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

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.360/Del/2023
Assessment Year: 2017-18

ACIT, Circle 25(1), New Delhi.	Vs	Verizon Communications India Pvt. Ltd., Unit No.305, 3rd Floor, Aero City, Asset No.7, Worldmark-3, Indira Gandhi International Airport, New Delhi – 110 037. PAN: AAACW3738L
(Appellant)		(Respondent)

Assessee by	:	Shri S.K. Aggarwal, CA
Revenue by	:	Shri Vizay B. Vasanta, CIT-DR
Date of Hearing	:	15.04.2024
Date of Pronouncement	:	31.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 19.12.2022 of the Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.NFAC/2016-17/10089592 arising out of the appeal before it against the order passed u/s 143(3) r.w.s. 144B of the Income Tax Act, 1961

(hereinafter referred as 'the Act'), by the ITO, National Faceless Assessment Centre, Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the record.

3. The relevant facts are that the AO noted that the assessee company made Certain payments to its associated Enterprises (AEs) located outside India i.e. MCI International Inc (MCII), MIC Communications Service Ind. (MCICS) and Verizon Business Network Service Ind. (VBNSI) amounting to Rs. 26,43,90,632/-, Rs. 4,04,11,671/- and Rs. 1,04,25,78,180/- respectively. As regards the telecom payments made to MCII and MCICS, the AO noted that the said payments were in the nature of royalty u/s. 9(1)(vi) of the Act and Article 12 of the India US Tax Treaty and therefore, the assessee was required to deduct TDS on these payments as per section 195 of the Act. The assessee company stated before the AO that these payments are not in the nature of royalty as there is no use/right of use of equipment and/or process granted to it and the retrospective amendment made in the definition of 'Royalty' under the Act vide Finance Act, 2012 by way of insertion of Explanation 5 and 6 to section 9(1)(vi) of the Act cannot override the beneficial provisions of tax treaties. The assessee also pointed out before the AO that its case on the issue of telecom payments made to MCII and MCICS is squarely covered by the decision of the Hon'ble Jurisdictional Delhi ITAT in its own case for the AYrs. 2010-11, 2011-12, 2013-14 and 2015-16. However, the AO was not satisfied with the assessee's submissions and stated that the payments made to MCII and MCICS are in the

nature of fees for technical service/royalty and held that the assessee is liable for deduction of TDS u/s. 194 r.ws 9 of the Act. While holding so, the AO referred to the decision of the Hon'ble Madras High Court in the case of Verizon Communication Singapore Pvt. Ltd vs. (361 ITR 575) (2013). Accordingly, the AO made an addition of Rs. 30,48,02,303/- on account of disallowance u/s. 40(a)(i) of the Act by holding payments made by the assessee to MCICS and MCII as 'Royalty' under section 9(1)(vi) of the Act.

4. In appeal, before CIT(A), the assessee has submitted that its case is squarely covered by the decision of the Hon'ble ITAT Delhi Bench passed in its own case for the AYrs. 2010-11 to 2015-16. The appellant has contended that ruling of Hon'ble Delhi High Court and Hon'ble Delhi Tribunal are binding on lower authorities and the AO should have considered the decisions rendered by the Jurisdictional Court, rather than referring to the decision of the Hon'ble Madras High Court in the case of Verizon Communication Singapore Pvt. Ltd (supra), facts of which are not applicable to the assessee's case. The appellant had stressed that payment for Telecommunication Service made to MCICS and MCII do not qualify as Royalty and to support its case, the appellant had placed reliance upon various judicial precedents. Further by placing reliance upon various judicial precedents, the appellant has further submitted that retrospective amendment made in the definition of 'Royalty' under the Act by Finance Act 2012 by way of insertion of Explanation 5 and 6 to section 9(1)(vi) of the Act has no applicability on the payments made by the Appellant as any

amendment made in the Act cannot amend the provisions of tax treaties. The appellant had stressed that its case is covered by exception given in section 9(1)(vi)(b) of the Act and prayed that the addition made by the AO at Rs. 30,48,02,303/- on account of disallowance u/s. 40(a)(i) of the Act by holding payments made by the assessee to MCICS and MCII as 'Royalty' under section 9(1)(vi) of the Act may kindly be deleted.

5. The CIT(A) sustained the contentions of assessee by following findings;

> *"Considering the facts of the case and appellant's submissions, I am inclined to agree with the appellant's claim. I find that the issue "whether payments made by the assessee to MCICS and MCII are in nature of 'Royalty' which attracted provisions of section 195" is considered by the Hon'ble ITAT Delhi Bench 'D' in appellant's own case for the AY 2011-12 and decided in favour of the assessee by holding that these payments are not in the nature of 'Royalty' and hence, the assessee is not liable to deduct TDS as per provisions of section 195 of the Act on these payments. Accordingly, the Hon'ble Delhi ITAT directed to delete the disallowance made u/s. 40(a)(i) of the Act. Subsequently, similar issue further came up for adjudication before the Hon'ble Delhi ITAT 'D' Bench in appellant's own case for AYrs. 2013-14, 2015-16 & 2010-11. The Hon'ble ITAT Delhi 'D' Bench vide their common order dated 20-10-2021 in ITA No. 7297/Del/2017, 6509/Del/2019 & 2234/2019 decided the issue in favour of the assessee following the earlier decision of coordinate Bench passed for the AY 2011-12.*

5.1 As with regard to payment amounting to Rs.104,25,78,180/- to Verizon Business Network Service Ind. (fellow subsidiary) which assessee had claimed as payment being made for business support service. The CIT(A) had held as follows;

> "9. *I have considered the facts of the case, assessment order and appellant's written submissions. The AO noted that the assessee company made payment amounting to Rs.104,25,78,180/- to Verizon Business Network Service Ind. (fellow subsidiary) and claimed the*

said payment being made for business support service. The AO was of the view that these payments are similar to payments made to MCI Communication Service in earlier years for which disallowances were made u/s. 40(a)(i) of the Act in those years. Accordingly, the AO made the disallowance of Rs.104,25,78,180/- u/s 40(a)(i) of the Act for not withholding taxes. The appellant has contended that the AO misunderstood the facts/ nature of the services provided by VBNSI to the Appellant and he grossly erred in characterizing the payments made to VBNSI for the Business Support Services as "Telecom Charges" of the nature provided by MCICS and MCII to the Appellant. The appellant has submitted that the Business Support Services provided by VBNSI are different from the Telecommunication Services provided by MCICS and MCII to the Appellant. To support its case, the appellant elaborately discussed relevant Articles of India-US treaty and stated that payments for business and operational support service to VBSNI do not qualify as FTS in terms of section 9(l)(vii) r.w Article 12(4) of the India-US tax treaty. The appellant has also referred to various judicial precedents. Alternatively, the appellant has submitted that if the AO's assertion is taken to its logical conclusion, the said services get squarely covered by the order of the Hon'ble Delhi Tribunal in Appellant's own case for AY 2010-11, 2011-12, 2013- 14 and AY 2015-16 wherein the Hon'ble Delhi Tribunal held that these payments are not in the nature of 'Royalty'. Considering the facts of the case and appellant's submissions, I am inclined to agree with the appellant's claim. In the instant case, while making the addition of Rs.1,04,25,78,180/- on account of disallowance u/s. 40(a)(i) by holding payment made by the assessee to VBSNI as 'Royalty' under section 9(1)(vi) of the Act, the AO simply stated that similar payments were made by the assessee company to MCI Communication Service in earlier years and disallowances u/s 40(a)(i) of the Act were made. When the AO himself equated the payments made to VBSNI as similar to payments made to MCI Communication Service which were considered as 'Royalty' and held as liable for deduction of tax as per provisions of sec. 195 of the Act, then certainly this issue gets covered by the decision of the Hon'ble ITAT Delhi 'D' Bench in appellant's own case for the AYrs. 2010-11 to 2015-16 wherein the Hon'ble ITAT Delhi 'D' Bench clearly held that such payments do not fall within the ambit of royalty, within the relevant Article of DTAA and the assessee company is not required to deduct TDS on such payments. Findings of the Hon'ble ITAT in this regard have already been reproduced in para no. 6 above. Respectfully following the above decision of the Hon'ble Delhi ITAT 'D' Bench as reproduced above in para 6 above, it is held that the AO

was not justified in making addition of Rs. 1,04,25,78,180/- on account of disallowance u/s. 40(a)(i) of the Act by holding payments made by the assessee to VBSNI as 'Royalty' under section 9(1)(vi) of the Act, the AO is directed to delete the same. The grounds of appeal raised by the appellant regarding this issue are allowed."

6. At the time of hearing, it was submitted by the ld. AR that the Hon'ble High Court has dismissed the Revenue's appeal against the order dated 20th March, 2020 for AY 2011-12 sustaining the order of the Tribunal. The copy of the order is provided at page 127 of the paper book. Further, the ld. AR has pointed out that the Hon'ble Delhi High Court in Respondent's own case vide order dated 16.11.2023, has dismissed the Revenue's appeal against the order of the Tribunal dated 20.10.2021 for AYs 2010-11, 2013-14 and 2015-16 and the copy of which is made available at pages 8-9 of the paper book. The ld. DR could not dispute the aforesaid.

7. Thus issues stand to be quite settled in favour of assessee. We are of the considered view that CIT(A) had allowed the appeal of the assessee following the Tribunal's decision in assessee's own case which now stands confirmed by the Hon'ble Delhi High Court. Thus, the substantive ground raised in the Revenue's appeal is left with no substance.

8. The appeal of the Revenue is dismissed.

Order pronounced in the open court on 31.05.2024.

Sd/-	Sd/-
(G.S. PANNU)	(ANUBHAV SHARMA)
VICE PRESIDENT	JUDICIAL MEMBER

Dated: 31st May, 2024.

dk
Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi