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

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.2097/Del/2017
Assessment Year: 2009-10

DCIT, Circle-18(1), New Delhi	**Vs.**	M/s. Net 4 India Ltd., AB-11, Community Centre, Safdarjung Enclave, New Delhi
		PAN :AAACT0291M
(Appellant)		**(Respondent)**

Assessee by	None
Department by	Sh. Saurabh Anand, Sr. DR

Date of hearing	06.05.2024
Date of pronouncement	10.05.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

This is an appeal by the Revenue against order dated 27.01.2017 of learned Commissioner of Income Tax (Appeals)-42, New Delhi, pertaining to assessment year 2009-10.

2. When the appeal was called out none appeared on behalf of the assessee despite notice. Even, there is no application seeking adjournment. On perusal of record, it is observed that after filing of the present appeal in the year 2017, though, the appeal has

come up for hearing on multiple occasions, however, on each and every time, the appeal got adjourned due to absence of the assessee despite several notices of hearing being issued to the assessee through various modes. These facts show complete lack of interest on the part of the assessee to pursue the present appeal. Therefore, we proceed to dispose of the appeal ex-parte qua the assessee after hearing learned Departmental Representative and based on the materials available on record.

3. In ground nos. 1 to 4, the Revenue has challenged partial relief granted by learned first appellate authority in the matter of disallowance made under section 14A of the Income-tax Act, 1961 (in short 'the Act') read with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules').

4. Briefly the facts are, the assessee is a resident corporate entity. For the assessment year under dispute, the assessee filed its return of income on 26.09.2009 declaring total income of Rs.7,96,10,160/-. In course of assessment proceedings, the Assessing Officer noticed that in the year under consideration, the assessee had received exempt income by way of dividend amounting of Rs.56,10,000/-. Whereas, he had not disallowed

any expenditure attributable to earning of such income in terms of section 14A read with Rule 8D. Therefore, he issued a show-cause notice to the assessee requiring him to explain, as to why the disallowance in terms of section 14A read with Rule 8D should not be made. In response to the show-cause notice issued by the Assessing Officer, the assessee took various contentions objecting to the proposed disallowance. The Assessing Officer, however, was not convinced with the submissions of the assessee and proceeded to compute disallowance under Rule 8D(2). While doing so, he disallowed an amount of Rs.96,03,087/- towards interest expenditure under Rule 8D(2)(ii). Further, he disallowed an amount of Rs.10,53,500/- under Rule 8D(2)(iii) towards administrative expenses. Thus, in aggregate, he disallowed an amount of Rs.1,06,56,587/-. The assessee contested the aforesaid disallowance before learned first appellate authority. While deciding the issue in the context of facts and materials on record, learned first appellate authority noticed that the assessee had enough surplus interest free funds to take care of the investments in exempt income yielding assets. Therefore, following certain judicial precedents, including the decision of Hon'ble Bombay

High Court in case of CIT Vs. HDFC Bank Ltd., (2014) 366 ITR 505 (Bom), he held that disallowance of interest expenditure under Rule 8D(2)(ii) is unsustainable. As regards disallowance of administrative expenses under Rule 8D(2)(iii), he sustained the disallowance.

5. We have heard learned Departmental Representative and perused the materials on record. The factual finding of learned first appellate authority that the assessee had enough surplus interest free funds to take care of the investments made in exempt income yielding assets could not be controverted by the Revenue. That being the factual position on record, keeping in view the settled legal principles, we do not find any infirmity in the decision of learned first appellate authority in deleting the disallowance made under Rule 8D(2)(ii). Ground nos. 1 to 4 are dismissed.

6. In ground nos. 5 and 6, the Revenue has challenged deletion of disallowance of Rs.4,76,33,000/- under Section 40(a)(i) of the Act.

7. Briefly the facts are, in course of assessment proceedings, the Assessing Officer noticed that in the year under consideration,

the assessee has paid an amount of Rs.4,76,33,000/- in foreign currency towards domain name registration. After calling for necessary information and examining them, he found that the payments were made in foreign currency to the registrar operators for various domain name for which they have the franchise. It was claimed by the assessee that the payments made towards domain name registration, being not in the nature of royalty under section 9(1)(vi) of the Act, there was no requirement for withholding tax at source, as, such income is not taxable in the hands of non-residents in absence of Permanent Establishment (PE). The Assessing Officer, however, was not convinced with the submissions of the assessee. He was of the view that the payment made would fall under section 9(1)(vi) of the Act, as, all the conditions therein are fulfilled. Thus, he held that the payment made, being in the nature of royalty, the assessee was required to withhold tax under section 195 of the Act. The assessee contested the disallowance before learned first appellate authority.

8. After considering the submissions of the assessee in the context of facts and materials on record, learned first appellate authority concluded that the payment made is neither in the

nature of royalty, nor FTS. Accordingly, he deleted the disallowance.

9. We have considered the submissions of learned Departmental Representative and perused the materials on record. Undisputedly, the payments made by the assessee are towards domain name registration. After examining the process of registration of domain name, learned first appellate authority has recorded a factual finding that the assessee has limited right to make a query in the registry database maintained by ICANN through graphical user interface by giving input data of the applicant. Registrar has no exclusive right in the whole process. He has observed that there is no transfer of copyright by ICANN or its authorized agency in permitting any registrar. According to him, the need of registration is only to ensure uniqueness of the domain name, which is a must to exist in the internet world. He has observed that there is a set procedure laid down by ICANN to apply for each and every application and there is no option left with the applicant to obtain such service in a different manner/mode. The registrar is merely a facilitator in connecting the applicant to the registry database to check uniqueness of

domain name. Once the uniqueness of applied domain name is checked, the registration of domain name is automatic on the payment of requisite fee. He has recorded a factual finding that the user of domain name has not even iota of knowledge about the code piece/computer program. Therefore, there cannot be any question of its usage/exploitation. The assessee has merely got right to use the functionality based on the computer program and not the computer program itself. The assessee has not exploited the code piece in any manner. Thus, he has concluded that the payments made cannot be treated as royalty under section 9(1)(vi) of the Act, nor Fee for Technical Services under Article 12(3) of India – US DTAA.

10. From the aforesaid observations of learned first appellate authority, it becomes quite clear that the payments made were not for use or right to use of any software, equipment, process etc. The Revenue has failed to bring any cogent evidence on record to controvert the factual finding of learned first appellate authority and establish on record that the payment made is for use or right to use of any computer software/program, equipment/process etc., as defined under section 9(1)(vi) of the

Act. That being the case, we concur with the decision of learned first appellate authority on the issue. Grounds are dismissed.

11. Ground no.7, being a general ground, is dismissed.

12. In the result, the appeal is dismissed.

Order pronounced in the open court on 10th May, 2024

Sd/-	***Sd/-***
(DR. B.R.R KUMAR)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Dated: 10th May, 2024.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi