



\$~35

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Decision delivered on: 14.12.2023+ **ITA 766/2023, CM APPL. 64846/2023 & 64847/2023****PRINCIPAL COMMISSIONER OF INCOME TAX
(INTERNATIONAL TAX)-1**

..... Appellant

Through: Mr Sunil Agarwal, Sr Standing
Counsel with Mr Shivansh B. Pandya,
Standing Counsel and Mr Utkarsh
Tiwari, Adv.

versus

GODADDY.COM LLC

..... Respondent

Through: Mr Prakash Kumar and Ms Rashmi
Singh, Advs.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This appeal concerns Assessment Year (AY) 2013-14.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 26.05.2023 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. In the instant appeal, the Tribunal was called upon to adjudicate the legal tenability of two separate orders dated 30.09.2019 passed by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] whereby he had deleted the penalty amounting to Rs.1,97,31,721/- and Rs.4,95,98,366/- levied under Section 271(1)(c) of the Income Tax Act, 1961 [in short, "Act"] concerning AY 2013-14 and AY 2014-15, respectively.



4. It is not in dispute that CIT(A) deleted the penalty imposed by the AO, in view of the quantum appeal preferred before this Court, concerning AYs 2013-14, 2014-15 and 2015-16.

5. The Tribunal while disposing of the appeal against the aforementioned order of the CIT(A) has made the following observations:

“8. We have heard the Ld. Representative of the parties and perused the material on records. We have also considered the decision of the Hon’ble Delhi High Court in Liquid Investment and Trading Co. (supra) and decision of Indore Bench of the Tribunal in Yugal Kishore Jajoo (supra) relied upon by the assessee. It is an undisputed fact that the assessee earned revenues from two streams i.e. web hosting and domain registration charges and offered revenue from web hosting services to tax in the return filed for the relevant AYs. However, the assessee did not offer to tax its income from domain registration services for the reason that it was under a bonafide belief that this income is not chargeable to tax under the provisions of the Act. The said income has been held to be taxable as “royalty” by the appellate authorities including the Tribunal in the quantum appeal of the assessee. In this view of the matter, the Ld. AO imposed the impugned penalty which was deleted by the Ld. CIT(A) for the detailed observations and findings recorded by him in his appellate order(s) with which we are inclined to agree.

9. We notice that in the quantum appeal filed by the assessee before the Hon’ble Delhi High Court, the Hon’ble Court has framed a substantial question of law as mentioned earlier. We are, therefore, of the view that the issue involved in the present appeals is a debatable issue and the position in law is not yet settled. The impugned penalty in both the AYs is therefore not exigible.”

6. In sum, the Tribunal was of the view that the issue involved in the appeal was debatable. As would be evident, in this behalf, the Tribunal had also taken recourse to the fact that the quantum appeal was pending in this court.

6.1 Concededly, the quantum appeals were filed by the respondent/assessee with this court for the AY in issue, i.e., AY 2013-14 and other AYs as well. The other AYs *qua* which the appeals were filed, as



noticed above, were AY 2014-15 and AY 2015-16.

6.2 Insofar as these appeals were concerned, the question of law, as framed, was answered in favour of the respondent/assessee and against the appellant/revenue, although, as noticed above, the respondent/assessee had preferred appeals before this court.

7. The question of law which was framed and answered by this court in ITA No.891/2018 [AY 2013-14]; ITA No.261/2019 [AY 2014-15] and ITA No.75/2023 [AY 2015-16] reads as follows:

“Whether on the facts of the case and in law, the Income Tax Appellate Tribunal [in short, “Tribunal”] erred in holding that the income received by the appellant as a consideration for providing domain name registration services amounted to ‘royalty’ under Section 9(1)(vi) of the Income Tax Act, 1961 [in short, “Act”]?”

8. Given the position that the respondent/assessee before us has succeeded in the aforementioned appeals, the penalty imposed in the instant appeal cannot be sustained.

9. Therefore, the impugned order, in our opinion, requires no interference.

10. The appeal is, accordingly, closed.

11. Consequently, the application filed for condonation of delay is rendered ineffectual and is, thus, closed.

12. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J.

GIRISH KATHPALIA, J.

DECEMBER 14, 2023/rk