

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: D : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.373/Del/2020
Assessment Year: 2016-17

PDR Solutions FZC,
PO Box No.16113,
Ras Al Khaimah,
United Arab Emirates,

Vs ACIT,
Circle,
International Taxation 2(2)(2),
New Delhi.

PAN: AAGCP5504K

(Appellant)

(Respondent)

Assessee by : Shri Porus Kaka, Sr. Advocate
Revenue by : Shri Abhishek Sharma, CIT-DR

Date of Hearing : 06.05.2025
Date of Pronouncement : 13.06.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the final assessment order dated 03.12.2019 passed by the Dy. Commissioner of Income-tax, Circle, International Taxation-2(2)(2), New Delhi (hereinafter referred to as the Ld. AO) u/s 144C(13) r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2016-17.

2. Heard and perused the record. We find that in the appeal in hand, the issues involved are treating the ‘domain name registration services’ receipts as income taxable as royalty u/s 9(1)(vi) of the Act under the Indo-UAE Treaty and further, the AO proposing to tax the income from web hosting services also as royalty u/s 9(1)(vi) of the Act as per the said tax treaty.

3. The issues, though contested by the ld. DR are almost settled. The Hon’ble Delhi High Court in the case of ***Godaddy.Com LLC vs. ACIT (2023) 157 taxmann.com 256 (Delhi)*** has settled the issue of treating fee received by the assessee on account of domain registration services as not giving rise to royalty income and in assessee’s own case for AY 2017-18 and 2018-19 reported in ***(2023) 146 taxmann.com 84 (Mumbai-Trib)***, the coordinate Bench of the Mumbai Tribunal vide decision dated 30.12.2024 has held that income received by the assessee towards domain registration services as per Article 12 of relevant DTAA would not be taxable in India.

3. Similarly, the web hosting services provided to the customers has also been considered by the coordinate bench in the case of the assessee and it is held as follows:-

“23. We have considered the rival submissions and perused the material available on record. Web hosting normally refers to the Web server that stores lots of data files. Web hosting provider normally has servers and network connection to the end users or the resellers. Web hosts are companies that provide space on a server they own or lease for use by the clients as well as providing Internet connectivity, typically a data centre. As per the assessee, the consideration paid is for use of the server space and the customers neither have an independent right to use the server space nor have physical access to it. Further, there is no right to use the technology platform nor there is any grant of license to use the platform. We find that

the term 'royalty' is not as widely defined in the India UAE DTAA as the same has been defined under the provisions of the Act. We further find that after the insertion of Explanation 5 to section 9(1)(vi) of the Act by Finance Act 2012, the possession or control or Page | 15 PDR Solutions FZC ITA no.1855/Mum./2022 ITA no.1856/Mum./2022 location of the right, property, or information is not relevant under the provisions of the Act. However, we find that similar amendment has not been carried out in the provisions of India UAE DTAA. In DIT vs New Skies Satellite BV, [2016] 382 ITR 114 (Delhi), the Hon'ble Delhi High Court held that unless the DTAA is amended jointly by both parties, Finance Act, 2012 which inserted Explanations 4, 5 and 6 to section 9(1)(vi) by itself would not affect the meaning of term 'royalty' as mentioned in the DTAA. Therefore, in absence of a grant of any control over the equipment belonging to the assessee to its customers, the findings of the AO that the amount so received will constitute royalty is not acceptable in view of the provisions of Article 12(3) the India UAE DTAA. Further, we find no basis in linking the taxability of income from web hosting services with income from domain registration services by the AO, as both are independent and mutually exclusive. Hence, the AO is directed to delete the addition on account of income from web hosting services. Accordingly, ground No. II raised in assessee's appeal is allowed."

4. Further, the coordinate Bench at Delhi in the case of GoDaddy.com LLC, wherein one of us, i.e., the Judicial Member was in the quorum, vide ITA No.1558 to 1561/Del/2022 and ITA No.3027/Del/2023, reported in (2025) 170 taxmann.com 408 (Delhi-trib.) has held that such incomes are even falling beyond the scope of 'fee for technical services' or 'fee for included services.' Thus, we are inclined to sustain the grounds raised in the appeal.

5. The appeal is allowed. The impugned additions are deleted.

Order pronounced in the open court on 13.06.2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 13th June, 2025.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi