

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No.3318/Del/2023
Assessment Year: 2021-22

Telstra Singapore Pte. Ltd., 8 Cross Street, 22-00, Manulife Towers, Singapore	Vs.	Deputy Commissioner of Income Tax, Circle-(3)(1)(1), New Delhi
PAN :AADCT5366N		
(Appellant)		(Respondent)

Assessee by	Sh. S.K. Aggarwal, CA Ms. Muskan Aggarwal, CA
Department by	Sh. Vijay B. Vasanta, CIT(DR)

Date of hearing	14.05.2024
Date of pronouncement	17.05.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

By filing this appeal, the assessee has assailed the final assessment order dated 28.09.2023 passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (in short

'the Act') pertaining to assessment year 2021-22, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. In ground nos. 1 to 4, the assessee has challenged the taxability of the amount received towards Bandwidth charges as royalty under section 9(1)(vi) of the Act and Article 12(3) of India – Singapore Double Taxation Avoidance Agreement (DTAA).

3. Briefly the facts relating to this issue are, the assessee is a non-resident corporate entity incorporated under the laws of Singapore and is a tax resident of Singapore. As observed by the Assessing Officer, the assessee is engaged in the business of providing digital transmission of data through International Private Leased Circuits or Multiprotocol Label Switching to facilitate high speed data connectivity, which is otherwise known as Bandwidth services. In the year under consideration, the assessee has provided Bandwidth services to various customers in India and received an amount of Rs.8,01,29,404/- In course of draft assessment proceedings, though, the assessee claimed that Bandwidth charges, being not in the nature of royalty, are not taxable in India in absence of any Permanent Establishment (PE), however, the Assessing Officer was not convinced with the

submissions of the assessee. He was of the view that Bandwidth charges fall within the definition royalty in terms of section 9(1)(vi) of the Act and Article 12(3) of India – Singapore DTAA. Accordingly, he proposed the addition of receipts towards Bandwidth charges as royalty income while framing the draft assessment order. The assessee contested the aforesaid addition by raising objections before learned DRP. Relying upon its past directions in assessee's case in earlier assessment years, learned DRP upheld the addition. In terms with the directions of learned DRP, the assessment was finalized.

4. Before us, learned counsel appearing for the assessee submitted that the issue is squarely covered by a number of decisions of the Tribunal starting from assessment year 2011-12 to 2019-20. Copies of the orders passed by the Tribunal for the aforesaid assessment years were placed on record. Thus, he submitted, due to parity of facts the issue is squarely covered by the decisions of the Tribunal in earlier assessment years.

5. Though, learned Departmental Representative fairly agreed with the aforesaid submissions of the assessee, however, he relied upon the observations of the Assessing Officer and learned DRP.

6. We have considered rival submissions and perused materials on record. We have also gone through the decisions of the Tribunal in assessee's case in earlier assessment years. The short issue arising for consideration in these grounds is whether the Bandwidth charges are taxable as royalty income.

7. We find, this is a recurring issue between the assessee and the Revenue from past assessment years. While deciding the issue for the first time in assessee's case in assessment years 2011-12, 2012-13 and 2014-15, the Tribunal in ITA No.1548/Del/2015 and Ors., dated 30.09.2020, held that Bandwidth charges are not taxable as royalty income. Identical view was taken by the Tribunal in subsequent assessment years, till assessment year 2019-20 through orders passed in ITA No.5880/Del/2018 & 5479/Del/2019, dated 13th July, 2022 in assessment years 2015-16 and 2016-17; ITA No.599/Del/2021, dated 27th September, 2022 in assessment year 2017-18 and the latest order passed in ITA No.1654/Del/2022 & 1655/Del/2022, dated 17th July, 2023 in assessment years 2018-19 and 2019-20.

8. From the observations made by the Assessing Officer and learned DRP, it is established on record that there is no factual

difference relating to the issue in the impugned assessment year compared to the past assessment years. Therefore, respectfully following the consistent view of the Tribunal on the issue, as discussed above, we hold that the receipts from Bandwidth charges are not taxable as royalty income either under section 9(1)(vi) of the Act or under Article 12(3) of India – Singapore DTAA. Accordingly, we direct the Assessing Officer to delete the addition. Grounds are decided accordingly.

9. In ground no. 5, the assessee has raised the issue of short grant of TDS credit.

10. We have heard the parties and perused the materials on record. It is the say of the assessee that though it has offered to tax the interest income on income tax refund, however, the credit for corresponding TDS deducted on the interest on income tax refund has not been granted by the Assessing Officer, while computing the tax liability in the final assessment order. Keeping in view the aforesaid submissions of the assessee, we direct the Assessing Officer to factually verify assessee's claim and grant TDS credit in accordance with law.

11. Ground no. 6, being premature at this stage, is dismissed.

12. In the result, the appeal is partly allowed.

Order pronounced in the open court on 17th May, 2024

**Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER**

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

Dated: 17th May, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi