

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

SP Nos.286/Bang/2018 and 18 & 19/Bang/2019 [in IT(TP)A Nos.3430/Bang/2018, IT(IT)A No.97/Bang/2019 and IT(TP)A 2890/Bang/2017)
Assessment years : 2014-15, 2016-17 & 2013-14

M/s. Google India Private Ltd., No.3, RMZ Infinity Tower-E, 4 th Floor, Old Madras Road, Bengaluru. PAN: AACCG 0527D	Vs.	The Jt. Commissioner of Income Tax, Special Range 3, Bengaluru. The Deputy Commissioner of Income Tax (International Taxation), Circle 1(1), Bengaluru. The Assistant Commissioner of Income Tax, Circle 3(1)(2), Bengaluru.
APPLICANT		RESPONDENT

Applicant by	:	S/Shri Deepak Chopra, Anmol Anand & Ms. Jomal Joy, Advocates.
Respondent by	:	Shri K.V. Aravind, Standing Counsel

Date of hearing	:	21.02.2019
Date of Pronouncement	:	21.02.2019

ORDER

Per N.V. Vasudevan, Vice President

These are Stay Petitions filed by the Assessee, M/s. Google India Pvt. Ltd. [GIPL], praying for an order of stay of recovery of outstanding demand arising out of orders of Assessment and the first appellate Authority in relation to AY 2014-15, 2016-17 & 2013-14 respectively.

2. The outstanding demand arises out of three additions made by the Assessing Officer (AO) /Transfer Pricing Officer (TPO) which were confirmed by the CIT(Appeals) in AY 2014-15 and by the Disputes Resolution Panel (DR) in AY 2013-14. The outstanding demand as far as AY 2016-17 is concerned arises out of an order passed u/s.201(1) & 201(1A) of the Income Tax Act, 1961 (Act) for Assessee's failure to deduct tax at source on payments made to Google Ireland Ltd. (GIL), by GIPL as distributor of Advertisements under AdWords Program of GIL.

3. The first addition giving rise to the outstanding demand in AYs 2014-15 & 2013-14 and the taxes payable on payment by GIPL to GIL for which the Assessee was treated as Assessee in default in the order passed u/s.201(1) & 201(1A) of the Act is under the following facts and circumstances. GIPL was a wholly owned subsidiary of Google International LLC, US. GIPL was engaged in the business of providing Information Technology (IT) and Information Technology enabled Services (ITES) to its group companies. It also acted as a distributor for AdWord programmes in India.

4. Under an Adword Programme distribution agreement, entered into between GIPL and GIL, GIPL was granted the marketing and distribution rights of Adwords Programme to advertisers in India and the GIPL was

remunerated on cost plus market basis for the distribution services under Adword Programmes.

5. The Assessing Officer noticed that GIPL had credited/paid amounts to the account of GIL without deduction of tax at source. GIL had also not obtained the Nil tax deduction certificate on the sums payable to it from the department as was required under section 195.

6. According to the AO, the payments were in the nature of "Royalty" and chargeable to tax in the hands of GIL in India and therefore the Assessee was under an obligation to deduct tax at source. On the other hand, the assessee had taken a stand that the amount payable to GIL was not in the nature of royalty either under the Act or under the India-Ireland 'DTAA'.

7. The AO/CIT(A)/DRP held that the payment was in the nature of Royalty and accordingly disallowed the sum paid, which was claimed as deduction while computing income from business by invoking the provisions of section 40(a)(ia) of the Act in AYs 2014-15 & 2013-14 respectively. Similarly for AY 2016-17, orders u/s.201(1) & 201(1A) of the Act were passed treating GIPL as an Assessee in default. The Assessee is in appeal against the aforesaid orders in these three appeals.

8. The second addition which has given rise to the outstanding demand in the appeals for AYs 2014-15 & 2013-14 arises out of determination of Arm's Length Price (ALP) u/s.92 of the Act, in respect of international Transactions of rendering IT services and IT enabled Services and Marketing and Distribution services rendered by GIPL to its Associated Enterprises (AE).

9. The third addition which has given rise to outstanding demand in AYs 2014-15 & 2013-14 is on account of attribution of profits to Google

Ireland Ltd. (GIL). The AO, in his order, opined that the profits arising out of AdWords programme attributable to Google Ireland are not offered to tax. Therefore, he proceeded to compute the amount of profits attributable to Google Ireland. This issue has also been adjudicated by the ITAT in the earlier years and the issue has been restored to AO for fresh consideration.

10. The outstanding demand and the break-up of the outstanding demand in the three assessment years referred to above on account of each of the issues and also on account of interest for AYs 2014-15 & 2013-14 and on account of order passed u/s.201(1) & 201(1A) for AY 2016-17 is given in **Annexure 1 & 2 to this order.**

11. The learned counsel for the Assessee submitted that in respect of the first issue and the orders u/s.201(1) of the Act, the Tribunal has already confirmed the action of the revenue authorities in the earlier assessment years and the issue is now pending adjudication before the Hon'ble Karnataka High Court. With reference to the other two additions which has given rise to the outstanding demand, the learned counsel pointed out that in the earlier orders of the Tribunal the issue has been set aside to the AO for fresh adjudication and therefore the demand arising out of those additions should not be permitted to be recovered. He submitted that if on the issue of addition on account of Royalty alone is considered for calculating outstanding demand, then 50% of the outstanding demand for all the three years would be about Rs.347 Crores, after giving credit to Rs.375 Crores already paid by the Assessee.

12. The learned DR, on the other hand, submitted that 100% of the outstanding amount on account of taxes alone for the three assessment years, if the addition on account of Royalty alone is considered for calculating outstanding demand, would be Rs.596 Crores after giving credit to Rs.375 Crores already paid by the Assessee.

13. The calculation of outstanding demand and sum which the Assessee wants to pay as a condition for grant of stay and the sum which the Department wants the Assessee to pay as a condition for grant of stay are as follows:

Assessment Year	Total Demand*			Taxes already Paid	Assessee's Offer	Department's Demand
	Tax	Interest	Total			
2013-14	490	276	766	225	--	24
2014-15	750	400	1150	0	244	365
2016-17 [201(1) & 201(1A)]	357	100	45	150	103	207
					347	596

[*Excluding Prepaid Taxes]

14. After considering the existence of prima facie case, balance of convenience, relative hardship, the earlier orders of the Tribunal and the orders of the Hon'ble High Court of Karnataka in the case of the Assessee on identical issue of grant of stay, the offer to pay by the Assessee and the demand of the department, we are of the view that it would be just and appropriate to grant an order of stay of recovery of outstanding demand for a period of 6 months from the date of this order, or till disposal of the appeals of the Assessee, whichever is earlier. The Assessee shall pay the following sums towards outstanding demand viz., a sum of Rs.350 Crores on or before 31.3.2019 and another sum of Rs.125 Crores in three instalments as follows:-

Rs.25 Crores on or before 30.4.2019

Rs.50 Crores on or before 31.5.2019

Rs.50 Crores on or before 30.6.2019

15. The aforesaid sums shall be paid for the various AYs as follows:

AY 2013-14 :	Rs. 20 crores.
AY 2014-15 :	Rs.185 crores
AY 2016-17 :	Rs.270 crores

	Rs.475 crores

16. The appeals of the Assessee are posted out of turn for hearing on 03.07.2019. The date of hearing was announced in the open court and hence no notice of hearing would be sent to the parties.

17. In the result, the stay petitions are allowed as indicated above.

Pronounced in the open court on this 21st day of February, 2019.

Sd/-
(B.R. BASKARAN)
Accountant Member

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Encl : Annexures I & II

Bangalore,
Dated, the 21st February, 2019.
/ Desai Smurthy /

Copy to:

1. Applicant
2. Respondents (3)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.

ANNEXURE-I

Addition Points AY 2013-14	Addition made by AO (Rs)	Tax Component including Surcharge and E Cess	Interest Component	Total Demand	Payments made	Outstanding (Tax)	Outstanding (Interest)
Royalty Issue	768.59	249.37	139.65	389.02	225.00	24.37	139.65
Transfer Pricing	346.32	112.36	62.92	175.28	0.00	112.36	62.92
Attribution	396.13	128.52	71.97	200.49	0.00	128.52	71.97
Total	1,511.04	490.25	274.54	764.79	225.00	490.25	274.54
Addition Points AY 2014-15	Addition made by AO (Rs)	Tax Component including Surcharge and E Cess	Interest Component	Total Demand	Payments made	Outstanding (Tax)	Outstanding (Interest)
Royalty Issue	1,076.19	365.80	204.85	570.65	0.00	365.80	204.85
Transfer Pricing	690.59	234.73	65.92	300.65	0.00	234.73	65.92
Attribution	527.12	179.17	100.33	279.50	0.00	179.17	100.33
Total	2,293.90	779.70	371.10	1,150.80	0.00	779.70	371.10

ANNEXURE-II

*9/R
201-118*

<u>Assessment year 2016</u>	<u>2017</u>	<u>201 proceedings</u>
Total demand	495,87,34,091	Paid
201(1)	386,72,42,827	
201(1A)	109,14,91,264	
		150 crores
REMAND ISSUE DEMAND		
TOTAL	37,36,81,764	
201(1)	29,14,28,840	
201(1A)	8,22,52,924	
TOTAL DEMAND AFTER REDUCING REMAND ISSUE		
TOTAL	458,50,52,327	
201(1)	357,58,13,987	
201(1A)	100,92,38,340	