

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI A.D.JAIN, JUDICIAL MEMBER

ITA No.5393/Del/2011
Assessment Year : 2008-09

M/s Intelsat Corporation,
C/o PricewaterhouseCoopers
(P) Ltd.,
Sucheta Bhawan, Gate No.2,
1st Floor,
11A, Vishnu Digambar Marg,
New Delhi – 110 002.
PAN : AADCP6533D.

Vs. Assistant Director of Income Tax,
Circle-1(2),
International Taxation,
New Delhi.

(Appellant)

(Respondent)

Appellant by : Shri Pawan Kumar and Shri Arvind
Rajan, ARs.
Respondent by : Application for adjournment by
CIT-DR.

ORDER

PER G.D.AGRAWAL, VP :

This appeal of the assessee is directed against the order of learned Dispute Resolution Panel-1, New Delhi dated 23rd September, 2011.

2. The learned CIT-DR, vide application dated 31st January, 2012, has requested for adjournment of the appeal.

3. The learned counsel for the assessee submitted that the issue involved in this appeal is covered in favour of the assessee by the decision of the Tribunal in assessee's own case for AY 2006-07 and

2007-08 and also of Hon'ble High Court for AY 2007-08. In support of his submission, he has filed copies of the orders of the Tribunal in ITA No.4662/Del/2011 for AY 2006-07 and in ITA No.5443/Del/2010 for AY 2007-08 and of Hon'ble High Court for AY 2007-08 in the form of a paper book.

4. We have heard the submissions of the learned counsel for the assessee and perused the material placed before us. In view of the submission of the learned counsel for the assessee that the issue involved is covered in favour of the assessee by the earlier decisions of the Tribunal in assessee's own case for AY 2006-07 and 2007-08 and also the decision of Hon'ble Jurisdictional High Court for AY 2007-08, we have rejected the application of the learned CIT-DR requesting for adjournment and proceeded to decide the appeal of the assessee ex-parte qua the Department.

5. We find that the issue involved in this appeal is covered by the aforementioned decisions of the Tribunal. The Tribunal, vide its order dated 4th March, 2011 in ITA No.5443/Del/2010 for AY 2007-08, has held in paragraph 4 as under:-

"4. We have considered the facts of the case and submissions made before us. We have already mentioned that there is a distinguishable feature namely that the assessee has received payments from persons residents in India. However, the receipts have been taxed u/s 9(1)(vii), Explanation 2, Clause (vi) thereunder. The decision in the case of Asia Satellite Telecommunications Company Limited is to the contrary and in favour of the assessee. It is also a matter of fact on record that the assessee is a tax resident of USA and, therefore, the provisions contained in the DTAA are applicable. However, we are of the view that we need not go into the provisions of the DTAA because of the provision contained in Section 90(2) of the Act. This provision provides that where the Central Government has entered into an agreement with the Government of any

country outside India under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall applied to the extent they are more beneficial to that assessee. The assessee is found to have incurred no liability to tax under the Act. Therefore, even if the provisions of the treaty go against the assessee, it has to be granted the benefit of the Act under which no liability to tax can be fastened on the assessee. Accordingly, ground Nos.1 to 5 are allowed.”

6. The above order of the Tribunal dated 4th March, 2011 has been followed by the Tribunal in its order dated 16th January, 2012 in ITA No.4662/Del/2011 for AY 2006-07. The learned counsel for the assessee further submitted that the said order of the Tribunal dated 4th March, 2011 was also the subject-matter of appeal by the Department before Hon’ble Delhi High Court. Hon’ble Delhi High Court, vide its order dated 19th August, 2011 in ITA No.977/2011, has dismissed the appeal filed by the Department and confirmed the order of the Tribunal. Copy of the said order of Hon’ble Delhi High Court has also been placed in the paper book filed by the assessee. Their Lordships of Delhi High Court have decided the said issue by holding as under:-

“Learned Counsel for the Revenue could not dispute the position that issues raised in this appeal are directly covered by the judgment of this Court in the case of Asia Satellite Telecommunications Ltd. Vs. Commissioner of Income Tax (ITA 131/2003 decided on 31.01.2011). In that judgment, a categorical view is taken that the income received from the activities undertaken by the respondent/assessee would not be exigible to tax in India.

Following that judgment, this appeal is dismissed.”

7. Respectfully following the aforesaid judgment of Hon’ble Delhi High Court and the decisions of the Tribunal for AY 2006-07 & 2007-08 cited supra, we reverse the directions under Section 144C(5) of the IT

Act, 1961 passed by the Dispute Resolution Panel and allow the appeal of the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Decision pronounced in the open Court on conclusion of hearing on 2nd February, 2012.

Sd/-
(A.D.JAIN)
JUDICIAL MEMBER

Sd/-
(G.D.AGRAWAL)
VICE PRESIDENT

Dated : 02.02.2012
VK.

Copy forwarded to: -

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

Assistant Registrar