

# INTERNATIONAL TAXATION

## Case Law Update



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### A. SUPREME COURT

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***CIT(IT) vs. Nagravisian S.A [(2023) 157 taxmann.com 458 (SC)]***

SLP dismissed on ground of delay and merits against order of High Court that income of assessee, a Switzerland based company from supply of CAS and middleware products to Indian customers does not fall under 'royalty' as defined under section 9(1)(vi) and article 12(3) of India-Swiss DTAA and thus, same does not give rise to any income taxable in India

#### Facts

- i. The Hon'ble High Court held that in view of decision of Supreme Court in case of ***Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT [2021] 124 taxmann.com 42/432 ITR 471***, income of assessee, a Switzerland based company from supply of CAS and middleware products to Indian customers did not fall under 'royalty' as defined under section 9(1)(vi) and article 12(3) of India-Swiss DTAA and thus, the same did not give rise to any income taxable in India.

- ii. Aggrieved, the Revenue filed SLP before the Hon'ble Apex Court with delay of 325 days.

#### Decision

- i. The Special Leave Petition was dismissed both on the ground of delay as well as on merits.

### B. HIGH COURT

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***Godaddy.com LLC vs. ACIT [(2023) 157 taxmann.com 256 (HC - Delhi)]***

Fee received by assessee, a domain name registrar, for registration of domain names of third parties, i.e., its customers, could not be treated as royalty

#### Facts

- i. The assessee, a US based company was an accredited registrar for the Internet Corporation for Assigned Names and Numbers (ICANN). It did not have any PE in India
- ii. It provided services such as domain name registration, website design, and web hosting and charged a fee from its customers for facilitating domain name

registration, which was shared, three ways i.e a part of the fee received from the customers was kept by the assessee and a portion of the fee was shared with ICANN and the registry.

- iii. The domain name's owner was the customer who sought domain name registration and the customer could, at his option, dissolve his engagement with the assessee and move to another registrar, having a back-to-back arrangement with ICANN and the registry appointed by it [The customer would not have been able to engage with another Registrar had the assessee been the domain name's owner].
- iv. The AO by way of draft assessment order proposed an addition concerning the income of the assessee received against domain name registration services offered to its customers by construing the same as royalty. The said order was upheld by the DRP and the Hon'ble Tribunal.
- v. Aggrieved, the assessee filed an appeal before the Hon'ble High Court.

### Decision

- i. The Hon'ble High Court noted that what was agreed between the assessee and its customers was that mere registration of a domain name did not create any proprietorship rights in the name used as the domain name or in the domain name registration either in the assessee or the customers or even any other third party.
- ii. It accepted the submission of the assessee, that since it was not the

domain name's owner, it could not confer the right to use or transfer the right to use the domain name to another person/entity.

- iii. It further held that it was possible in a given situation that a domain name may have the attributes of a trademark. [on the basis of Section 2m read with Section 2zb of Trademarks Act, 1991].
- iv. However, relying on the judgement of the Hon'ble Supreme Court in ***Satyam Infoway vs. Siffynet Solutions, (2004) 6 SCC 145***, it held that it is the registrant (and not the Registrar) who owns the domain name, and can protect its goodwill by initiating passing off action against a subsequent registrant of the same domain name/a deceptively similar domain name. Further, the Tribunal's reliance on the aforesaid judgment was misconceived as in the said case, the court was concerned only with the rights of the domain name owner and not the Registrar, while determining whether action could be initiated in relation to domain names. It further held that the aforementioned principle may have been attracted if the assessee had granted rights in or transferred the right to use its domain name, i.e., Godaddy.com, to a third person (which was not so in the instant case).
- v. It thus concluded that the fee received by the assessee for registration of domain names of third parties, i.e., its customers, could not be treated as royalty.

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***CIT (IT) vs. Piaggio & C.S.P.A*  
[[2023] 157 taxmann.com 622 (HC  
- Bombay)]**

Where assessee entered into two agreements with its AE and Assessing Officer concluded that second agreement was only an extension of first agreement and, therefore, tax rate applicable would be 20 per cent and not 10.56 percent, since old agreement which provided trademarks to be used by assessee were only restricted to Ape 501 and Ape 601, whereas, as per new agreement, assessee had provided license to manufacture and sell vehicles under name of Ape, which encompassed all kinds of vehicles and the territory which was covered under old agreement was different from territory that was covered under new agreement, second agreement was not an extension of earlier agreement.

**Facts**

- i. Assessee was in business of manufacture of motorized two wheelers and three and four-wheeled light goods transport vehicles.
- ii. It received royalty income and technical fees for services rendered in India to its AEs. It had entered into two agreements with its AE in March 1998 and April 2008.
- iii. The AO concluded, after considering both agreements, that second agreement was only an extension of first agreement and, therefore, tax rate applicable u/s 115A of the Income-tax Act, 1961 would be 20 per cent and not 10.56 per cent.
- iv. The Hon'ble Tribunal observed that there was difference between the

two agreements and also the law as prevailing and that old agreement which provided trademarks to be used by assessee were only restricted to Ape 501 and Ape 601, whereas, as per new agreement, assessee had provided license to manufacture and sell vehicles under name of Ape, which encompassed all kinds of vehicle and also observed that the territory which was covered under old agreement was different from the territory that was covered under new agreement and thus, the second agreement was not an extension of the earlier agreement.

- v. Aggrieved, Revenue filed an appeal before the Hon'ble High Court.

**Decision**

- i. The Hon'ble High Court held that these were factual findings and also possible findings which by no stretch of imagination could they be termed as perverse.
- ii. Accordingly, the Hon'ble High Court dismissed the Revenue's appeal by holding that no substantial question of law arose.

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***PCIT vs. Inductis India (P.) Ltd.*  
[[2023] 157 taxmann.com 87 (HC  
Delhi)]**

Where assessee-company was a debt free company question of receiving any interest on receivables would not arise and thus, adjustment made by AO on account of interest on outstanding receivables was liable to be deleted.

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*PCIT vs. Sony India (P.) Ltd. [(2023) 157 taxmann.com 466 (HC Delhi)]*

Where assessee incurred AMP expenses in respect of products of AE and TPO made upward adjustment on account of same, in view of fact that assessee had received compensation for AMP expenses incurred by it in terms of higher profitability on products sold and fact that comparables chosen by TPO had a net margin lower than that of the assessee, no upward adjustment was required to be made.

## C. TRIBUNAL

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*Toyota Kirloskar Motor (P) Ltd. vs. ACIT [(2024) 158 taxmann.com 79 (Bangalore Tribunal)]*

Where assessee had entered into international transactions including payment of royalty to its AE and applied TNMM at entity level after aggregating all international transactions but TPO had concluded that royalty should be separately benchmarked, since assessee's margins had been computed including royalty payment which was higher than margin of comparables and in case of comparables, margins were computed after including royalty and research and development expenses, no separate adjustment for royalty was required.



“The only religion that ought to be taught is the religion of fearlessness. Either in this world or in the world of religion, it is true that fear is the sure cause of degradation and sin. It is fear that brings misery, fear that brings death, fear that breeds evil. And what causes fear? Ignorance of our own nature.”

— Swami Vivekananda

“You must not lose faith in humanity. Humanity is like an ocean; if a few drops of the ocean are dirty, the ocean does not become dirty.”

— Mahatma Gandhi