IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

IT(IT)A No.2128/Bang/2024
Assessment year: 2013-14

The Deputy Commissioner of Income Tax (IT), Circle 2(2), Bengaluru.	Vs.	A1 Telekom Austria Aktiengesellschaft, B 112-2 ACC Taxes Telekom Austria Building Lassallestrasse 9 LEOPOLDS TADT WIEN 1020. **PAN: AAQCA 6492D**
APPELLANT		RESPONDENT

Appellant by	:	Shri Dhiraj, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	11.12.2024
Date of Pronouncement	:	27.12.2024

O R D E R

Per Prashant Maharishi, Vice President

1. This appeal is filed by the DCIT(IT), Circle 2(2), Bengaluru [the ld. AO] for the assessment year 2013-14 against the appellate order passed by the CIT(Appeals)-12, Bengaluru [ld. CIT(A)] dated 07.10.2024 wherein appeal filed by A1 Telecom Austria [assessee-respondent] against the re-assessment order passed u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [the Act] dated 11.5.2022 by the ACIT was allowed.

2. Therefore, the AO is aggrieved and has preferred this appeal as per substantial questions of law raised in the grounds of appeal as under:-

> "1. Whether on the facts and in the circumstances of the case and in law, the CIT(A)-12 was right in ignoring the fact that the assessee had in accordance with the agreement entered into by it provided carriage and connectivity services to M/s, Vodafone Idea Ltd. and the payments made therein were taxable as per section 9 of the Income Tax Act?
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> 2. Whether on the facts and circumstances of the case and in law, the CIT(A)- 12 was right in holding that the payments to NTOS for interconnect services and capacity transfer are not taxable as Royalty without considering that the processes were triggered from India, thereby making the source of such income accrue/arise out of India, for the NTOS to earn the income and the payments were made by the deductor by collecting it from the ultimate payer i.e., the end consumer in India for services rendered?
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> 3. Whether on the facts and in the circumstances of the case and in law, the CIT(A)-12 was right in ignoring the fact that the notice u/s. 148 issued to the assessee was justified as it had not filed the return of income offering the payments made by it to M/s. Vodafone Idea Ltd. which was held to be taxable in India, by the AO?
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> 4. Whether on the facts and circumstances of the case and in law, CIT(A)-12 was right in holding that the process royalty is not applicable without as much as considering the agreements between the assessee and payees, opinion of experts in the field of telecommunication and provisions governing royalty in the act and DTAA?"

3. The brief facts of the case show that assessee is a non-resident telecom operator based in Austria, who has received a payment of Rs.208,42,638 from an Indian entity Vodafone South Ltd. As per proceedings u/s. 201 in the case of payee, it was held to be

chargeable to tax in India as royalty and such decision was also upheld by the coordinate Bench. Therefore, a notice u/s. 148 of the Act was issued on 26.2.2021, in response to which the assessee filed its return of income on 26.3.2021. The reasons were disclosed to the assessee which were objected to on 1.4.2021 and disposed on 24.12.2021. Notice u/s. 142(1) of the Act was also issued which was responded by the assessee and further a show cause notice was also issued that, why the amounts received from Vodafone South Ltd. and other entities should not be treated as royalty and brought to tax in India.

4. The assessee replied that these are interconnect service charges which are standard facilities, does not require any manpower or human intervention and therefore cannot be taxed as royalty. Assessee further submitted tax residency certificate, copies of agreement and stated that it is not chargeable to tax in India. The ld. AO rejected the explanation of the assessee and held that such interconnect charges are liable to be taxed in India as per the Act as well as DTAA entered into between India-Austria. Therefore, he taxed the sum of Rs.11,47,52,968 as royalty income. Re-assessment order was passed on 11.5.2022.

5. The assessee, aggrieved with the same, challenged it before the ld. CIT(A). The assessee submitted that identical issue raised in the case of Vodafone Idea Ltd., who filed appeal against the order of coordinate Bench before the Hon'ble Karnataka High Court,

wherein the issue was decided against the revenue. The revenue also challenged it before the Hon'ble Supreme Court and SLP was dismissed. The ld. CIT(A) held that in view of the decision of the Hon'ble Supreme Court, the issue whether interconnect charges should be treated as royalty or not has reached finality, as Supreme Court has held that such charges are not royalty. The appeal of the assessee was allowed.

6. The ld. AO, aggrieved with the same, has raised several grounds of apepal. The ld. DR reiterated the findings of the ld. AO and ld. AR supported the order of the ld. CIT(A). He also submitted that identical issue arose in assessee's own case for AY 2009-10, 2011-12 & 2012-13 wherein the coordinate Bench has passed an order dated 25.8.2023 allowing the appeal of assessee. There is no change in facts and circumstances of the case.

7. We have carefully considered the rival contentions and perused the orders of ld. lower authorities. We find that the only issue in this case is, whether interconnect service charges paid by Vodafone and Bharti Airtel amounting to Rs.11,47,52,968 are chargeable to tax in India as per the Income-tax Act or DTAA. We find that the ld. CIT(A) has categorically relied upon the decision of Hon'ble Karnataka High Court in the case of payee and Hon'ble Supreme Court has dismissed the SLP also. Honourable Karnataka High Court following the above judgments has held so in series of judgements such as Deputy Commissioner of Income Tax V. M/S

Belgacom International Carrier Services SA Belgium, The Deputy Commissioner Of Income Tax V. M/s. M.I. Limited, The Deputy Commissioner Of Income Tax V. M/s. Maxis International Sdn Bhd, the Deputy commissioner of Income Tax v. Emirates Telecommunications group company, etc. that Interconnect charges are not royalty. In case of assessee, on identical facts and circumstances, Coordinate Benches have also held so. Therefore respectfully following all those decisions, we do not find any infirmity in the order of ld. CIT(A) in holding that interconnect charges cannot be taxed as royalty. Hence, order of ld. CIT (A) is upheld. Therefore, the appeal of the ld. AO does not survive.

8. In the result, the apepal filed by the ld. AO is dismissed.

Pronounced in the open court on this 27th day of December, 2024.

Sd/-	Sd/-
(SOUNDARARAJAN K.) JUDICIAL MEMBER	(PRASHANT MAHARISHI) VICE PRESIDENT

Bangalore,
Dated, the 27th December, 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.