

# TransPrice Times

Edition: 1<sup>st</sup> – 15<sup>th</sup> April 2018

## Godaddy.com LLC – ITAT – Pune

**Outcome:** **Against** taxpayer

**Category:** International tax – Royalty on domain registration fees

**Transaction:** Receipt of fees for domain registration from customers.

**History:** Taxpayer, a US company (not being a tax resident of US jurisdiction) is an accredited domain name registrar authorized by Internet Corporation for Assigned Names and Numbers (ICNN). Customers from all over the world desiring a domain name apply for a name with the taxpayer, after which taxpayer enquires ICNN, a central organisation appointing registrars, to check availability of the domain name and post ICNN's confirmation it would provide the domain name to customers at a fee as per conditions attached by ICNN. A part of the total fee charged to the customer pertained to web hosting services which taxpayer itself treated as royalty and filed a return of income for the year under consideration offering income from web hosting services to be taxed. The tax officer characterised the domain registration fee received by the taxpayer as royalty as per Explanation 2 of Section 9(1)(vi) of the Income-tax Act 1961 ('the Act').

**Facts and contentions:** As the taxpayer was not a tax resident of the US, it could not avail the benefits under the India-US tax treaty. Thus, provisions of the Act were considered by tax authorities. The taxpayer contended that the tax officer had incorrectly linked both web hosting charge with domain name registration charge.

The tax authorities argued that a domain name was an intangible asset similar to a trademark.

Further, the tax authorities submitted that the customers of taxpayer used the server of taxpayer considering domain name registration as a tool which equips customers with the right to use the server of taxpayer 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 fee was treated as royalty as per Section 9(1)(vi) of the Act.

**Ruling:** Tax Court observes that taxpayer did not provide any submission to differentiate domain registration charges from web hosting charges. It was held that the domain registration plays a part in the character of web hosting charges as without the domain registration in place, web hosting would not be possible. Accordingly, Tax Court accepts intermediary tax authorities' view and considered the domain name as an IP similar to trademark and taxable in India.

## Mitchell Drilling India Private Limited – ITAT – Delhi

**Outcome:** **Partially** in favour of taxpayer

**Category:** Sham international transaction

**History:** Taxpayer's arrangement with its AE under a hire purchase agreement was treated as a sham transaction by tax officer, to avoid not charging/withholding tax on rental of Rig and claiming depreciation. Subsequently, tax officer made TP additions on hire purchase transactions fixing Arm's Length Price (ALP) as NIL, disallowed depreciation & payment of interest under hire purchase agreement.

**Ruling:** Tax Court held that only a declared and genuine international transaction can be subjected to trigger of TP provisions. As

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taxpayer did not press any ground on treatment of hire purchase, it concurred with the tax officer's characterisation of hire purchase arrangement as sham/bogus. Thus, Tax Court looked at each transaction on which TP adjustment was levied one-by-one.

Accordingly, Tax Court ruled on transactions of payment of principal & interest under hire purchase and repossession of Rig. In respect of interest payment under hire purchase, Tax Court observed that a double interest disallowance in the form of transfer pricing addition & Section 40(a)(i) of the Act was made and adjudicated it to only a single disallowance.

Considering payment of principal instalments under hire purchase, Tax Court studied applicability in case of payment transaction which does not result in an effect to the debit side of the Profit & Loss account or leads to a creation of asset. It stated that the payment could be either a loan advanced to AE where transfer pricing adjustment on interest can be made or the nature of transaction is such that there is no possibility of earning any income hence not subject to transfer pricing legislation, as there is no likelihood of impact on profits of taxpayer in any manner. Accordingly, in taxpayer's transaction of payment of principal, Tax Court states that it is of such nature that is not likely to affect profits of taxpayer. Further, remits matter to file of tax officer and states that if taxpayer had already claimed deduction of payment of principal the same should be disallowed or otherwise deleted.

Ruling on the transaction pertaining to 'Repossession of rig' which was declared as receipt by taxpayer, Tax Court noticed that the transaction was shown as 'deletion' in Fixed Assets schedule. Tax Court noted that

depreciation on asset block was allowed after the deletion. Hence, had the adjustment been made at NIL as per tax officer, the same would in turn increase depreciation and put taxpayer in advantageous position with regard to non-applicability of TP provisions. Thus, since ALP of this receipt transaction was found to be less than the transacted value, Tax Court deleted adjustment on 'repossession of Rig'.

## RECENT NEWS

**Central Board of Direct Taxes (CBDT) notifies protocol amending India-Kazakhstan tax treaty** into force on March 12, 2018 incorporating Exchange Of Information on tax matters along with Limitation On Benefits clause where treaty benefits would be denied if the main purpose or one of the main purposes was to take the treaty benefits. Further, specific provisions relating relief of economic double taxation in transfer pricing cases has been introduced in line with the BEPS minimum standard Action 14 on Mutual Agreement Procedure. A new Article replaces Article on Assistance on Collection in Taxes aligned with global treaty standards.

### **Advance Rulings Forms to be modified**

**CBDT has signalled its intent to align BEPS implementation measure in the minimum standard Action 5 of the OECD BEPS Project** for improving transparency in tax rulings. Accordingly, it has released a draft notification inviting comments to modify forms for advance ruling and has proposing amendment to Rule 44E, Form 34C, 34D and 34DA as per BEPS Action Plan 5. This will enable to capture relevant details at the application stage itself, such as name, address and country of the residence of non-resident's immediate parent company or ultimate parent company.