

23<sup>rd</sup> January, 2026

## Friday Tax Alert

### **No TDS on transponder charges under India-UK DTAA as payment cannot be considered as royalty – ITAT**

#### **Facts of the case:**

- The Assessee, an Indian media company, entered into an agreement with Intelsat, UK based company for uplinking and downlinking of TV signals through satellite transponders. Pursuant to said agreement, the Assessee made payment towards transponder service fee.
- The Assessee claimed that transponder service fees paid to Intelsat UK is not chargeable to tax in India and purely out of abundant caution taxes were withheld while making the remittance to Intelsat UK on a grossed-up basis. Accordingly, the Assessee filed an appeal under section 248 before Commissioner (Appeals) seeking refund of TDS.
- The Assessing Officer held that transponder charges were chargeable to tax in India as royalty for ‘use of’ or ‘right to use of process’ as per Explanation 6 to section 9(1)(vi).
- The Commissioner (Appeals) held that transponder charges could not be considered as fees in relation to any secret process, and accordingly, the same was not taxable as process royalty under Article 13 of the India-UK DTAA. Thus, the Commissioner (Appeals) held that the impugned payment of transponder service fees did not fall within the meaning of ‘royalty’ under the India-UK DTAA.
- Aggrieved by the order Revenue filed an appeal before Income Tax Appellate Tribunal.

#### **Decision held by Hon’ble Income Tax Appellate Tribunal:**

- In the instant case, there is no dispute that Intelsat UK is a tax resident of UK under Article 4 of the India UK DTAA, and therefore, the transponder service fees is governed by the India-UK DTAA to the extent they are more beneficial as per section 90(2).
- The taxability of transponder service fees in the hands of the recipient, i.e., Intelsat UK, came up for consideration before the Chennai Bench of the Tribunal in *Intelsat Global Sales and Marketing Ltd. v. DCIT, in IT(TP)A No.49/Chny/2018 and others*. While deciding the issue in favour of Intelsat UK, the Co-ordinate Chennai Bench of the Tribunal vide order dated 16-10-2023 held that such receipts cannot be taxed as process Royalty.
- Therefore, respectfully following the decisions of the High Courts and Co-ordinate Bench cited supra, there is no infirmity in the findings of the Commissioner (Appeals) in coming to the conclusion that **the payment of transponder service fees by the Assessee to Intelsat UK do not fall within the meaning of the term “Royalty” as per the India-UK DTAA since the transponder charges could not be considered as fees in relation to any secret process.**
- According to the findings of the Commissioner (Appeals) that the transponder service fees payable by the Assessee to Intelsat UK are not taxable in India as Royalty as per the provisions of the India-UK DTAA, and therefore, the Assessee is not liable to withhold taxes under section 195 are upheld.

## **No separate ALP adjustment for royalty when it is covered under Transactional Net Margin Method benchmarking - ITAT**

### **Facts of the case:**

- The Assessee Company was engaged in the business of manufacturing mechanical control cables and window regulators for automobile industries. It had entered into international transactions, including payment of royalty to its associated enterprise (AE). The Assessee adopted combined transaction approach using Transactional Net Margin Method (TNMM) as the most appropriate method for benchmarking these transactions.
- The Transfer Pricing Officer (TPO) rejected the Assessee's approach and applied the Comparable Uncontrolled Price (CUP) Method for benchmarking the payment of royalty. The TPO proposed an upward adjustment in the royalty rate and made a transfer pricing addition to the Assessee's income.
- On appeal, the Dispute Resolution Panel (DRP) directed the TPO to reconsider the comparables and allow working capital adjustment. Pursuant to the DRP directions, the TPO deleted the proposed addition related to manufacturing operations but upheld the adjustment in respect of payment of royalty.
- Aggrieved by the order Assessee filed an appeal before Income Tax Appellate Tribunal.

### **Decision held by Hon'ble Income Tax Appellate Tribunal:**

- It is not in dispute that the entry level operating profit margin of 4.19 % earned by the Assessee has already been held to be at arm's length by the TPO while giving effect to the directions of the DRP.
- The aforesaid entry level operating margin of 4.19 % includes payment of royalty as on operating expenses.
- **Once the combined benchmarking approach, whose PLI includes payment of royalty is accepted by the TPO to be at arm's length, a separate adjustment pertaining to the concerned international transaction ought not to be made to income of the Assessee.**
- Considering the above facts and circumstances, there is merit in the ground of the Assessee and accordingly the addition made by the Assessing Officer is deleted.

*Hi-Lex India (P.) Ltd. V. Assessment Unit Income Tax Department [2025] 181 taxmann.com 102 (Delhi - Tribunal)*

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