

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 957/Mum/2024
Assessment Year: 2016-17

DCIT, CC-62, Mumbai	Vs	Interactive Avenues Pvt. Ltd., Mumbai 3es Floor, House M Vasanji Road Sakinaka, Andheri-East Maharashtra - 400072 [PAN: AACCI0954J]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Ajit Kumar Jain & Shri Siddhesh Chaugule, A/Rs
Revenue by :	Shri Anil Sant, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 15/07/2024
घोषणा की तारीख /Date of Pronouncement: 15/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the
ld. CIT(A)-54, Mumbai, dt. 04/12/2023, pertaining to AY 2016-17.

2. The substantive grievance reads as under:-

"(i) Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) is justified in deleting the disallowance made u/s 40(a)i) by holding that the payment made for display of banner advertisement was not in the nature of royalty but the same was in the nature of business profit and in the absence of any PE of Facebook Ireland Ltd, in India?

(ii) Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) order can be said as perverse in nature for holding that the assessee is not liable to deduct TDS on payments made to non-residents by relying on the decision of Hon'ble TAT in assessee's own case, wherein the department did not accept the decision of ITAT and filed further appeal which is pending before Hon'ble High Court for adjudication?

(iii) Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) is right in law allowing appeal of the assessee by holding that there was no obligation on part of assessee to deduct TDS on payments made to non-resident companies without analyzing the facts and materials of the present case with provisions of respective DTAA's ?"

3. At the very outset, it has been brought to our notice that the impugned issue has been decided by the Co-ordinate Bench in ITA No. 3130/Mum/2019; AY 2015-16, order dt. 07/07/2022. A perusal of the order of the Id. First Appellate Authority shows that he has also followed the decision of the Tribunal in the ITA No. 3130/Mum/2019. In our understanding, merely because the revenue has not accepted the order of the Co-ordinate Bench and filed further appeal before the Hon'ble High Court, would not deprive us to follow the order of the Co-ordinate Bench. Therefore, following the precedents and finding that the Id. CIT(A) has followed the decision of the Co-ordinate Bench (*supra*), we decline to interfere.

4. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 15th July, 2024 at Mumbai.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 15/07/2024

Sd/-

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आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. ँ पीलर्षी / The Appellant
2. प्रत्यर्षी / The Respondent
3. संबंघित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (ं पील) / The CIT(A)-
5. विभर्षीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai