

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 7523/MUM/2025
Assessment Year: 2020-21**

ITO (IT)-1.2.2
Room No. 621D, Kautilya
Bhawan, G-Block, BKC,
Mumbai-400051.

Appellant

Vs. Bennett Coleman & Co Ltd.,
The Times of India Building, D
N Road,
Mumbai-400 001.
PAN NO. AAACB 4373 Q
Respondent

Assessee by : Mr. Ajit Kumar Jain
Revenue by : Mr. Krishna Kumar, Sr. DR

Date of Hearing : 21/01/2026
Date of pronouncement : 30/01/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 24.09.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – 55, Mumbai [in short ‘the Ld. CIT(A)’] in relation to deduction of tax at source for assessment year 2020-21. The relevant grounds raised by the Revenue are reproduced as under:



1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding that the assessee was not liable to deduct tax at source u/s 195 of the Act on payments made to Intelsat UK, for transponder charges on the ground that the payment did not constitute royalty u/s 9(1) (vi) of the Act or under the India-UK DTAA?"

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not taking into account that the payments made by the assessee to Intelsat Corporation, UK for transponder charges are specifically covered by Explanation 6 to Section 9(1)(vi) as being included in the expression process and hence fall under definition of Royalty as per Explanation 2 to section 9(1)(vi) of the Act?"

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not taking into account that the Explanation 6 to section 9(1)(vi) of the IT Act was inserted by the Indian Parliament by way of Finance Act, 2012 as a declaratory and clarificatory amendment with retrospective effect from the day and source rule on royalty came into effect to specify the intent of the law and does not provide a new law?"

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not taking into account that the term process is not defined in Article 13 of India UK DTAA and hence its meaning has to be derived from the domestic law of India as required by Article 3(3) of India UK DTAA?"

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not taking into account that the term process as provided in Explanation 6 to section 9(1)(vi) of the Act is domestic law meaning of the that term from 01.06.1976 as clarified by the Finance Act, 2012 and hence the meaning for purpose of Article 13 of India-UK DTAA as prescribed by Article 3(3) of India-UK DTAA"

2. The solitary issue arising for our consideration is whether the assessee was required to deduct tax at source under section 195 of the Income-tax Act, 1961 on payments made towards **transponder service charges**, treating the same as **royalty**.



2.1 Briefly stated, the assessee is an Indian company engaged in media and publishing businesses, including television broadcasting. It entered into an agreement with **Intelsat Global Sales and Marketing Limited, UK (“Intelsat UK”)** for availing satellite transponder services for up-linking and down-linking of television signals for broadcasting its channels in India. Under the agreement, the assessee made periodic payments to Intelsat UK towards transponder service fees. Although, as a matter of abundant caution, the assessee withheld tax on a grossed-up basis, it maintained that such payments were not chargeable to tax in India under the Act or the India-UK DTAA. Consequently, after remitting the tax, the assessee preferred an appeal under section 248 of the Act.

2.2 The learned CIT(A), following the decisions of the Hon’ble Delhi High Court in Asia Satellite Telecommunications Co. Ltd. vs. DIT, reported in (2011) 332 ITR 340 (Del.),. and DIT vs. New Skies Satellite BV, reported in (2016) 382 ITR 114 (Del.),, as approved by the Hon’ble Bombay High Court in Neo Sports Broadcast Pvt Ltd. vs. PCIT, in ITA No.1487 of 2018,, held that the transponder service fees do not constitute royalty either under the Act or under Article 13 of the India-UK DTAA, and accordingly, the assessee was not liable to deduct tax at source.

2.3 In further appeal by the Revenue against the aforesaid decision dated 28.08.2019 passed by the learned CIT(A), the



Tribunal, vide its order dated 30.07.2021 in ITA No.7077/Mum/2019 and others, after considering the preliminary objection of the Revenue that the learned CIT(A) passed the orders without affording opportunity of hearing to the Assessing Officer, remitted the matter to the file of the learned CIT(A) for denovo adjudication.

2.4 Pursuant thereto, the learned CIT(A), after calling for a remand report and considering detailed submissions of both parties, reiterated the earlier conclusion in favour of the assessee. The Revenue is now in further appeal before us.

3. Before us, the Ld. counsel for the assessee submitted that identical issue has been adjudicated by the Co-ordinate Bench in favour of the assessee.

4. Before us, the Ld. DR submitted that decision of the Hon'ble Delhi High Court in the case of New Skies Satellite BV (supra) has been challenged by the Revenue before the Hon'ble Supreme court vide diary No. 23909/2016 and the same is pending adjudication before the Hon'ble Supreme Court and matter is not yet finally settled.

5. We have heard the rival submissions and carefully perused the material on record. The Revenue's principal contention is founded upon the insertion of Explanation 6 to section 9(1)(vi) by the Finance Act, 2012 with retrospective effect, whereby the expression



“process” is deemed to include satellite transmission, whether or not such process is secret. It is contended that since the term “process” is not defined in the India-UK DTAA, the amended domestic law definition must be imported into the treaty by virtue of Article 3(3).

5.1 On the other hand, the assessee has relied upon Article 13(3) of the India-UK DTAA, which defines royalty as consideration for the use of, or right to use, a **“secret formula or process”**. It is contended that transponder services involve no transfer of any secret process, nor any right to use equipment or process, and merely constitute provision of a standard facility.

5.2 We find that this controversy is no longer res integra. The Hon’ble Delhi High Court in *New Skies Satellite BV (supra)* has categorically held that (i) the expression “process” in the treaty must be read as **“secret process”**; (ii) unilateral amendments to domestic law, including the Finance Act, 2012, cannot be read into a tax treaty unless the treaty itself is amended bilaterally; and (iii) payments for satellite transponder services constitute consideration for services and not royalty. The aforesaid view has been expressly approved by the Hon’ble Bombay High Court in *Neo Sports Broadcast Pvt. Ltd.(supra)*, which is binding upon us. The argument of the Revenue that the Finance Act, 2012 amendments were not



considered has been specifically rejected by the jurisdictional High Court.

5.3 The recent decision of the Co-ordinate Bench in the case of the assessee in ITA No. 5246/Mum/2025 is reproduced as under:

12. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee entered into an agreement with Intelsat UK for availing transponder services for up-linking and down-linking of satellite signal for broadcasting television channels in India. Accordingly, pursuant to the agreement, the assessee regularly made payments to Intelsat UK for availing such transponder services. The relevant clauses of the agreement, service order explaining the nature of services rendered by Intelsat UK and rights/responsibilities of the assessee and Intelsat UK under this agreement, as noted in the impugned order, are reproduced as follows:

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“1.1 Agreements: By executing this MSA, Intelsat and Customer agree that, upon execution by both parties of a service order pursuant to this MSA (each a ‘Service Order’), Intelsat shall provide to Customer, and Customer shall purchase from Intelsat, the services described in such Service Order (the ‘Service(s)’) in accordance with and subject to the conditions of this MSA and such Service order.”

• “2.2 Intelsat - Provided Facilities: Intelsat shall provide each Service using satellite and / or terrestrial facilities owned and / or operated by Intelsat and / or third parties under contract with Intelsat (the ‘Intelsat-Provided Facilities’).”

• “2.3 Space Segment Allocation: Intelsat reserves the right to assign and/or reassign Customer's space segment allocation within the satellite identified in the Service Order move the Service to a different satellite and/or a different orbital location (the satellite being used for the Service at any given time referred to herein as the ‘Satellite’), or in any way to alter the method by which it provides a Service, provided that any such change not result in a failure of the Service to meet the Service Specifications. Except in emergency circumstances, Intelsat shall notify Customer of any changes to its allocation as soon as reasonably practicable prior to such change and



shall use reasonable efforts to min disruption to Customer's Service during any such change."

- *"3.4 Customer-Provided Facilities: Unless otherwise specified in the Service Order, Customershall be responsible for the provision, installation, operation, maintenance of, and for securing all necessary licenses and/or authorizations for, all earth station facilities and equipment ("Customer-Provided Facilities"), for transmitting signals to, or receiving signals from, the Satellite in accordance with the requirements set forth in the Service Order."*
- *"15.4 No Property Interest Created: The Agreement is a service contract and does not grant, and Customer shall not assert, any property interest in or to, or lien upon, the property or assets of Intelsat, including but not limited to, the Satellite and/or any components) thereof and/or any Intelsat-Provided Facilities (collectively, the "Intelsat Assets")."*

13. As per the assessee, Intelsat UK was merely providing transponder services to the assessee for transmission of signals through the satellite, which facilitated the assessee in up-linking and down-linking of satellite signals for broadcasting television channels of the assessee in India. There is no dispute in the present case that the satellite is ownedand managed by Intelsat UK. As per the assessee, it has no rights/control/access or interest in such satellite. Further, as per the terms of the agreement, it was a responsibility of the assessee for the provision, installation, operation, maintenance of, and for securing all necessary licenses and/or authorisations for, all earth station facilities and equipment for transmitting or receiving signals from the satellite in accordance with requirements set forth in the service order.

14. In the instant case, there is not dispute that Intelsat UK is a tax resident of UK under Article 4 of the India-UK DTAA, and therefore, while determining the taxability of the transponder service fees in the hands of Intelsat UK, the provisions of India-UK DTAA shall be applicable to the extent they are more beneficial as per section 90(2) of the Act.

15. As per the Revenue, by the Finance Act, 2012, with retrospective effect from 01.06.1976, Explanation-6 was inserted in section 9(1)(vi) of the Act, which clarifies the meaning of the term "process" as used in Explanation-2 to section 9(1)(vi) of the Act. As per the Explanation-6 to



section 9(1)(vi) of the Act, the term “process” includes and shall be deemed to have always included transmission by satellite (including, up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret. Thus, it is the plea of the Revenue that as per Explanation-6 to section 9(1)(vi) of the Act, the “process” is not required to be “secret” in order to fall under definition of the term “Royalty” as provided in Explanation-2 to section 9(1)(vi) of the Act and specifically includes transmission by satellite including up-linking, amplification, conversion for down-linking of any signal. Therefore, as per the Revenue, the transponder service fees paid by the assessee to Intelsat UK are chargeable to tax in India as per the provisions of the Act. As regards the taxability under the India-UK DTAA, it is the plea of the Revenue that since the term “process” is not defined under the tax treaty, accordingly, as per the provisions of Article 3(3) of the India-UK DTAA, the definition of the term “process” as provided under the Act shall apply.

16. On the other hand, the assessee placed reliance upon the definition of the term “Royalty”, as provided in Article 13(3) of the India-UK DTAA, which reads as follows: -

“3. For the purposes of this Article, the term "royalties" means:

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematography films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, **secret formula or process**, or for information concerning industrial, commercial or scientific experience; and

(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.”

(Emphasis supplied)

17. Thus, as per the assessee, in order for a payment to be termed as Royalty under the provisions of the India-UK DTAA, the same needs to



be a payment for the use of a “secret process” and not just “process”. As per the assessee, the payment made by it to Intelsat UK for the use of the transponder facility for transmission of its channel is not for any secret process, as the transponder facility is rendered through standard facilities, and the transponder technology is available off the shelf. Therefore, there is no secret about the process. Accordingly, it is the plea of the assessee that the transponder fees do not tantamount to fees in relation to any secret process, and therefore, do not fall within the definition of the term “Royalty” as provided in Article 13(3) of the India-UK DTAA.

18. We find that while considering the similar issue of taxability of transponder service fees as Royalty, inter alia, under the India-Netherlands DTAA, which has an identical definition of the term “Royalty” as in the India-UK DTAA, the Hon’ble Delhi High Court, after considering the provisions of Explanation-6 to section 9(1)(vi) of the Act, in DIT vs. New Skies Satellite BV, reported in (2016) 382 ITR 114 (Del), observed as follows: -

“58. Nevertheless, whether or not punctuation plays an important part in statute interpretation, the construction Parliament gives to such punctuation, or in this case, the irrelevancy that it imputes to it, cannot be carried over to an international instrument where such comma may or may not have been evidence of a deliberate inclusion to influence the reading of the section. There is sufficient evidence for us to conclude that the process referred to in Article 12 must in fact be a secret process and was always meant to be such. In any event, the precincts of Indian law may not dictate such conclusion. That conclusion must be the result of an interpretation of the words employed in the law and the treatises, and discussions that are applicable and specially formulated for the purpose of that definition. The following extract from Asia Satellite Telecommunications Co. Ltd's case (supra) takes note of the OECD Commentary and Klaus Vogel on Double Tax Conventions, to show that the process must in fact be secret and that specifically, income from data transmission services do not partake of the nature of royalty.

“74. Even when we look into the matter from the standpoint of Double Taxation Avoidance Agreement (DTAA), the case of the appellant gets boost. The Organisation of Economic Cooperation and Development (OECD) has framed a model of Double Taxation Avoidance Agreement (DAA) entered into by India are based. Article 12 of the said model DTAA contains a definition of royalty which is in all material respects virtually the same as the definition of royalty contained in clause (ili) of Explanation



2 to Section 9(1) (vi) of the Act. This fact is also not in dispute. The learned counsel for the appellant had relied upon the commentary issued by the OECD on the aforesaid model DTAA and particularly, referred to the following amendment proposed by OECD to its commentary on Article 12, which reads as under:

9.1 Satellite operators and their customers (including broadcasting and telecommunication enterprises) frequently enter into transponder leasing agreements under which the satellite operator allows the customer to utilize the capacity of a satellite transponder to transmit over large geographical areas.

Payments made by customers under typical transponder leasing agreements are made for the use of the transponder transmitting capacity and will not constitute royalties under the definition of paragraph 2; these payments are not made in consideration for the use of, or right to use, property, or for information, that is referred to in the definition (they cannot be viewed, for instance, as payments for information or for the use of, or right to use, a secret process since the satellite technology is not transferred to the customer). As regards treaties that include the leasing of industrial, commercial or scientific (ICS) equipment in the definition of royalties, the characterization of the payment will depend to a large extent on the relevant contractual arrangements. Whilst the relevant contracts often refer to the lease of a transponder, in most cases the customer does not acquire the physical possession of the transponder but simply its transmission capacity: the satellite is operated by the lessor and the lessee has no access to the transponder that has been assigned to it. In such cases, the payments made by the customers would therefore be in the nature of payments for services, to which Article 7 applies, rather than payments for the use, or right to use, ICS equipment. A different, but much less frequent, transaction would be where the owner of the satellite leases it to another party so that the latter may operate it and either use it for its own purposes or offer its data transmission capacity to third parties. In such a case, the payment made by the satellite operator to the satellite owner could well be considered as a payment for the leasing of industrial, commercial or scientific equipment. Similar considerations apply to payments made to lease or purchase the capacity of cables for the transmission of electrical power or communities (e.g. through a contract granting an indefeasible right of use of such capacity) or pipelines (e.g. for the transportation of gas or oil).

75. Much reliance was placed upon the commentary written by Klaus Vogel on *Double Taxation Conventions (3rd Edition)*'. It is recorded therein:

The use of a satellite is a service, not a rental (thus correctly, Rabe, A., 38 RIW 135 (1992), on Germany's DTC with Luxembourg); this would not be the case only in the event the entire direction and control over the satellite, such as its piloting or steering, etc. were transferred to the user.'

76. Klaus Vogel has also made a distinction between letting an asset and use of the asset by the owner for providing services as below:

'On the other hand, another distinction to be made is letting the proprietary right, experience, etc., on the one hand and use of it by the licensor himself, e.g., within the framework of an advisory activity. Within the range from services, viz. outright transfer of the asset involved (right, etc.) to the payer or le royalty. The other, just as clear-cut extreme is the exercise by the payee of activities in the service of the payer, activities for which the payee uses his own proprietary rights, know-how, etc., while not letting or transferring them to the payer.'



77. The Tribunal has discarded the aforesaid commentary of OECD as well as Klaus Vogel only on the ground that it is not safe to rely upon the same. However, what is ignored is that when the technical terms used in the DTAA are the same which appear in Section 9(1)(vi), for better understanding all these very terms, OECD commentary can always be relied upon. The Apex Court has emphasized so in number of judgments clearly holding that the well-settled internationally accepted meaning and interpretation placed on identical or similar terms employed in various DTA As should be followed by the Courts in India when it comes to construing similar terms occurring in the Indian Income Tax Act. ...

78. There are judgments of other High Courts also to the same effect.

(a) Commissioner of Income Tax Vs. Ahmedabad Manufacturing and Calico Printing Co., (139 ITR 806 (Guj.)) at Pages 820-822.

(b) Commissioner of Income Tax Vs. Vishakhapatnam Port Trust [(1983) 144 ITR 146 (AP)] at pages 156-157.

(c) N.V. Philips Vs. Commissioner of Income Tax [172 ITR 521] at pages 527 & 538-539.”

59. On a final note, India's change in position to the OECD Commentary cannot be a fact that influences the interpretation of the words defining royalty as they stand today. The only manner in which such change in position can be relevant is if such change is incorporated into the agreement itself and not otherwise. A change in executive position cannot bring about a unilateral legislative amendment into a treaty concluded between two sovereign states. It is fallacious to assume that any change made to domestic law to rectify a situation of mistaken interpretation can spontaneously further their case in an international treaty. Therefore, mere amendment to Section 9(1)(vi) cannot result in a change. It is imperative that such amendment is brought about in the agreement as well. Any attempt short of this, even if it is evidence of the State's discomfort at letting data broadcast revenues slip by, will be insufficient to persuade this Court to hold that such amendments are applicable to the DTAA's.

60. Consequently, since we have held that the Finance Act, 2012 will not affect Article 12 of the DTAA's, it would follow that the first determinative interpretation given to the word "royalty" in Asia Satellite, when the definitions were in fact parimateria (in the absence of any contouring explanations), will continue to hold the field for the purpose of assessment years preceding the Finance Act, 2012 and in all cases which involve a Double Tax Avoidance Agreement, unless the said DTAA's are amended jointly by both parties to incorporate income from data transmission services as partaking of the nature of royalty, or amend the definition in a



manner so that such income automatically becomes royalty. It is reiterated that the Court has not returned a finding on whether the amendment is in fact retrospective and applicable to cases preceding the Finance Act of 2012 where there exists no Double Tax Avoidance Agreement.”

19. Thus, the Hon'ble Delhi High Court in the decision cited (*supra*) held that unless the provisions of tax treaty are amended jointly by both parties to incorporate the amended definition of the term “Royalty” by the Finance Act, 2012, which inserted Explanation-6 to section 9(1)(vi) of the Act, such an amendment by itself would not result in any change in the definition of the term “Royalty” as defined in the provisions of the tax treaty.

20. We find that the following issue came up for consideration before the Hon'ble Jurisdictional High Court in *PCIT vs. NEO Sports Broadcast Pvt. Ltd.*, in ITA No.1487 of 2018: -

“(a) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in deleting the addition towards Satellite Space Fees/transponder charges relying on the decision of Hon'ble Delhi High Court in the case of Asia Satellite Telecommunication 238 CTR (Del) 233, without considering the amendment in section 9(1)(vi) w.e.f. 01.06.1976 [by Finance Act, 2012], wherein the intent of legislature in respect of 'royalty' has been clarified thereby deeming the said charges to be 'royalty' in nature.”

21. While deciding this issue in favour of the taxpayer, the Hon'ble Jurisdictional High Court, vide order dated 23.04.2019, observed as follows:-

“2. In question (a) the revenue contends that the Satellite Space Fees and transponder charges paid by the assessee were in the nature of royalty payments. From the perusal of the impugned judgment of Income Tax Tribunal ("Tribunal' for short) we notice that the revenue's main thrust before the Tribunal was that the charges paid were capital expenditure and not revenue expenditure. However, in this context, the Tribunal did observe fleetingly on the question of charges being royal payments. We have therefore heard the learned Counsel for the parties on merits on this issue raised by the revenue.

3. We notice that an identical issue came up for consideration before Delhi High Court in case of Asia Satellite Telecommunications Co. Ltd. Vs. DIT, reported in (2011) 332 ITR 340. It was the case in



which the assessee a non-resident was engaged in satellite communication, having control of satellites. The assessee would provide use of transponder facility on satellite to the television companies outside India, which in turn would be routed to the operators in India, who would pass them on to the customers. The question was whether the payments made to the non-resident were in the nature of royalty and therefore come within the scope of section 9(1) of the Income Tax Act, 1961 ('the Act' for short). The Court by a detailed judgment held that the payments were not in the nature of royalty charges. The Court made a distinction between transfer of rights in respect of property and transfer of rights in the property.

4. Later on similar issue once again came before Delhi High Court in the case of Directorate of Income-tax Vs. New Skies Satellite BV, reported in (2016) 382 ITR 114. The Court followed the earlier decision in case of Asia Satellite Telecommunication (supra) and dismissed the revenue's Appeal. It was held that the explanations added below section 9(1) of the Act were not merely clarificatory in nature. Respectfully agreeing with the said decisions of the Delhi High Court, this question is not considered.”

22. We find that similar findings have been rendered by the Co-ordinate Bench of the Tribunal in the following decisions: -

- ACIT (IT) vs. Viacom 18 Media (P.) Ltd., (2022) 134 taxmann.com 243 (Mumbai Tribunal)*
- ACIT (IT) vs. Viacom 18 Media (P.) Ltd., (2022) 135 taxmann.com 321 (Mumbai Tribunal)*
- ACIT (IT) vs. United Home Entertainment (P.) Ltd., (2025) 175 taxmann.com 377 (Mumbai Tribunal)*

23. In the present case, as noted in the foregoing paragraphs, the Revenue has not disputed the contention of the assessee regarding the applicability of the India-UK DTAA to the instant case. Therefore, we do not find any infirmity in the findings of the learned CIT(A) in deciding this issue as per the provisions of the India-UK DTAA and rejecting the contention of the Assessing Officer that the amended meaning of the term “process” in the Act needs to be incorporated in the definition of the term “Royalty” under Article 13 of the India-UK DTAA by virtue of Article 3(3) of the India-UK DTAA.



24. We find that the taxability of transponder service fees in the hands of the recipient, i.e., Intelsat UK, came up for consideration before the Co-ordinate Chennai Bench of the Tribunal in *Intelsat Global Sales and Marketing Ltd. vs. DCIT*, in IT(TP)A No.49/Chny/2018 and others. While deciding the issue in favour of Intelsat UK, the Co-ordinate Chennai Bench of the Tribunal vide order dated 16.10.2023 held that such receipts cannot be taxed as process Royalty, by observing as follows: -

“16. As regards the taxability of receipts of process royalty, the Ld. AR argued that no secret process is involved in provision of services by the assessee since the mechanism of providing satellite transmission services is available in the public domain. The assessee owns satellite which include transponders and provide satellite transponder services to its customers as per eleven parameters to be adhered or provided to the customers of the assessee i.e. VSNL etc. The assessee is not involved in carrying out this process. Intelsat Earth Station Standards, eleven parameters, data pointing Intelsat Global Sales and Marketing Limited vs DCIT calculator are available in public domain and therefore do not constitute secret information or process. No confidential information is provided by the assessee to its customers to tax the receipts as process royalty. The assessee has placed the unredacted version of the customer contract (at pages 101 to 105 of the additional evidence) which clearly establishes that the redacted information i.e. allocated transponder, allocated bandwidth are merely commercial information. The amendment in section 9(i)(vi) of the Act vide Finance Act, 2012 cannot be read into the India-UK DAA. The impugned issue is also covered by the decisions (supra) of the Delhi High Court in the case of Intelsat Corporation and Asia Satellite Telecommunication Co. Ltd. The case of the assessee also finds support by the decision of the Delhi High Court in *New Skies Satellite BV (2016) 68 taxmann.com 8 (Delhi HC)*. The Ld. DR has not brought on record any material to controvert the above



submissions of the Ld. AR. In the light of the above factual matrix of the case and legal position set out above, we are of the considered view that the impugned receipts cannot be taxed as process royalty.”

25. Therefore, respectfully following the decisions of the Hon’ble High Courts and Co-ordinate Bench cited supra, we do not find any infirmity in the findings of the learned CIT(A) in coming to the conclusion that the payment of transponder service fees by the assessee to Intelsat UK do not fall within the meaning of the term “Royalty” as per the India-UK DTAA. As regards the other findings of the learned CIT(A) regarding the non-taxability of the payment as “Fees for Technical Services”, and as business profit in the absence of a Permanent Establishment of Intelsat UK in India, the Revenue has not raised any ground in its appeals before us. Therefore, we are not rendering any findings on these issues.

26. Accordingly, we upheld the findings of the learned CIT(A) that the transponder service fees payable by the assessee to Intelsat UK are not taxable in India as Royalty as per the provisions of the India-UK DTAA, and therefore, the assessee is not liable to withhold taxes under section 195 of the Act. As a result, the solitary issue raised by the Revenue before us is decided in favour of the assessee and against the Revenue.”

5.4 The contention of the Revenue that the pendency of an SLP against *New Skies Satellite BV* unsettles the legal position cannot be accepted. A mere pendency of an appeal does not dilute the binding nature of the judgment, particularly when it has been followed by the jurisdictional High Court and consistently applied by the Tribunal.

5.5 In view of the settled legal position, and respectfully following the binding decisions of the Hon’ble Bombay High Court and the Co-ordinate Benches of the Tribunal (supra), we find no infirmity in the order of the learned CIT(A) holding that the transponder service



fees paid by the assessee to Intelsat UK do not constitute royalty under Article 13 of the India-UK DTAA and that the assessee was not liable to deduct tax at source under section 195 of the Act.

5.6 The grounds raised by the Revenue are accordingly dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30/01/2026.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 30/01/2026
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai