IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.909 of 2014

Commissioner of Income Tax
Chennai ... Appellant /Appellant

-Vs-

M/s.Velti India Pvt. Ltd.,
(Formerly known as M/s.Air2web India Pvt. Ltd.)
4-E, P.M.Towers, 37, Greams Road,
Chennai - 600 006 (PAN:AACCA8496)
... Respondent/Respondent

Prayer: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "C" Bench, dated 27.02.2014 in ITA.1030/Mds/2013 & C.O.No.146/mds/2013. Assessment year 2009-2010, and against the order of the commissioner of Income Tax(Appeal)-IX, Chennai-34, dated 28/01/2013, made in ITA.No.441/11-12 the assessment year 2009-10, and against the order of the Joint Commissioner of Income Tax(OSD) Company Circle-I(1), Chennai, order dated 20/12/2011 made in GIR/PAN AACCA8496P the Assessment year 2009-10.

For Appellant : Mr.V.Rajesh, Junior Standing Counsel
assisted by Mr.Karthik Ranganathan
Senior Standing Counsel

For Respondent : Mr.Sridhar

O R D E R

(Order of the Court was made by Dr.Vineet Kothari,J)

The Court was held by Video Conference as per the Resolution of the Full Court dated 03 July 2020, by Judges at the respective residence and the counsel, staff of the Court appearing from their respective residences.

2. This Tax Case Appeal has been filed by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Madras " C " Bench, dated 27.02.2014 in ITA.1030/Mds/2013, by raising the following substantial questions of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the payment made by the assessee to M/s.Clickatel is not fees for technical services and no TDS is required to be made, when as per Explanation 2 to Sec.9 (1)(vii) of the Act, such payment outside India has to be treated as fees for technical services irrespective of whether the Non-resident has a permanent residence in India or the non-resident has rendered service in India?
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> 2. Whether in the facts and circumstances of the case ,the Tribunal was right in overlooking the retrospective amendment made to Explanation 2 to Sec.9(1)(vii) of the Act, whereby payment made for technical services to non-resident is taxable in India irrespective of whether the non-resident has a permanent residence in India or the non-resident service in India?
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> 3.Whether in the facts and circumstances of the case, the Tribunal was right in holding that the payment made by the assessee to M/s.Clickatel is only to transmit bulk SMS and requires no technical knowledge is correct when similar services rendered by BSNL and other Indian carriers have been accepted as technical services by the assessee?
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> 4.Whether in the facts and circumstances of the case, the Tribunal is right in approving the action of the CIT(A) in following the judgment of the Apex Court in the case of CIT Vs Bharti Cellular Ltd, reported in 330 ITR 239 and that of the Delhi High Court in the case of CIT Vs Bharti Cellular Ltd, reported in 319 ITR 139 when the judgment of the Delhi High Court has been reversed by the Apex Court and the Apex Court has

remanded the issue to the AO?

5. Whether in the facts and circumstances of the case, the Tribunal was right in law in holding that the service charges received in advance for the service to be rendered in future years are not liable to tax in the year of receipt and accordingly deleting the disallowance made by the Assessing officer?

6. Whether in the facts and circumstances of the case the Tribunal was right in not considering the fact that the entire payment is received by the assessee in advance and there is no provision in the agreement that the assessee has to refund the amount when the services are not rendered and hence the income has accrued to the assessee at the time of receipt itself?

3. When the matter is taken up for hearing, learned Standing Counsel brought to our notice the Circular issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore).

4. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeal filed by the Revenue is dismissed as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

1.Income Tax Appellate Tribunal
Madras "C" Bench, Chennai.

2.The Commissioner of Income Tax,
(Appeals)-IX, Chennai.

3.The Joint Commssioner of Income-Tax(OSD)
Company Circle-I(1), Chennai.

4.The Commissioner of Income Tax,
Chennai.

T.C.A.No.909 of 2014

NR(CO)
CB(23/10/2020)