

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.1464 OF 2011
WITH
INCOME TAX APPEAL NO.1465 OF 2011
WITH
INCOME TAX APPEAL NO.1466 OF 2011

The Director of Income Tax (I.T.). ..Appellant.

v.

M/s. Universal International Music B.V. ..Respondent.

Mr. Suresh Kumar for the Appellant.

None for the Respondent.

**CORAM : J.P. DEVADHAR AND
M.S. SANKLECHA, JJ.**

DATE : 08TH FEBRUARY, 2013.

PC:

In all these appeals the common question of law raised by the revenue for our consideration is as under:

Whether on the facts and circumstances of the case and in law the Tribunal was correct in holding that the assessee is the beneficial owner of the royalty income received from the Universal Music India Private Ltd. and therefore entitled for the tax rate of 10% as per the DTAA?

2) The respondent assessee claimed benefit of Article 12 of the Double Tax Avoidance Agreement (DTAA) between India

and Netherlands and sought to pay tax at concessional rate at 10% in respect of royalty income received from M/s. Universal India Private Limited.

3) The case of the revenue is that the respondent assessee is not entitled to concessional rate of tax provided in Article 12 of DTAA on the ground that it is not the beneficial owner of the musical tracks in respect of which the royalty income was earned. Thus, not entitled to concessional rate of tax at 10% under DTAA as held by the Assessing officer.

4) In Appeal, the CIT(A) and the Tribunal arrived at a finding of fact on the basis of the evidence in the form of certificate dated 25/7/2003 from revenue authorities in Netherlands certifying that the respondent assessee was a beneficial owner of the royalty received in respect of musical track given to M/s. Universal Music Pvt. Ltd. Besides, reliance was placed by the Tribunal upon the CBDT Circular No.789 dated 13/4/2000 that certificate from revenue authorities is sufficient evidence of beneficial ownership. On these findings of fact the Tribunal upheld the order of CIT(A) and held that the respondent assessee is entitled to benefit of Article 12 of DTAA.

5) The respondent has not been able to show anything on record to controvert the finding of fact arrived at by the CIT(A) and the Tribunal that the respondent assessee is the beneficial

owner of the royalty received on the musical tracks given to Universal Music Private Limited. In view of the above, the decision of the Tribunal being based on a finding of fact, no occasion to entertain the proposed question of law can arise.

6) Accordingly, the appeal is dismissed with no order as to costs.

(M.S.SANKLECHA, J.)

(J.P. DEVADHAR, J.)

