

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, PRESIDENT AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1878/Del/2017
Assessment Year : 2013-14

M/s Godaddy.com LLC,
C/o Godaddy India Domains
& Hosting Services Pvt.Ltd.,
Unit 003, Tower 4A,
DLF Corporate Park,
M.G. Road,
Gurgaon – 122 002.
PAN : AAECG7133K.
(Appellant)

Vs. Assistant Commissioner of
Income Tax, Circle-1(3)(1),
International Taxation,
New Delhi.

(Respondent)

Appellant by : Shri S.P. Singh & Shri Manoneet
Dalal, ARs and Shri G. Chandra
Shekhar & Ms. Shradha Khandelwal,
CAs.
Respondent by : Shri G.K. Dhall, CIT-DR.

Date of hearing : 31.01.2018
Date of pronouncement : 03.04.2018

ORDER

PER G.D. AGRAWAL, PRESIDENT :-

This appeal by the assessee for the assessment year 2013-14 is directed against the order of learned Dispute Resolution Panel-1, New Delhi dated 23rd December, 2016.

2. Ground No.1 of the assessee's appeal, which reads as under, is of general nature and needs no separate adjudication :-

“That on the facts and in the circumstances of the case and in law, the impugned order of assessment framed by the AO pursuant to the directions of the DRP is erroneous and bad in law as well as in facts.”

3. Ground No.2 of the assessee's appeal reads as under :-

"That on the facts and in the circumstances of the case and in law, the AO/DRP has wrongly alleged that receipts from domain name registration amounting to INR 174,154,636 should be charged to tax as royalty as per the provisions of section 9(1)(vi) read with section 115A of the Act."

4. The facts of the case are that the assessee is a limited liability company located in the USA. It is engaged in the business as accredited domain name registrar authorized by Internet Corporation for Assigned Names and Numbers (in short 'ICANN'). For the year under consideration, the assessee filed return declaring income of ₹20,42,77,864/- being the receipt from web hosting services/on demand sale. The assessee offered the same as income from royalty. However, the Assessing Officer assessed the same as fees for technical services which is affirmed by learned DRP. Though the assessee has raised ground Nos.3 & 4 against the action of the Assessing Officer assessing the income from web hosting services as FTS, as against royalty income declared by the assessee, such grounds are not pressed at the time of hearing. In addition to above, the assessee had income from domain registration fees amounting to ₹17,41,54,636/-, which is claimed to be not taxable in India. The Assessing Officer assessed the same as income from royalty. The relevant finding in this regard in paragraph Nos.6 to 6.5 of his order reads as under :-

"6. Domain Name Registration as Royalty

6.1 What is domain name

The domain name is much like an entry in a phone book. Computers communicate by using numbers, called IP addresses, to contact each other, much like we use a phone number to dial a specific person's phone. If we want people to find our business's phone number, we want to be listed in a phone book. The phone book tells people looking for our phone number "Company A's phone

number is xxx-xxx-xxxx” just as a domain tells people (i.e. their computers) “domainA.com is hosted on the server xxx.xxx.xxx.xxx” without the domain, we would have to tell our customers “Hey my site is located at 123.456.789.123/~mysite/” instead of “mysite.com” we can see how, without a domain, having a site or hosting is impractical.

6.2 What is the procedure for registering a domain name

A domain name is an identification string that defines a realm of administrative autonomy, authority or control within the Internet. Domain names are formed by the rules and procedures of the Domain Name System (DNS). Any name registered in the DNS is a domain name. Domain names can also be thought of as a location where certain information or activities can be found.

Domain names are used in various networking contexts and application-specific naming and addressing purposes. In general, a domain name represents an Internet Protocol (IP) resource, such as a personal computer used to access the Internet, a server computer hosting a web site, the web site itself or any other service communicated via the Internet.

Domain names are organized in subordinate levels (sub domains) of the DNS root domain, which is nameless. The first-level set of domain names are the top-level domains (TLDs), including the generic top-level domains (gTLDs), such as the prominent domains com, info, net, edu, and org, and the country code top-level domains (ccTLDs). Below these top-level domains in the DNS hierarchy are the second-level and third-level domain names that are typically open for reservation by end-users who wish to connect local area networks to the Internet, create other publicly accessible Internet resources or run web sites. The registration of these domain names is usually administered by domain name registrars who sell their services to the public.

A fully qualified domain name (FQDN) is a domain name that is completely specified in the hierarchy of the DNS, having no parts omitted.

Labels in the Domain Name System are case-insensitive and may therefore be written in any desired capitalization

method, but most commonly domain names are written in lowercase in technical contexts.

Technical requirements and process

In the process of registering a domain name and maintaining authority over the new name space created, registrars use several key pieces of information connected with a domain :

Administrative contact. A registrant usually designates an administrative contact to manage the domain name. The administrative contact usually has the highest level of control over a domain. Management functions delegated to the administrative contacts may include management of all business information, such as name of record, postal address, and contact information of the official registrant of the domain and the obligation to conform to the requirements of the domain registry in order to retain the right to use a domain name. Furthermore, the administrative contact installs additional contact information for technical and billing functions.

Technical contact. The technical contact manages the name servers of a domain name. The functions of a technical contact include assuring conformance of the configurations of the domain name with the requirements of the domain registry, maintaining the domain zone records, and providing continuous functionality of the name servers (that leads to the accessibility of the domain name).

Billing contact. The party responsible for receiving billing invoices from the domain name registrar and paying applicable fees.

Name servers. Most registrars provide two or more name servers as part of the registration service. However, a registrant may specify its own authoritative name servers to host a domain's resource records. The registrar's policies govern the number of servers and the type of server information required. Some providers require a hostname and the corresponding IP address or just the hostname, which must be resolvable either in the new domain, or exist elsewhere. Based on traditional requirements (RFC 1034), typically a minimum of two servers is required.

Domain names may be formed from the set of alphanumeric ASCII characters (a-z, A-Z, 0-9), but characters are case-insensitive. In addition the hyphen is permitted if it is surrounded by characters, digits or hyphens, although it is not to start or end a label. Labels are always separated by the full stop (period) character in the textual name representation.

6.3 What are the functions performed by ICANN and what are the functions performed by Go Daddy in the procedure

As a technical coordinating body, ICANN (Internet Corporation for Assigned Names and Numbers) performs a variety of functions related to the Internet's unique identifiers. These include operational functions, collaboration, coordination and engagement.

In this case, clients desirous of services apply to assessee who in turn enquires from ICANN availability of domain name. On confirmation, assessee registers the clients for fees and for conditions as imposed by ICANN.

As already mentioned, Godaddy US is a registrar of the customers who need these services and provide the services to its customers. And ICANN is the central organisation who appoints such registrar like Godaddy US and charge fee from Godaddy under a fixed predetermined formula.

The clients all over the worlds apply for services as per Proforma given by the assessee and pay fees for the same. One part of the fees is allegedly received by the Godaddy for web-hosting which is being offered for tax under royalty by the assessee and the other part is taken for domain name registration. A fixed percentage of the latter is given by the assessee to the ICANN.

6.4 Taxability as Royalty

As per the section 9(1)(vi) of the act :

Explanation 2. – For the purposes of this clause, “royalty” means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head “Capital gains”) for –

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;

(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;

(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v).

As per article 12 of India US Double Taxation Avoidance Agreement.

3. The term royalties as used in this Article means :

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright or a literary, artistic, or scientific work, including cinematograph films or work on film, 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, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; 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 payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8.

The definition of royalty under the act is similar to tax treaty wherein the use of or right to use of any industrial, commercial, or scientific equipment or similar property should be treated as royalty. Here, certain terms need to be clarified in today's information technology atmosphere:

Equipment : supplies or tools needed for a special purpose or the act of equipping someone or something

Scientific : of or relating to science or done in an organized way that agrees with the methods and principles of science.

In the instant case, the customers of Godaddy are using the server of the assessee and paying the fees for the same, as domain name registration is a tool which equips the customer with the right to use the server of Godaddy and web hosting charges are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment of domain registration fee is received.

Accordingly, the domain registration charges are royalty as per Section 9(1)(vi) the act as well as Article 12(3)(a) of the tax treaty.

It can be seen that domain registration is an integral part of the services which are offered by the assessee. The assessee in its submissions has not distinguished how domain registration charges are different from web hosting charges, the latter being duly admitted by the assessee itself as royalty which is duly reflected in its return of income. Domain registration partakes the character of web hosting charges since without domain registration being in place, web hosting is not possible. As domain registration charges have been essentially charged for granting right to use the servers of the assessee, domain registration being the precondition to web hosting etc, and same being highly technical process and because of its inherent quality, the same squarely falls under the definition of royalty under the provisions of the Act and the Double Taxation Avoidance Agreement. Besides, both the services/facilities i.e. web hosting and domain name registration flow from the same server, it is only because of the peculiar nature of the two i.e. web hosting and domain name registration fall under different categories i.e. the first under FTS (because it involved high technique and

make available condition is fulfilled as discussed earlier) and latter under royalty (because of the right it confers and the equipment it provides as discussed earlier). Here, it is likely that the assessee is not offering receipts from domain registration because it has to pay certain fixed percentage to ICANN which is not being paid by the US Government. However, it is the relationship of assessee and ICANN which should not affect the Indian Revenue in any way. In case, the assessee feels the burden of taxation because of ICANN payments, the assessee should recover the same (tax) payable to India from ICANN.

The feasibility of section 201 of the Act, can also be seen in the hands of the assessee in view of non-deduction of TDS while making payment to ICANN.

6.5 In view of the above, it is concluded that the receipts from domain registration fee Rs.17,41,54,636/- of is charged to tax as royalty as per the provisions of section 9(1)(vi) read with section 115A of the I.T.Act."

5. On appeal, learned DRP upheld the finding of the Assessing Officer. Hence, this appeal by the assessee. At the time of hearing before us, learned counsel for the assessee, at the outset, stated that the appellant is not a tax resident of USA and, therefore, does not claim any benefit under the provisions of India-USA tax treaty. He stated that taxability of the receipt from domain registration fees needs to be examined under the provisions of the Income-tax Act, 1961. He stated that the learned Assessing Officer/DRP have incorrectly linked web hosting services with domain name registration services. He stated that these two services have independent existence. In support of his contention, he referred to a sample web hosting agreement between the assessee and the customer. He further submitted that domain name registration is the process of registering a domain name which identifies one or more IP address with a name that is easier to remember and use in URLs to identify particular web pages. The domain name allows others to access user's website directly with an easy to memorize address instead of using a numeric IP address. Registering a domain name secures that specific

internet address. In this regard, he referred to the sample domain name registration agreement. He further explained the process of registration of domain name which is as below :-

“a) A user makes a request to the appellant online through its website (www.godaddy.com).

b) When a user requests for a particular domain name registration, the appellant checks availability of the domain name with ICANN.

c) Subsequently, ICANN confirms the availability of the desired domain name and assigns a unique IP address to the domain name.

d) Based on the confirmation from ICANN, the appellant facilitates in registering the domain name for the user.

The appellant is not involved in actual purchase and sale of domain names (i.e., parking of domain names for subsequent sale to the users). It is important to note that above process is automated and no human intervention is involved for the purpose of domain name registration.

In short, following services are rendered by the appellant and ICANN under domain name registration :

- *Checking the availability of desired domain name;*
- *Facilitating registration of the domain name of the users;*
- *Assigning unique IP address for the domain name; and*
- *Maintaining a record of all the domain names and their IP address.”*

6. He further stated that for providing domain registration service, none of the employees of the appellant visited India and all services are provided from outside India. The appellant does not have any fixed business presence in India in the form of any branch/liason office and the business operations are undertaken from outside India. He also stated that the appellant merely facilitates in getting domain registered in the name of the customer who pays a price for availing such services. Hence, the receipt in respect of domain name registration is not in the nature of royalty under Explanation 2 of

Section 9(1)(vi) of the Income-tax Act. In support of his contention, he relied upon the decision of Hon'ble Delhi High Court in the case of Asia Satellite Telecommunications Co.Ltd. Vs. DIT – [2011] 197 Taxman 263 (Delhi High Court) and of Authority for Advance Rulings in the case of Dell International Services (India) Private Limited – [2008] 218 CTR 209 (AAR). In view of the above, it is contended by the learned counsel that the addition made by the Assessing Officer on account of domain registration fee amounting to ₹17,41,54,636/- treating the same as royalty may be deleted.

7. Learned CIT-DR, on the other hand, relied upon the order of the Assessing Officer as well as learned DRP and further stated that the transaction of domain name registration and web hosting services are interrelated processes. He stated that these are not independent processes of each other but are inextricably linked/connected to each other. He further stated that even otherwise, the amount received for domain name registration is taxable in India as royalty within the meaning of Section 9 of the Income-tax Act, 1961. He stated that domain name is an intangible asset similar to trademark. He stated that appellant has been accredited by ICANN to registered domain names and, as per agreement between the appellant and ICANN, the appellant has the right to register, assign, transfer and manage specific domain names. The appellant enjoys absolute and exclusive rights to assign domain names under specific domain extensions. The ICANN owns domain extensions but has granted the registrar all the rights and risks relating to the assignment, allocation, transfer and management of specific domain names within specific extensions. The appellant registrar has thus right to own, allocate, register, transfer, cancel/deactivate, renew, suspend, auction and exploit domain names under accreditation agreement between ICANN. The domain name registration charges were paid to the appellant inside India. In view of the above, the amount received by the appellant towards domain

name registration fee is in the nature of royalty within the meaning of Section 9(1)(vi) of the Income-tax Act and has rightly been taxed by the Assessing Officer and upheld by the DRP. In support of his contention, he relied upon the following decisions :-

(i) Satyam Infoway Ltd. Vs. Sifynet Solutions Pvt.Ltd. – [2004] Supp (2) SCR 465 (SC).

(ii) Tata Sons Limited Vs. Mr. Manu Kishori & Ors. – 90 (2001) DLT 659 (Delhi).

(iii) Makemytrip (India) Pvt.Ltd. Vs. DCIT – (2012) (ITA Nos.3961/Del/2009 & 4087/Del/2009).

8. We have carefully considered the arguments of both the sides and perused relevant material placed before us. The limited question before us is whether the domain registration fee received by the assessee can be termed as royalty. At the outset, we clarify that the appellant himself has mentioned that since it is not a tax resident of USA, therefore, it is not claiming any benefit under the provisions of India-US tax treaty. Accordingly, we have to examine within the meaning of Income-tax Act, more particularly, Section 9(1)(vi) to examine whether the receipt by the assessee on account of domain registration fee can be termed as royalty. Section 9(1)(vi) of the Income-tax Act reads as under :-

“9. (1) The following incomes shall be deemed to accrue or arise in India :-

(vi) income by way of royalty payable by –

(a) the Government; or

(b) a person who is a resident, except where the royalty is payable in respect of any right, property or information

used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

(c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India:

Provided that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976, and the agreement is approved by the Central Government :

[Provided further that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum payment made by a person, who is a resident, for the transfer of all or any rights (including the granting of a licence) in respect of computer software supplied by a non-resident manufacturer along with a computer or computer-based equipment under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 of the Government of India.]”

9. Explanation 2 after the sub-section defines the word “royalty”, which reads as under :-

“Explanation 2. – For the purposes of this clause, “royalty” means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head “Capital gains”) for –

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention,

model, design, secret formula or process or trade mark or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;

(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

[(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;]

(v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films; or

(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to [(iv), (iva) and] (v)."

10. The contention of the Revenue is that the domain name is an intangible asset which is similar to trademark. The assessee is rendering services in connection with such domain name registration and therefore, the charges received by the assessee clearly fall within the definition of royalty as provided in Section 9(1)(vi) of the Income-tax Act. We find that Hon'ble Apex Court has considered the similar aspect in the case of Satyam Infoway Ltd. (supra). The question before Hon'ble Apex Court was whether internet domain names are subject to the legal norms applicable to other intellectual properties such as trademarks. Hon'ble Apex Court decided the issue in favour of the assessee. The relevant observation of their Lordships reads as under :-

“The use of the same or similar domain name may lead to a diversion of users which could result from such users, mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar web site which offers no such services. Such users could well conclude that the first domain name owner had mis-represented its goods or services through its promotional activities and the first domain owner would thereby lose their custom. It is apparent therefore that a domain name may have all the characteristics of a trademark and could found an action for passing off.”

Over the last few years the increased user of the internet has led to a proliferation of disputes resulting in litigation before different High Courts in this country. The Courts have consistently applied the law relating to passing off to domain name disputes. Some disputes were between the trademark holders and domain name owners. Some were between domain name owners themselves. These decisions namely Rediff Communication Ltd. v. Cyberbooth and Anr., AIR (2000) Bombay 27, Yahoo Inc. v. Akash Arora, (1999) PTC 19 201, Dr. Reddy’s Laboratories Ltd. v. Manu Kosuri, (2001) PTC 859 (Del.), Tata Sons Ltd. v. Manu Kosuri, (2001) PTC 432 (Del.), Acqua Minerals Ltd. v. Pramod Borse & Anr., (2001) PTC 619 (Del.), and Info Edge (India) Pvt.Ltd. & Anr. V. Shailesh Gupta & Anr., (2002) 24 PTC 355 (Del.) correctly reflect the law as enunciated by us. No decision of any court in India has been shown to us which has taken a contrary view. The question formulated at the outset is therefore answered in the affirmative and the submission of the respondent is rejected.”

(emphasis by underlining supplied by us)

11. That Hon’ble Jurisdictional High Court in the case of Tata Sons Limited (supra) has also examined the identical question and held as under :-

“6. In Yahoo Inc! Vs Akash Arora 1999 PTC 201 while granting an injunction restraining the defendants from

using Yahoo either as a part of its domain name or as a trademark, learned Single Judge of this Court applied the law relating to trademark to a dispute regarding Internet. It was further held that considering the vast import of Internet and its user, several Internet users are not sophisticated enough to distinguish between the domain names of the parties. It was also held that with the ease of access from all corners of the world, Courts should take a strict view of copying as the potentiality of the harm is far greater because of the easy access and reach by any one from every corner of the globe. The Court also held after analyzing Section 27 and Section 29 of the Trade & Merchandise Marks Act, that passing off action can be maintained in respect of services as well as goods.

7. *In British Telecom Plc. Vs. One in a Million 1999 FSR 1 the Court held that in the case of a registration of domain names of third party trademarks of well-known names, there was jurisdiction to grant injunctive relief when the defendant was equipped with or was intending to equip another with an instrument of fraud. It was also held that a name which would by reason of similarity to the name of another, inherently lead to passing off, was such an instrument. It was held that in case it would not inherently lead to passing off but the Court concluded on the facts without regard to the defendant's intention that the name was produced to enable passing off, was adapted to be used for passing off and, if used, was likely to be used fraudulently, an injunction would be appropriate.*

8. *In Rediff Communications Ltd. Vs. Cyberbooth AIR 2000 Bombay 27 the user of the Website "www.radiff.com" was enjoined as it was held deceptively similar to the plaintiff's website "www.rediff.com". In the above decision, the Court held that the Internet domain names are of importance and can be a valuable corporate asset and such domain name is more than an Internet address and is entitled to protection equal to a trade mark. It was held that with the advancement and progress in technology the services rendered by an Internet site have also to be recognized and accepted and are being given protection from passing off.*

9. *In view of the above decisions, I am satisfied that it is now settled law that with the advent of modern technology particularly that relating to cyberspace, domain names or Internet sites are entitled to protection as a trade mark because they are more than a mere address. The*

rendering of Internet services is also entitled to protection in the same way as goods and services are, and trade mark law applies to activities on Internet."

(emphasis by underlining supplied by us)

12. Learned counsel for the assessee has also relied upon the decision of Hon'ble Jurisdictional High Court in the case of Asia Satellite Telecommunications Co.Ltd. (supra). However, we find that the facts in that case were altogether different. In the said case, the assessee company carried on the business of private satellite communications and broadcasting facilities. During the relevant assessment year, it was the lessee of a satellite, called Asia-Sat 1 and was the owner of a satellite, called Asia Sat 2. Those satellites were launched by the assessee and were placed in a geostationary orbit in the orbital slots. Those satellites neither used the Indian orbital slots nor were they positioned over Indian airspace. However, the footprint area (the area of earth's surface over which a signal is relayed from satellite) of those satellites covered the territory of India. The assessee entered into an agreement with TV channels, communication companies or other companies who desired to utilize the transponder capacity available on its satellite to relay their signals. The customers had their own relaying facilities, which were not situated in India. From those facilities, the signals were beamed into space where they were received by a transponder located in the assessee's satellite. The role of the assessee in this cycle was that of receiving the signals, amplifying them and after changing frequency relaying them over the entire footprint area. For that service, the TV channels made payments to the assessee. The question before the Hon'ble High Court was whether such payments can be said to be royalty chargeable to tax in India. Hon'ble High Court answered the question in the negative. However, the facts in the assessee's case are clearly different. In the case under appeal before us, the issue is whether the fees received by the assessee for rendering services for domain registration can be said to be royalty. Therefore, in our opinion, the

above decision of Hon'ble Delhi High Court relied upon by the learned counsel for the assessee would have no application. The learned counsel has also relied upon the decision of Authority for Advance Rulings in the case of Dell International Services (India) Private Limited (supra). In that case also, the issue before the Authority for Advance Rulings was whether the payment for providing communication through telecom bandwidth can be termed as royalty within the meaning of Section 9(1)(vi) of the Income-tax Act. Thus, the facts in the above case were also different than the facts under appeal before us. On the other hand, the issue before Hon'ble Apex Court in the case of Satyam Infoway Ltd. (supra), Hon'ble Jurisdictional High Court in the case of Tata Sons Limited (supra) and Hon'ble Bombay High Court in the case of Rediff Communications Ltd. – AIR 2000 Bombay 27 was whether the domain names can be considered as intellectual properties such as trademark. Hon'ble Apex Court in the case of Satyam Infoway Ltd. (supra) has held that the domain name is a valuable commercial right and it has all the characteristics of a trademark and accordingly, it was held that the domain names are subject to legal norms applicable to trademark. Hon'ble Bombay High Court in the case of Rediff Communications Ltd. (supra) held that domain names are of importance and can be a valuable corporate asset and such domain name is more than an internet address and is entitled to protection equal to a trademark. Hon'ble Jurisdictional High Court in the case of Tata Sons Limited (supra) held that domain names are entitled to protection as a trademark because they are more than an address. Respectfully following the above decisions of Hon'ble Apex Court, Hon'ble Bombay High Court and Hon'ble Jurisdictional High Court, we hold that the rendering of services for domain registration is rendering of services in connection with the use of an intangible property which is similar to trademark. Therefore, the charges received by the assessee for services rendered in respect of domain name is royalty within the meaning of Clause (vi) read with Clause (iii)

of Explanation 2 to Section 9(1) of Income-tax Act. In view of the above, we uphold the orders of the lower authorities on this point and reject ground No.2 of the assessee's appeal.

13. Ground Nos.3 & 4 of the assessee's appeal, which read as under, were not pressed by the assessee at the time of hearing :-

"3. That on the facts and circumstances of the case and in law, the AO/DRP has erred in holding that the web hosting services provided/rendered by the Appellant qualify as fees for included services as per Article 12(4)(a) of the India-USA Tax Treaty as well as under Section 9(1)(vii) of the Act.

4. That on the facts and circumstances of the case and in law, the AO/DRP has erred in not appreciating that the Appellant has characterized income from web hosting services as royalty and already offered the same to tax as per the provisions of section 9(1)(vi) read with section 115A of the Act."

14. At the time of hearing, the learned counsel stated that the assessee itself has offered the income from web hosting services as royalty. The Assessing Officer has assessed the same as fees for technical services which is upheld by the DRP. He stated that since the rate of tax for royalty as well as for FTS is the same, the assessee would not like to contest ground Nos.3 & 4 because so far actual tax liability is concerned, these grounds are only academic. In view of the above, ground Nos.3 & 4 of the assessee's appeal are rejected being not pressed.

15. Ground No.5 is against initiation of penalty proceedings u/s 271(1)(c) of the Act. This ground is premature at this stage and accordingly, rejected as such.

16. Ground No.6 relating to charging of interest u/s 234A, 234B and 234C is admitted to be consequential and since no relief is allowed on

any other point in this appeal, accordingly, there would be no variation in the quantum of interest. Thus, ground No.6 is also rejected.

17. In the result, the appeal of the assessee is dismissed.
Decision pronounced in the open Court on 03.04.2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
PRESIDENT

VK.

Copy forwarded to: -

1. Appellant : **M/s Godaddy.com LLC,**
C/o Godaddy India Domains &
Hosting Services Pvt.Ltd., Unit 003, Tower 4A,
DLF Corporate Park, M.G. Road, Gurgaon – 122 002.
2. Respondent : **Assistant Commissioner of Income Tax,**
Circle-1(3)(1), International Taxation, New Delhi.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar