: 08.12.2023

**ORDER**

Captioned appeals by the assessee are for assessment years 2013-14 and 2015-16. While, ITA No. 1980/Del/2017 arises out of final assessment order dated 13.01.2017 passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961, ITA No. 3035/Del/2019 arises out of order dated 10.01.2019 of learned Commissioner of Income-tax (Appeals)-42, New Delhi.

2. Since the issues arising in the appeals are identical, they have been clubbed together and disposed of in a common order, for the sake of convenience.

3. The issue in dispute arising in the appeals relates to the taxability of administrative fee received by the assessee as royalty under section 9(1)(vi) of the Act as well as under Article 12(3) of India-USA Double Taxation Avoidance Agreement (DTAA).

4. Briefly, the facts are, the assessee is a non-resident corporate entity incorporated in United States of America (USA) and tax resident of USA. It is stated, the assessee is a non-profit entity, hence, exempt from tax in USA. Copy of tax exemption certificate is available on record. Be that as it may, the assessee is the sole global decimal administrator appointed by mobile industry for providing International Mobile Equipment Identification (IMEI) number for tracking a particular mobile phone. The database of IMEI number is maintained by the assessee outside India. The purpose of the assessee is for stopping the stolen phone equipment or otherwise preventing the misuse of mobile for offense based on information provided to call network provider and instruction to them so that particular IMEI number is put into the black

list and thereafter cannot be used in GSM network, thereby preventing misuse of particular mobile phone.

5. As stated by the Assessing Officer, the assessee unites nearly 800 of the world's mobile operators as well as more than 200 companies in the broader mobile ecosystems, including handset makers, software companies, equipment providers, internet companies, media and entertainment organizations. The assessee also provides services in India, for which it has entered into an agreement with A.B. Mobile Standards Alliance Pvt. Ltd. (MSAI), wherein, MSAI provided certain facility to the mobile manufacturers such as information and guidance to log into GSMA IMEI database etc. As per the agreement, the assessee does not provide any service to MSAI. Rather, GSMA provides access to the database to MSAI, through which, Type Allocation Code (TAC) or IMEI can be generated and allocated to the mobile manufacturers. For providing such services to the Indian Mobile manufacturers, MSAI collects certain amount from them and after retaining 30% of the amount collected, transfers 70% to the assessee because the database is maintained by GSMA and because eight digit

IMEI Number is provided by GSMA Ltd., which is used by the mobile equipment manufacturers to complete 14 digit IMEI number.

6. In course of assessment proceedings, the Assessing Officer called upon the assessee to explain why the administrative fees received by the assessee should not be treated as royalty under section 9(1)(vi) of the Act as well as under Article 12(3) of India-USA DTAA. In response to the queries raised by the Assessing Officer, the assessee furnished detailed submissions stating that the amount received cannot be treated as royalty either under the domestic law or the treaty provision. The Assessing Officer, however, was not convinced with the submissions of the assessee. Referring to Explanation-2 to section 9(1)(vi) of the Act, he observed that the amount received is in the nature of royalty, as the amount received is for use of any patent, model, design, secret formula or process or trademark or similar property and it also involves imparting of any information concerning technical, industrial, commercial or scientific experience. He also observed that the definition of royalty under Article 12(3) is also identical. Referring to the agreement with MSAI, the Assessing Officer observed that MSAI is using the trademark of GSMA and distributing

unique IMEI number and paying the fees for the same. He observed that IMEI number is the unique invention to track the mobile devices, hence, it is the use of invention and information concerning industrial, commercial or scientific experience. Ultimately, he concluded that the administrative fee received by the assessee is in the nature of royalty. The assessee contested the aforesaid decision of the Assessing Officer before learned DRP/Commissioner (Appeals). However, the decision of the Assessing Officer was upheld by both the authorities.

7. Before us, learned counsel appearing for the assessee reiterated the submissions that the assessee neither does have any technology nor it shares any technology for implant of IMEI number in the devices. He submitted, it is the device manufacturer who holds the technology to implant IMEI number into the end devices manufactured by them. He submitted, it is also the responsibility of the device manufacturer to ensure that each device receives a unique IMEI number implanted into it. Learned counsel submitted, since there is no provision of service by the assessee to MSAI or any other customer in India, there is no question of payment towards royalty or FTS. There is just sharing of revenue between the assessee and MSAI. He submitted, the assessee

does not charge any amount from MSAI for any service. Rather, the amount paid by MSAI to the assessee is just sharing of revenue firstly collected by MSAI and later on distributed between MSAI and the assessee. He further submitted that the fee received also cannot be treated as FTS, as the assessee is not providing any managerial, technical or consultancy services to MSAI or any other party in India. He submitted, under no circumstance, the amount received can be treated as royalty, as the payment received is not for use or right to use any copyright of literature or artistic or scientific work or motion picture films. Further there is no use or right to use any industrial, commercial or scientific equipment. He submitted, the assessee is just facilitating the IMEI number by providing TAC to the mobile manufacturer and preparing database of IMEI number. Thus, he submitted, the payment received will not fall either under section 9(1)(vi) of the Act or under Article 12(3) of India-USA DTAA.

8. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned DRP/Commissioner (Appeals).

9. We have considered rival submissions and perused materials on record. As discussed earlier, the assessee is a global decimal administrator appointed by mobile industry for providing unique identification number known as IMEI or TAC for tracking mobile devices. As submitted before us by learned counsel for the assessee, this is the only company in the world which allocates these numbers. As discussed earlier, the assessee is a non-profit organisation, hence, exempt from taxation in USA. The specific activity of the assessee is to provide a unique identification number, which can be incorporated/implanted in the mobile devices by device manufacturers in a combination with other numbers to be provided by the device manufacturer to create a 14 digit IMEI number, which is unique to each mobile device. As discussed earlier, in so far as India is concerned, the assessee has appointed MSAI as the reporting body (RB) through agreement dated 22.07.2011. As per the terms of the agreement, the assessee shall provide a database to MSAI through which TAC can be generated and allocated to the device manufacturer. As a RB, MSAI is required to assist GSMA in allocation of TAC to mobile device manufacturers, approve the representatives of mobile device

manufacturers, and the brand owners distributing or offering the mobile equipments for sale. So the only service rendered by MSAI is, facilitation of allocation of TACs for mobile manufacturers.

10. As per terms of the agreement, MSAI will ensure in a timely, fair and impartial manner that the assessee will allocate manufacturer IDs and TACs only to eligible mobile equipment manufacturers maintaining a valid GSMA. As per TAC allocation agreement with GSMA. MSAI will be responsible for verifying, as part of its service, that no TAC numbers or number ranges have been already allocated to the same or any other mobile equipment manufacturer or are allocated to two or more mobile equipment manufacturers at the same time. The agreement further provides that any copyright or any other intellectual property rights that may subsist in the TAC allocation or within the GSMA hosted IMEI database and the GSMA owned any rights in any software, hardware or other materials provided to MSAI or having been generated by or on behalf of the GSMA, shall not operate as an assignment of such right by GSMA to MSAI. It further provides that any material made available by the GSMA or any third party on behalf of the GSMA under the agreement, may carry the GSMA's trademark and proprietary marks or

such other logo or proprietary marks and MSAI will act in good faith and will not do anything to bring or threaten to bring the GSMA or the marks into disrepute, or to infringe upon, harm or contest the validity of the marks and MSAI agrees that it will not use any of the marks unless expressly and specifically permitted to do so in writing by the GSMA.

11. Thus, from the aforesaid facts, it is very much clear that the only service the assessee has provided to MSAI is, access to database maintained by it containing certain unique numbers, which in combination with some other numbers to be created by mobile equipment manufacturer would form the IMEI number to be implanted in the mobile device. For providing IMEI/TAC numbers, assessee and MSAI follow revenue sharing model of 70:30. The agreement makes it clear that MSAI will have no right or any right to use any copyright, intellectual property right, which may be associated with TAC allocation or in GSMA hosted IMEI database. Thus, the agreement itself makes it explicit that there is no transfer of right to use any patent, invention, model, design secret formula or process or trade mark or similar property. It also does not impart any information concerning technical, industrial commercial or scientific experience. What the assessee

provides is a database containing unique numbers, which has to be provided to the mobile equipment manufacturers for implanting in the mobile devices so that the devices can be tracked and put in the black list in case of theft or misuse so as to prevent crime.

12. As per article 12(3) of India-USA DTAA, the amount received cannot fall within the ambit of royalty, as the consideration received cannot be construed to be for use or right to use any copyright of literary, artistic or scientific work including motion picture films and works on film or video tape for use in connection with television. Neither it can be a consideration for any patent, trade mark, design or model, plan, secret formula or process. It also cannot be for information concerning industrial, commercial or scientific experience. It also cannot be considered to be payment for use of or the right to use industrial, commercial or scientific equipment. Though, the Assessing Officer has observed that IMEI number is a unique invention to track the mobile equipment and information concerning industrial, commercial or scientific experience, however, we are not convinced. The fact of the matter is, the assessee, as a global administrator has created a database of unique numbers, which in combination with other numbers

to be provided by mobile manufacturers can be implanted in the mobile devices to identify and keep track of the device. It is further to be noted that a particular IMEI number can be provided to only one mobile equipment manufacturer and has to be implanted in a single mobile equipment. This fact also proves that there is no transfer of use or right to use of any copyright of literary artistic or scientific work or use or right to use of any commercial or scientific experience or equipment. The database of IMEI number can be compared with the registration numbers granted to identify a particular vehicle, which is nothing but a number allocated by the registering authority from a database of numbers available with them. That does not amount to transfer of any right to use of any copyright etc. Thus, on overall consideration of facts and materials on record, we are of the view that the amount received by the assessee will not fall within the definition of royalty both under section 9(1)(vi) of the Act as well as under Article 12(3) of India-USA DTAA. Accordingly, we direct the Assessing Officer to delete the additions in both the assessment years under dispute.

13. So far as the issue of short credit of TDS, as raised in ground No. 2 of ITA No. 1980/Del/2017, is concerned, we direct the Assessing

Officer to factually verify assessee's claim and grant credit of TDS as per law.

14. Other grounds raised by the assessee, being consequential and pre-mature, do not require adjudication.

15. In the result, appeals are allowed, as indicated above.

Order pronounced in the open court on 08/12/2023.

Sd/-

**(G.S. PANNU)**  
**VICE-PRESIDENT**

Sd/-

**(SAKTIJIT DEY)**  
**VICE-PRESIDENT**

Dated: 08.12.2023

\*aks/-

Copy forwarded to:

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

Assistant Registrar  
ITAT New Delhi