

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESAV DUBEY, JUDICIAL MEMBER

IT(IT)A No.1272/Bang/2024
Assessment years : 2008-09

The Deputy Commissioner of Income Tax (International Taxation), Circle 1(1), Bengaluru.	Vs.	Google Ireland Ltd., Gordon House, Barrow Street, Dublin. PAN: AADCG 7672A
APPELLANT		RESPONDENT

Appellant by	:	Ms. Priya Tandon, Ms. Nandita Phal & Shri Anmol Anand, Advocates.
Respondent by	:	Shri Sridhar E., CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.09.2024
Date of Pronouncement	:	21.10.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal by the revenue is directed against the order dated 15.05.2024 of the CIT(Appeals), Bengaluru-12, Bangalore for the assessment year 2008-09 on the following grounds:-

1. “Whether on the facts and circumstances of the case and in law, the CIT(A) is correct in stating that the Equalization levy provisions enacted in the Finance Act, 2016 were done so as to bring the income generated from online advertisements and therefore, concluded that these payments/incomes were hitherto non-taxable under the then existing provisions, without

considering that the amendment to made to Section 10(50) of the Income Tax Act, 1961 in Finance Act, 2020 that exemption under section 10(50) will not apply for royalty or fees for technical services which is taxable under the Act read with the agreement notified by the Central Government under section 90 or section 90A of the Act?

2. Whether on the facts and circumstances of the case and in law, the CIT(A) is right in disregarding the AO's argument that the provisions of the DTAA between India-UK w.r.t royalty are to be interpreted in harmony with the Section 9 of the Income Tax Act, 1961?
 3. Whether on the facts and circumstances of the case and in law, the CIT(A) has failed to appreciate the law that the sale of advertisement spaces by Google Ireland is an income in the nature of (f) Royalty as per section 9(1)(vi) of the IT Act, 1961 and as per article 12 of India-Ireland DTAA?
 4. Whether on the facts and circumstances of the case and in law, the CIT(A) is right without appreciating the fact that in the case of the assessee, the issue of software or the customization thereof is not the primary issue but is indeed regarding the revenue earned through advertising space on the website of the assessee?"
2. The brief facts of the case are that the assessee, Google Ireland Limited (GIL) is a foreign company having its registered office at Ireland. The assessee is involved in the business of sale of online advertisement space to Google India Pvt. Ltd. (GIPL) under the amended Google Adwords Program Distribution Agreement dated 12.12.2005 and to direct advertisers.
3. The AO noted that the assessee has given the marketing & distribution rights of Adwords program to GIPL without holding the tax at source u/s. 195 of the Income-tax Act, 1961 (the Act). During the proceedings u/s. 201 in the case of GIPL, it was found that GIPL

had paid an amount of Rs.1198,261,982 and other customers in India had paid Rs.721,311,566 during the year to GIL towards marketing & distribution rights of Adwords program in India and the receipts are taxable in the hands of GIL in India under the Act and India-Ireland DTAA as royalty as per Explanation 2 to section 9(1)(vi) of the Act. The AO noted that the ITAT, Bangalore has held the payments made to GIL towards Adwords program as royalty.

4. Based on the above information in the case of GIPL, the AO observed that the assessee-GIL has not offered the receipts to tax and therefore income escaped assessment for the above assessment years. Notice under Section 148 of the Act was issued to the assessee. The assessee filed Nil return of income pursuant to the notice u/s. 148 of the Act and sought for the reasons recorded for reopening of the assessment. On receipt of the reasons recorded for reopening the assessment, the assessee raised its objections which were disposed by the AO. During the course of assessment proceedings the matter was referred to the Transfer Pricing Officer (TPO) and the TPO concluded that no adjustment was required to the international transactions. The assessee submitted before the AO that the order of the Tribunal dated 23.10.2017 in the case of GIPL holding that payments to GIL towards Adwords program to be royalty was set aside by the Hon'ble High Court of Karnataka and remanded to the Tribunal. After the remand from High Court, the Tribunal vide its order dated 19.10.2022 in IT(TP)A Nos.1513 to 1516/Bang/2013 for AYs 2009-10 to 2012-13 decided the issue of sale of online advertising space is not liable to be

taxed in India both under the Income-tax Act and DTAA. This order was followed by the coordinate Bench of the Tribunal in the case of GIPL (payer) for AYs 2013-14 to 2016-17 in IT(IT)A No.1190/Bang/2014 and connected appeals vide order dated 15.12.2022. However, the AO noted that department is in process of filing further appeal in the said cases. It was held by the AO that in view of the departmental stand and the interest of the revenue, reassessment proceeding had to be completed. Accordingly, the AO passed the final assessment order making additions towards royalty income.

5. Aggrieved by the final assessment order, the assessee filed appeal before the CIT(Appeals). The ld. CIT(Appeals) following the ITAT order for the AY 2007-08 cited by the assessee, the relevant portion of the order is extracted in his order, allowed the assessee's appeal. Aggrieved the revenue is in appeal before the Tribunal.

6. The ld. DR relied on the order of the AO.

7. The learned A.R. submitted that as regards the stream of income received by the assessee from GIPL is concerned, the issue on merit is squarely covered in favour of the assessee by the order of the Tribunal in assessee's own case for AY 2007-08 in IT(IT)A No.2845/Bang/2017 dated 28.2.2023. He further submitted that the Tribunal in the case of Google India Pvt. Ltd. (Payer's case) in IT(TP)A No.1513 to 1516/Bang/2013 concerning AYs 2009-10 to 2012-13 (order dated 19.10.2022) on an identical issue held that impugned payment cannot be characterized as royalty. Following this

decision, the Tribunal also decided similar issue in favour of GIPL for the relevant AYs viz., AYs 2013-14, 2014-15, 2015-16 & 2016-17 in ITA No. 1190/Bang/2014 and connected appeals dated 15.12.2022.

8. We have heard the rival contentions and perused the material on record. This issue was considered by the coordinate Bench of the Tribunal in assessee's own case for AY 2007-08 in IT(IT)A No.2845/Bang/2017 by order dated 28.02.2023 in para 8 to 11 of the order and it was held that the payment made by the payer (GIPL) to the assessee (GIL) is not in the nature of royalty or FTS and consequently it cannot be brought to tax in the hands of the assessee. The relevant portion of the order is extracted in the order of the Id. CIT(Appeals), hence we are not reproducing the same again.

9. Following the above orders of the Tribunal, we hold that the payments made by GIL and other Indian customers to the assessee cannot be taxed in the hands of the assessee and find no infirmity in the order of the Id. CIT(Appeals). The grounds by the revenue in this regard are dismissed.

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

Pronounced in the open court on this 21st day of October, 2024.

Sd/-
(KESAV DUBEY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 21st October, 2024.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.