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IN THE INCOME TAX APPELLATE TRIBUNAL
"B''BENCH: BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

IT(IT)A No.615 to 620/Bang/2020
Assessment Years :2015-16, 2015-16, 2016-17, 2016-2017, 2017-18 & 2017-18 respectively

Urban Ladder Home Décor Solutions Pvt. Ltd. 1st, 2nd& 3rd Floor, No.259 & 276 Amarjyothi HBCS Layout Domlur Bengaluru 560 071 **PAN NO :AABCU4143N**	**Vs.**	ACIT (International Taxation) Circle-2(2) Bengaluru
APPELLANT		**RESPONDENT**

Appellant by	**:**	Shri Padam.C. Kincha, A.R.
Respondent by	**:**	Shri Muzaffar Hussain, D.R.

Date of Hearing	:	08.07.2021
Date of Pronouncement	:	17.08.2021

O R D E R

PERB.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed these appeals challenging the common order dated 17.3.2020 passed by Ld. CIT(A)-12, Bengaluru confirming the demand raised u/s 201(1) of the Income-tax Act,1961 ['the Act' for short] and interest charged u/s 201(1A) of the Act5 for financial years 2014-15, 2015-16 & 2016-17 relevant for assessment years 2015-16, 2016-17 & 2017-18. In all these appeals, the assessee is challenging the validity of demand raised u/s 201(1) and interest charged u/s 201(1A) of the Act.

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2. The facts relating to the issue are stated in brief. The assessee company is engaged in the business of dealing in home décor products. It sells its products mainly through online marketing. Hence, the assessee has placed its advertisement in the platform of Facebook, Ireland. It has also used bulk mail facility offered by M/s Rocket Science group, USA. The assessee has also used Amazon Web Services (AWS) offered by M/s Amazon Inc., USA, which is in the nature of providing information technology infrastructure on rental basis. All the three payees are non-residents.

3. The A.O. noticed that the assessee has made payments to these non-residents. Hence, he conducted a survey operation u/s 133A of the Act on 27.10.2017 to examine compliance with TDS provisions. During the course of survey operation, the A.O. noticed that the assessee company has made payments to non-residents towards advertisement and marketing expenses without deducting tax at source. The A.O. took the view that the assessee is liable to deduct tax at source from the payments made to non-residents.

4. The AO examined the taxability of above cited payments as per the provisions of sec. 9(1)(vi) of the Act, more particularly under clause (iii) and (iva) of Explanation 2 to Sec. 9(1)(vi) of the Act. The AO has also observed that these payments have been examined as per DTAA provisions. However, the AO has made reference to DTAA provisions while examining the payments made to AWS. Since there was failure to deduct tax at source by the assessee, the AO treated the assessee as assessee in default in all the three years under consideration and raised demand u/s 201(1) of the Act and also charged interest u/s 201(1A) of the Act.

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5. The details of payments made by the assessee to three different non-residents and the demand raised by the A.O. during the years under consideration are tabulated below:-

Particulars	***FY 2014-15 (A.Y. 2015-16)***	***F.Y. 2015-16 (A.Y. 2016-17)***	***F.Y. 2016-17 (A.Y. 2017-18)***
	Amount	***Amount***	***Amount***
Facebook Ireland Limited ('Facebook')	*26,29,79,222*	*23,40,43,100*	*2,23,64,259*
Rocket Science Group, LLC, US ('MailChimp')	*9,59,272*	*51,60,278*	*68,01,265*
Amazon Web Services Inc., US ('AWS')	*18,71,643*	*1,91,22,481*	*2,36,01,356*
Total	***26,58,10,137***	***25,83,25,859***	***5,27,66,880***

Demand u/s 201(1)	2,65,81,013	2,58,32,586	52,76,689
Interest u/s 20(1A)	93,03,356	59,41,494	5,80,436

6. The nature of payments made to the above cited three companies and the decision taken by the AO are summarized below:-

(A) Payments made to Facebook, Ireland:-

6.1 The assessee company uses Facebook platform to display its products on the wall of Facebook users. Hence the assessee makes payments to Facebook for the advertisements hosted on the web for seeking attention of facebook users.

6.2 The case of the AO is described in paragraph 3.2.7 to 3.2.9 of the order passed for AY 2015-16. Identical reasoning is given for other two years also. The discussion made by the AO in AY 2015-16 are extracted below:-

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"3.2.7 Facebook provides many options to the businesses/advertisers to reach its database of users. To touch upon a few of the alternatives that Facebook provides – the businesses could choose their target market based on the age group, location, gender etc. The advertisement made in the Facebook platform is not dormant or passive or broad-based advertisement as made in TVs or newspapers or public hoardings. Unlike the traditional medium of advertisements, what facebook offers is – dynamic, highly target-group specific, real time monitored advertising……. Given the immense scope and possibilities that the platform offers, it would be myopic to categorise the advertisements made on Facebook as mere dormant, regular ad campaigns or banner services as mentioned in the submission.

3.2.8 ***It is evident that Facebook advertisements are nothing but the usage of Facebook technology and process to advance the business in the e-commerce era.*** *The technology, design, process and equipment of Facebook are being used, in a complex manner, with very high efficiency levels, to reach out the target audience, within a fraction of the second of the target user logging in his/her account. The advertiser A1 (in the schematic) communicates its requirements (in terms of its target market, and the profile of the consumer it wants to serve) through its advertiser's account with Facebook. In turn, using complex algorithms and advanced processors and equipment, the network of servers that Facebook maintains throughout the world locates the users that are being targeted by the advertiser A1. And as soon as the target user logs in, the ads/banners/web links, as determined by A1 will be displayed to the user near instantaneously. It can be termed as the most evolved form of online, target advertising.*

3.2.9 In short, the technology and/or design and/or process and/or equipment of Facebook that enable the advertisers to reach their target audience in the most efficient way is the crux of the business. The assessee has been using the same to develop its business. Accordingly, the payments made to Facebook get squarely covered under the provision – Explanation 2(iii) to Section 9(1)(vi) : the use of any patent, invention, model, design, secret formula or process or trade mark or similar property and also the provisions of Explanation 2(iva) to section 9(1)(vi) : the use or right to use any industrial, commercial or scientific equipment. Therefore, the payments made to Facebook amounting to Rs.26,29,79,222/- is treated as Royalty and hence tax should have been deducted u/s 195 at the time of payment/credit of Royalty.

(B) Payments made to Rocket Science Group, LLC, USA ("Mail Chimp"):-

6.3 M/s Rocket Science group LLC has got "Mail Chimp" platform, which allows its users to send bulk email

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advertisements/marketing content to their customers using its marketing automation tools.

6.4 The case of the AO is stated in paragraphs 3.2.14 to 3.2.15 of the assessment order for AY 2015-16. Identical reasoning has been given for other years also. The relevant portion of AO's order is extracted below:-

> *"3.2.15 For the detailed discussions made from Paragraphs 2.1 to 3.2.14, it is held that the services availed by the Assessee company from the non-residents is in the nature of usage of technology, model or process and/or equipment and the same is covered by Explanation 2(iii) to Section 9(1)(vi) : the use of any patent, invention, model, design, secret formula or process or trade mark or similar property and also the provisions of Explanation 2(iva) to section 9(1)(vi) : the use or right to use any industrial, commercial or scientific equipment and the payments so made amount to royalty payments. Therefore, the provisions TDS are applicable on royalty payments to non-residents, Rocket Science Group, LLC, US. As the Assessee Company has failed to deduct tax at source as stipulated u/s 195 on the payments made towards email advertisement through Mail Chimp's Market automation tool for the F.Y 2014-15 relevant to Assessment year 2015-16, the Assessee company is held to be an assessee in default as per the provisions of sec.201(1) of the Income tax Act, 1961 for non deduction of tax at source. The Assessee company should have deducted tax at the rate of 10% on these payments. However, the Assessee company has failed to deduct tax at source. Hence, the default for non deduction on the payments made and consequential interest leviable u/s 201(1A) for the above said assessment year, are computed at the last page of this order.*

(C) Payments made to Amazon Web Services Inc., US

6.5 The assessee company has availed cloud computing services from Amazon Web Services Inc (AWS) for its online business needs. Cloud computing is an arrangement in which the cloud provider hosts the shared computing resources such as hardware, software applications etc., and the cloud user accesses them for storage, data processing etc., via internet on a need basis. In view of Cloud computing technology, Enterprises need not make investment in IT infrastructure (hardware, storage space, application softwares,

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other IT resources etc.) and they can use the required IT resources on payment of charges.

6.6 The case of the AO is stated in paragraphs 4.1.1 to 4.1.11 & 5 of the assessment order for AY 2015-16. Identical reasoning has been given for other years also. For this payment, the AO has also referred to the definition given in India – US DTAA for "Royalty" and "fees for included services". The relevant portion of AO's order is extracted below:-

> *4.1.5 There will be sites of the Assessee Company, wherein the data connectivity and networking is provided by the ("AWS"). Generally, every site has a 'router' being placed in the premises for the data communication purposes. It is clear that the services provided by ("AWS") also includes providing the routers and the data connectivity and networking.*
>
> *4.1.6 The Assessee Company, by relying on the decisions of the ITATs, is wrong in claiming that there is no involvement of any human intervention at any stage and that the entire process is fully automated technique. Had such been the case, there would not have been any separate mention for the Provider to ensure that the facility is adequately staffed for the provision of all services and that the provider employees, agents and subcontractors have sufficient skill, expertise and ability to perform their duties in a competent and professional manner. This shows that the assessee is in fact not only aware of the technical expertise required in obtaining Data Hosting Services, but also appreciative of the quality of manpower to be employed for such technical services.*
>
> ……
>
> *4.1.8 The AO extracts Explanation 2 to sec. 9(1)(vi) of Income tax Act*
>
> *4.1.9 The AO extracts the definition of "Royalty" as per paragraph 3(a) of Article 12 of India – US DTAA.*
>
> *4.1.10 The AO extracts the definition of "fess for included services" as per Paragraph 4 of Article 12 of India – US DTAA.*
>
> *Then the AO concludes as under:-*
>
> *4.1.11 In view of the above discussion, even if the cloud computing services are taking the character of Fees for Technical Services (FTS), it is*

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chargeable to tax in India as per the IT Act and also as per the India – US DTAA.

5. As elaborated above, the payments of Rs.18,71,643/- made by the Assessee Company during the FY 2014-15 to ("AWS") for cloud computing services is clearly taxable in India as Royalty. As the Assessee Company has failed to deduct tax at source as stipulated u/s 195 on the payments made towards cloud computing services for the F.Y 2014-15 relevant to Assessment year 2015-16, the assessee is held to be an assessee in default as per the provisions of section 201(1) of the Income tax Act, 1961 for non-deduction of tax at source. The Assessee Company should have deducted tax at the rate of 10% on these payments. However the assessee has failed to deduct tax at source. Hence, the default for non deduction of tax on the payments made and consequential interest leviable u/s 201(1A) for the above said assessment year are computed in this last page.

Thus, the AO held that the payments made to all the three companies is in the nature of "Royalty" liable for deduction of tax at source u/s 195 of the Act.

7. The Ld CIT(A) has examined the nature of payments made to these three non-residents as under:-

(A) In respect of payments made to Facebook, Ireland, the Ld CIT(A) has first analyzed the nature of payments. He has examined the agreement entered between the assessee and Facebook and observed as under:-

*"13. **This involves payments by the appellant for the use of, or the right to use of patented software processes.** Under section 195 of the IT Act the income of non-resident which is taxable in India needs to be subjected to tax deduction. Therefore, the liability on the part of the assessee to deduct tax on payments made to Facebook Ireland is clearly defined in the ambit of Income tax Law. The nature of payment made is considered in the later part of the order along with other payments for software and data access.*

14. Also as per the extract of the agreement it is inferred that the proper space will be given by the Facebook to the appellant's company in which they can create their own company's domain and use the same. I find this issue of 'Royalty' under the IT Act as well as under the India-Ireland DTAA has been discussed in the case of Google India (P) Ltd by the Hon'ble. ITAT Bangalore.

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Then the Ld CIT(A) has discussed the observations made by the Tribunal in the case of Goggle India (P) Ltd and the details of Patent number US20040059708A1. He also examined diagram illustrating functional aspects of advertisement system consistent with the invention and observed as under:-

"16. Further at the cost of repetition the patent number US20040059708A1 is examined.

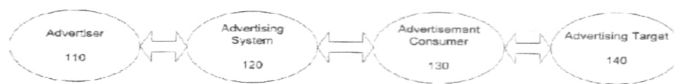

FIG. 1

FIG. 1 is a diagram illustrating an environment within which the invention may be implemented;

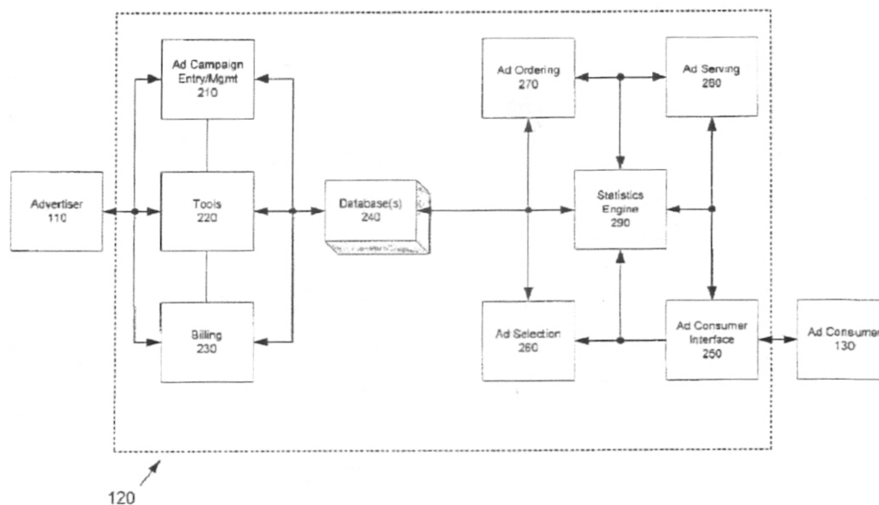

FIG. 2

FIG. 2 is a diagram functionally illustrating an advertising system consistent with the invention.

The system includes an ad campaign entry and management component 210, a tools component 220, a billing component 230, one or more

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database 240, an ad consumer interface component 250, an ad selection component 260, an ad ordering component 270, an ad serving component 280, and a statistics engine component 290. If the present invention is to be used with such an advertising system, it will primarily concern ad selection component 260. To help understand the invention, other components of the advertising system will be explained below. Furthermore, although FIG 2 shows a particular arrangement of components constituting advertisement system 120, those skilled in the art will recognize that not all components need be arranged as shown, not all components are required, and that other components may be added to, or replace, those shown.

17. The parent document, illustrate an embodiment of the invention and together with the description, explain the invention. In the drawings, in FIG.2 is a diagram functionally illustrating an advertising system consistent with the invention. Here the ad consumers (130) and the advertisers (110) are outside the bod whereas the management component 210, a tools component 220, a billing component 230, one or more data bases 240, an ad consumer interface component 250 are inside the bod. ***I find that the appellant who is handling management component, tools component, billing component and or one or more data bases certainly has more privileges and access to the programs than the ad consumers (130) and the advertisers (110).***

Then the Ld CIT(A) proceeded to discuss about another patent documents as under:-

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18. Further, the patent number US7778872B2 is examined.

(12) **United States Patent**
Kamangar et al.

(10) **Patent No.: US 7,778,872 B2**
(45) **Date of Patent: *Aug. 17, 2010**

(54) **METHODS AND APPARATUS FOR ORDERING ADVERTISEMENTS BASED ON PERFORMANCE INFORMATION AND PRICE INFORMATION**

(75) Inventors: **Salar Arta Kamangar**, Mountain View, CA (US); **Eric Veach**, Redwood City, CA (US); **Ross Koningstein**, Menlo Park, CA (US)

(73) Assignee: **Google, Inc.**, Mountain View, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1792 days.

6,026,368 A	2/2000	Brown et al.	
6,098,065 A *	8/2000	Skillen et al.	707/3
6,269,361 B1*	7/2001	Davis et al.	707/3
6,401,075 B1*	6/2002	Mason et al.	705/14
6,907,566 B1*	6/2005	McElfresh et al	715/517
7,076,443 B1*	7/2006	Emens et al.	705/14
7,130,808 B1	10/2006	Ranka et al.	
7,406,434 B1	7/2008	Chang et al.	
7,415,423 B2	8/2008	Ranka et al.	
2002/0169760 A1	11/2002	Cheung et al.	
2003/0014331 A1*	1/2003	Simons	705/27
2003/0046161 A1*	3/2003	Kamangar et al.	705/14
2003/0149937 A1	8/2003	McElfresh et al.	

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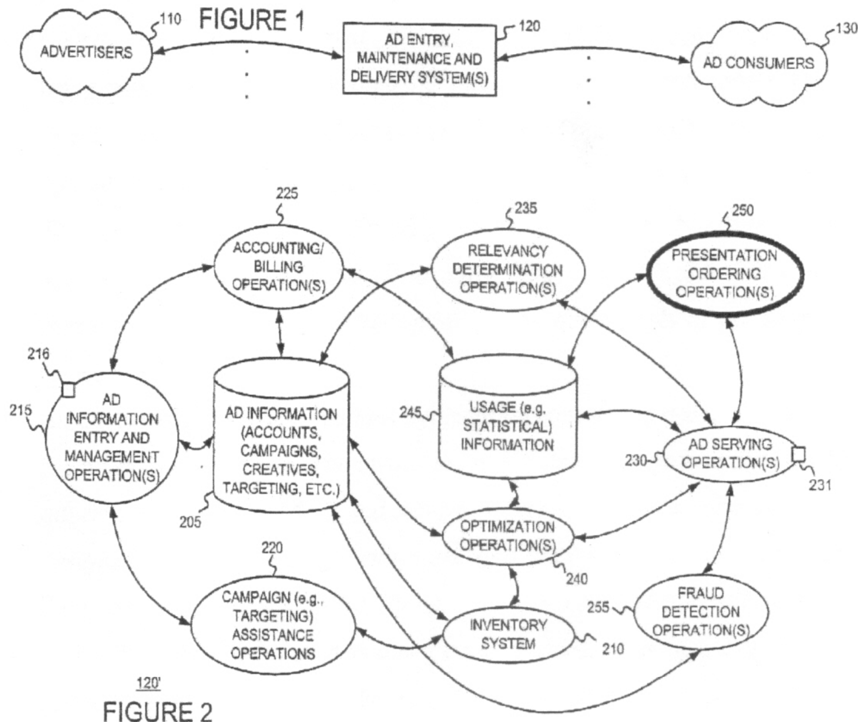

19. The description given in the patent document is as under:

*FIG. 2 illustrates an exemplary ad system **120'**, consistent with the present invention. The exemplary ad system **120'** may include an inventory system **210** and may store ad information **205** and usage or historical (e.g., statistical) information **245**. The exemplary system **120'** may support ad information **entry and management operation(s) 215**, campaign (e.g., targeting) assistance operation(s) **220**, **accounting and billing operation(s) 225, ad serving operation(s) 230**, relevancy determination operation(s) **235**, **optimization operations** **240**, presentation ordering operations **250**, and*

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fraud detection operation(s) ***255****. Advertisers* ***110*** *may interface with the system* ***120'*** ***via the ad information entry and management operation(s)*** ***215*** *as indicated by interface* ***216****. Ad consumers* ***130*** *may interface with the system* ***120'*** *via the ad serving operation(s)* ***230*** *as indicated by interface* ***231****.*

The present invention primarily concerns the presentation ordering operation(s) ***250****, and is described more fully in section 4.2. For contextual purposes, however, a brief description of the other parts of ad system* ***120'*** *appears below.*

An advertising program includes information concerning accounts, campaigns, creatives, targeting, etc. The term "account" relates to information for a given advertiser. A "campaign" or "ad campaign" refers to a series of advertisements designed to achieve a larger objective, and may include a start date, an end date, keywords, prices, price limits, and one or more advertisements (i.e., "creatives") used to market a given good, service, class of goods, or class of services. For example, Honda may have one advertising campaign for its automotive line, and a separate advertising campaign for its motorcycle line. The campaign for its automotive line may be targeted using a variety of keywords (e.g., "accord", "sedan", etc.), each of which may be associated with one or more creatives.

The ad information ***205*** *can be entered and managed via the ad information entry and management operation(s)* ***215****.* ***Campaign (e.g., targeting) assistance operation(s) 220 can be employed to help advertisers 110 generate effective ad campaigns.*** *The campaign assistance operation(s)* ***220*** *can use information provided by the inventory system* ***210****, which, in the context of advertising for use with a search engine, may track all possible ad impressions, ad impressions already reserved, and ad impressions available for given keywords. The ad serving operation(s)* ***230*** *may service requests for ads from ad consumers* ***130****. The ad serving operation(s)* ***230*** *may use relevancy*

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determination operation(s) ***235*** *to determine candidate ads for a given request. The ad serving operation(s)* ***230*** *may then use optimization operation(s)* ***240*** *to select a final set of one or more of the candidate ads. Finally, the ad serving operation(s)* ***250*** *may use presentation ordering operation(s)* ***250*** *to order the presentation of the ads to be returned****. The fraud detection operation(s) 255 can be used to reduce fraudulent use of the advertising system (e.g., by advertisers), such as through the use of stolen credit cards.***

The Ld CIT(A) has then observed as under:-

> *20. Thus, from the document of the patent numbers cited supra, it is clear that the appellant's roles are intertwined with that of user and advertisers.*
>
> *21. These instances are only illustrative and there are a number of such documents which evidence that the technical support cannot be carried out without access to these patented programs.*
>
> *22. Thus, on examination of patented documents and the ITAT order, the claim that the appellant is not having privileges and access to these patented programs is rejected.*

Thus, the Ld CIT(A) has taken the view that the assessee was given privilege of accessing/using various components of Advertisement program created by Facebook in its website.

(B) With regard to payments made to "MailChimp", the Ld CIT(A) has observed as under:-

> *"28. The appellant's company and the MailChimp has entered into an agreement, according to the same it is hereby averred that the MailChimp is providing the space to the appellant's company to create, send and manage certain marketing campaigns, including, without limitation, emails and advertisements and also* ***the MailChimp is providing access and use of MailChimp domain****.*
>
> *29.* ***This involves payments made by the appellant for the use of, or the right to use of patented software processes.*** *Under section 195 of the IT Act the income of non-resident which is taxable in India needs to be subjected to tax deduction. Therefore, the liability on the part of the assessee to deduct tax on payments made to Mailchimp is clearly defined in the ambit of Income tax Law. The nature of payment made is considered in*

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> *the later part of the order along with other payments for software and data access. Also the advertisements payments are discussed as above in Facebook Ireland."*

(C) With regard to the payments made to "Amazon Web Services", the Ld CIT(A) has observed as under:-

> *"6. Amazon Web Services (AWS) offers cloud space which is a kind of web hosting services. AWS provides the appellant with certain space of their cloud to store their data/applications and they and their vendors can use it as and when required. AWS has provided the appellant with user it and password for doing the same. In principle what has been offered by Amazon is an infrastructural space with permission to use by the assessee with a login id and password.*
>
> *7. This access is provided through various software and processes that are patented. The cloud space and web hosting services are practice of using a network of remote servers hosted on the internet to store, manage and process data, rather than a local server or a personal computer. The appellant used this cloud space and web hosting services to store its data and or applications and software. Using this, the appellant can make its software/products available to any of its users anywhere in the world. The mechanism is adopted by the assessee to avoid incurring huge capital expenditure in purchase of own servers, instead they procure 'right to use' of a server space provided by different agencies like Amazon Web hosting services and incur comparatively a much lower operational expenses.*
>
> *8. **This involves payments by the appellant for the use or, or the right to use of patented software processes.** Under section 195 of the IT Act the income of non-resident which is taxable in India needs to be subjected to tax deduction. Therefore, the liability on the part of the assessee to deduct tax on payments made to Amazon Web Hosting Services is clearly defined in the ambit of Income tax law. The nature of payment made is considered in the later part of the order along with other payments for software and data access."*

8. Then the Ld CIT(A) has referred to various case laws, but mainly took support of the decision rendered by Hon'ble Karnataka High Court in the case of CIT vs. Samsung Electronics Co Ltd (2011)(16 taxmann.com 141)(Kar), wherein it was held that the payment made by Indian residents to the non-resident supplier for software and

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access to database is "Royalty". Accordingly, the Ld CIT(A) held as under at page 28 of its order:-

> *"4. The decision of the Hon. Karnataka High Court in the case of Samsung Electronics co Ltd (cited supra) clearly holds the payment made by the Indian residents to the non-resident supplier for software and access to database as Royalty.*
>
> *5. The appellant has argued that the transaction of purchase of software and allowing the use of software does not fall within the definition of "Royalty" under respective treaties. I have examined the same. Various treaties are examined alongwith the payments made (supra). I find that the term "royalties" is defined as payments of any kind received as a consideration for the use of, or the right to use, any copyright of literacy, artistic or scientific work any patent, trade mark, design or model, plan, secret formula or process or information concerning industrial, commercial or scientific experience. I find that the appellant's contentions are not correct.* ***I hold that the consideration paid by the appellant for the use of, or the right to use of the software is royalty as per various treaties and need to be taxed in India****."*
>
> ……

9. The Ld CIT(A) also held that the payments made for use of software is royalty under the provisions of Income tax Act also. In this regard, the Ld CIT(A) has observed as under:-

> *"8. I find that the decision of Hon'ble Karnataka High Court in the case of Samsung (supra) is applicable in the facts of the case. Accordingly, the claim that use of software is not royalty within the I T Act is rejected."*

Finally, the Ld CIT(A) concluded as under:-

> *"31. In view of the above, the argument of the appellant that consideration paid for purchase of software, cloud computing, cloud space hiring, (involving transfer of the right to use the software) is not royalty is not acceptable. The grounds in this respect are therefore dismissed."*

Aggrieved by the order passed by Ld CIT(A) for the three years under consideration, the assessee has filed six appeals, viz., three appeals for the demand raised u/s 201(1) of the Act. and three appeals for the interest charged u/s 201(1A) of the Act.

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10. We heard the parties and perused the record. We notice that the AO has mainly invoked the provisions of sec. 9(1)(vi) of the Act in respect of payments made to M/s Facebook and M/s Rocket Science Group (MailChimp) to hold that the same is "royalty". In respect of payments made for Amazon Web Services, the AO has also referred to the provisions of DTAA entered into India and USA in addition to sec.9(1)(vi) of the Act. However, the AO has held that these payments are "royalty" mainly considering the provisions of sec.9(1)(vi) of the Act.

11. M/s Facebook is located in Ireland and other two are companies located in USA. We notice that India has entered into Double Taxation Avoidance Agreement (DTAA) with Republic of Ireland and also with United States of America. The question whether the provisions of Income tax Act could be referred to ignoring DTAA provisions, has been settled by Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Limited vs. CIT (Civil Appeal Nos. 8733-8734 of 2018 dated March 02, 2021) (125 taxmann.com 42). The Hon'ble Supreme Court examined the question whether the payments made to non-resident software suppliers is "royalty" and TDS u/s 195 of the Act was required to be deducted on those payments. The Hon'ble Supreme Court examined this question considering four types of situation, which has been narrated as under:-

*"**4.** The appeals before us may be grouped into four categories:*

(i) The first category deals with cases in which computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer.

(ii) The second category of cases deals with resident Indian companies that

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act as distributors or resellers, by purchasing computer software from foreign, non-resident suppliers or manufacturers and then reselling the same to resident Indian end-users.

(iii) The third category concerns cases wherein the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users.

(iv) The fourth category includes cases wherein computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users."

12. After analysing the provisions of Income tax Act, provisions of DTAA, the relevant agreements entered by the assessees with non-resident software suppliers, provisions of Copy right Acts, the circulars issued by CBDT, various case laws relied upon by the parties, the Hon'ble Supreme Court concluded as under:-

"CONCLUSION

168**. Given the definition of royalties contained in Article 12 of the DTAAs mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the Income-tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright.* ***The provisions contained in the Income-tax Act (section 9(1)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessees, have no application in the facts of these cases.

***169**. Our answer to the question posed before us, is that the amounts paid by resident Indian end-users/distributors to non-resident computer software*

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manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Income-tax Act were not liable to deduct any TDS under section 195 of the Income-tax Act. The answer to this question will apply to all four categories of cases enumerated by us in paragraph 4 of this judgment."

13. Hence the relevant DTAA provisions should be considered in the cases before us also for determining the question whether the payments made by the assessee to the above said three non-resident companies are in the nature of Royalty or not. Hence there is no necessity to refer to the provisions of sec. 9(1)(vi) of the Act for the payments made to the three non-resident persons, referred above.

14. The term "royalties" is defined as under in Article 12(3) of India – USA DTAA:-

3. The term "royalties" as used in this Article means:

(a) *payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof ; and*

(b) *payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8.*

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15. We shall now advert to the Agreements entered by the assessee with the three non-resident companies mentioned above, in order to understand the nature of services rendered by these companies and also to understand whether the payments made to the three non-residents are royalty or not in terms of the provisions of DTAA. The relevant clauses are extracted below for the sake of convenience:-

(A) FACEBOOK

4. License Grant

4.1 In consideration of your compliance with this Agreement for the duration of your subscription to Facebook at Work (unless terminated earlier) we hereby grant you and your Users:

(a) A non-exclusive, personal, non-transferrable, limited, revocable license to access and use Facebook at Work in accordance with this Agreement; and

(b) a non-exclusive, personal, non-transferrable, limited, revocable license to use any tool we may make available to you to create and manage Your Contents.

4.2 This License is not sub-licensable and is subject always to this Agreement.

5. Our Content

5.1 We own or license all Intellectual Property rights in Facebook at Work and Our Content. Facebook at Work and Our Content is protected by copyright laws and other Intellectual Property Laws. All such rights are reserved to us.

5.2 You may, and you must ensure that your Users will;

(a) only use Facebook at Work for its intended purpose within the scope of the License.

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(b) not make alterations, copies, extractions, modifications or additions to Facebook at Work and Our Content or any part of it, or sell, copy, disclose, distribute, disseminate or license it or any part of it or misuse it or any part of it in any way or reverse engineer, decompile, disassemble or decipher it or evade technical limitations on the use of Facebook at Work;

(c) not re-publish, sell, extract, reproduce, disseminate or otherwise use Facebook at Work and Our content, except as expressly permitted by this Agreement or with our prior written permission; and

(d) not use our copyrights, trademarks, protected designs and trade dress (including but not limited to Facebook, Facebook at Work, or any of the trademarks listed here (currently available at www.facebookbrand.com/trademarks), or any confusingly similar marks, except with our prior written permission.

5.3 You acknowledge and agree that any breach of this Section 5 may cause us irreparable harm for which damages are not an adequate remedy and that we may seek interim, preliminary or protective relief from any competent court to restrain your or your Users anticipated or actual breach of this Section 5.

5.4 Our Content made available on Facebook at Work is provided for information purposes only, is subject to change and will be updated from time to time without notice to you.

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17 Definitions.

In this Agreement, unless otherwise stated

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"Facebook at Work" means the features and services we make available, including but not limited to through the Facebook at Works websites, apps, and online services that we operate.

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"Our Content" means Facebook at Work and its content including without limitation, software, its "look and feel", images, text, graphics, illustrations, trademarks, photographs, audio, videos and sound but excluding Your content.

(B) Rocket Science Group (MailChimp)

MailChimp ("MailChimp,""we,"or"us") is an online marketing platform (the "Service") offered through the URL www.mailchimp.com (we'll refer to it as the "Website") that allows you to, among other things, create, send, and manage certain marketing campaigns, including, without limitation, emails, advertisements, and mailings (each a "Campaign", and collectively, "Campaigns").

………………..

13. Proprietary Rights Owned by Us

You will respect our proprietary rights in the Website and the software used to provide the Service (Proprietary rights include, but aren't limited to, patents, trademarks, service marks, trade secrets, copyrights, and other intellectual property). You may only use our brand assets according to our Brand Guidelines.

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19. Bandwidth Abuse/Throttling

You may only use our bandwidth for your MailChimp Campaigns. We provide image and data hosting only for your MailChimp Campaigns, so you may not host images on our servers for anything else (like a website). We may throttle your sending or connection through our API at our discretion.

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30. Assignments

You may not assign any of your rights under this agreement to anyone else. We may assign our rights to any other individual or entity at our discretion.

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(C) AMAZON WEB SERVICES:-

1. Use of the Service Offerings

1.1 Generally, you may access and use the Service Offerings in accordance with this Agreement. Service Level Agreements and Service Terms apply to certain Service Offerings. You will comply with the terms of this Agreement and all laws, rules and regulations applicable to your use of the Service Offerings.

1.2 Your account. To access the Services, you must have an AWS account associated with a valid email address and a valid form of payment. Unless explicitly permitted by the Service Terms, you will only create one account per email address.

1.3 Third-Party content. Third-Party content may be used by you at your election. Third-Party Content is governed by this Agreement and, if applicable, separate terms and conditions accompanying such Third-Party Content, which terms and conditions may include separate fees and charges.

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8.3 Service offerings License. We or our licensors own all right, title and interest in and to the Service Offerings, and all related technology and intellectual property rights. Subject to the terms of this Agreement, we grant you a limited, revocable, non-exclusive, non-sublicenseable, non-transferrable license to do the following: (a) access and use the Services solely in accordance with this Agreement; and (b) copy and use the AWS Content solely in connection with your permitted use of the Services. Except as provided in this Section 8.3, you obtain no rights under this Agreement from us, our affiliates or our licensors to the Service Offerings, including any related intellectual property rights. Some AWS Content and Third-Party Content may be provided to you under a separate license, such as Apache License, Version 2.0, or other open source license. In the event of a conflict between this Agreement and any separate license, the separate license will prevail with respect to the AWS content or Third-Party Content that is the subject of such separate license.

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14. Definitions.

"API" means an application programme interface.

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"AWS Content" means Content we or any of our affiliates make available in connection with the Services or on the AWS Site to allow access to and use of the Services, including APIs; WSDLs; Documentation; sample code; software libraries; command line tools; proofs of concept; templates; and other related technology (including any of the foregoing that are provided by our personnel). AWS Content does not include the Services or Third Party content.

………………..

"AWS Marks" means any trademark, service marks, service or trade names, logos and other designations of AWS and its affiliates that we may make available to you in connection with the Agreement.

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"Service Offerings" means the Services (including associated APIs), the AWS Content, the AWS Marks, and any other product or service provided by us under this Agreement. Service Offerings do not include Third-Party Content.

16. A careful perusal of the relevant provisions of the agreement entered by the assessee with Facebook and Rocket Science Group (Mailchimp) would show that both these non-resident companies are allowing the assessee to use the facilities provided in their sites, which includes, inter alia, software facilities also. The purpose of compelling the assessee to use those facilities, as could be inferred by us, is to create an environment of ease in creating the "advertisement content" to suit the platforms of Facebook or Mailchimp. The environment of ease is beneficial and time saving to both the advertiser and the advertising platform. Thus the facilities have been created by the non-resident companies for mutual benefit. However, a person shall get the right to use those facilities only when he enters into an agreement with them for hosting his advertisement or for sending bulk mails, meaning thereby, the use of facilities is intertwined with the activity of placing advertisement in web portal of Facebook or sending bulk

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mails. In case of web hosting charges paid to AWS, the assessee is allowed to use the information technology infrastructure facilities.

17. We shall now refer to some of the decisions relied upon by Ld AR before us. The Kolkata bench of Tribunal, in the case of ITO vs. Right Florists (2013) (32 taxmann.com 99) (Kol-Trib.), has considered an issue – whether the payments made to foreign search engine portals for online advertising services resulted in accrual of income in India in their hands in terms of sec.9(1) of the Act. The co-ordinate bench referred to the following decisions rendered by other co-ordinate benches:-

(a) Pinstorm Technologies (P) Ltd vs. ITO (24 taxmann.com 345)(Mum)

(b) Yahoo India (P) Ltd vs. DCIT (2011)(11 taxmann.com 431)(Mum)

In the above said two cases, the Tribunal held that the amount paid by the assessee to M/s Google Ireland Ltd for the services rendered for uploading and display of banner advertisement on its portal was in the nature of business profit on which no tax is deductible at source, since the same was not chargeable to tax in India in the absence of PE of Google Ireland Ltd in India. Finally, the co-ordinate bench held as under in the case of Right Florists:-

> *"**28.** In view of the above discussions, we are of the considered view, on the limited facts of the case as produced before us, the receipts in respect of online advertising on Google and Yahoo cannot be brought to tax in India under the provisions of the Income Tax Act, **as also under the provisions of India US and India Ireland tax treaty**. This observation is subject to the rider that so far as the PE issue is concerned, we have examined the existence of PE only on the basis of website simplicitor, and on*

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no other additional basis, as no case was made out for the same. In any case, revenue has not brought anything on record, either at assessment stage or even before us, to suggest that Google or Yahoo had a PE in India, and as held by a Special Bench of this Tribunal in the case of Motorola Inc v. Dy. CIT[2005] 95 ITD 269/147 Taxman 39 (Mag.) (Delhi) "DTAA is only an alternate tax regime and not an exemption regime" and, therefore, "the burden is first on the Revenue to show that the assessee has a taxable income under the DTAA, and then the burden is on the assessee to show that that its income is exempt under DTAA". No such burden is discharged by the Revenue. Accordingly, there is no material before us to come to the conclusion that Google or Yahoo had a PE in India, which, in turn, could constitute the basis of their taxability in India."

18. The taxability of Web hosting charges paid to Amazon Web Services LLC in its hands was examined by Pune bench of Tribunal in the case of EPRSS Prepaid Recharge Services India P Ltd (ITA No.828/Pun/2016 dated 24.10.2018) (2018) (100 taxmann.com 52) (Pune), which was relied upon by Ld A.R. The relevant discussions made and decision taken by Pune Tribunal are extracted below:-

"***11.*** *We have heard the rival contentions and perused the record. The issue which arises in the present appeal is in respect of charges paid by assessee to AWS. The assessee was engaged in sale of recharge pens and did not have the facility available with it of high technology equipments i.e. servers. So, in order to carry on its activity of distributorship of recharge pens, it used servers of Amazon, for which it paid web hosting charges. Before using the services available of Amazon online, it entered*

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into an agreement, under which fees structure was provided. Copy of agreement is placed at pages 3 to 22 of Paper Book. The agreement is called AWS Customer Agreement, which contains the terms and conditions that governs assessee's access to and use of Service Offerings. It was agreement between Amazon Web Services, Inc. and you i.e. assessee. It is provided that agreement takes effect when you click an "I Accept" button. Clause 1.1 lays down that 'you' (assessee) may access and use the Service Offerings in accordance with agreement. In clause 1.2, it is provided that to access services, 'you' (assessee) must create an AWS account associated with a valid e-mail address. Clause 1.3 provides that if you (assessee) would like support for the services other than the support we generally provide to other users of the services without charge, then you can enroll for customer support in accordance with the terms of AWS Support Guidelines. Clause 2.1 lays down that Amazon could change, discontinue, or deprecate any of the Service Offerings or change or remove features or functionality of the Service Offerings from time to time. As per clause 4.1, you (assessee) are solely responsible for the development, content, operation, maintenance and use of Your Content. Now, coming to clause 5.5, which provides the Service Fees to be paid, agreement provided that Amazon would calculate and bill fees and charges monthly. It is further agreed that you (assessee) have to pay applicable fees and charges for use of Service Offerings as described on AWS site using one of the payment modes they support. We may refer to clause 8.4 which lays down the Service Offerings License, under which it is provided that Amazon or its affiliates or licensors own and reserve all right, title and interest in and to the Service Offerings. However, limited, revocable, non-exclusive, non-sublicensable, non-transferrable license is granted to you (assessee) to do the following during the term:—

(i) access and use the Service solely in accordance with this agreement; and

(ii) copy and use the AWS Content solely in connection with your permitted use of the Services.

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12. *It is further provided that no rights under this agreement are obtained by you (assessee) from Amazon or its licensor to the Service Offerings, including any related intellectual property rights. The 'terms' between the parties are defined as per clause 14 and the terms which are relatable to the issue raised are as under:—*

"AWS Content" means Content we or any of its affiliates make available in connection with the Services or on the AWS Site to allow access to and use of the Services, including WSDLs; Documentation; sample code; software libraries; command line tools; and other related technology. AWS Content does not include the Services.

"AWS Marks" means any trademarks, service marks, service or trade names, logos, and other designations or AWS and its affiliates that we may make available to you in connection with this Agreement.'

13. *The assessee has used services and has made monthly payments to Amazon. The assessee has attached sample invoice of Amazon at pages 23 to 41 of Paper Book and ledger extract of Amazon in its books at pages 1 and 2 of Paper Book. The assessee had filed submissions before the Assessing Officer giving detailed note on web hosting charges, which was as under:—*

"Web Hosting Charges:

> *(a) Primarily EPRSS requires servers to run the various online recharges. Due to this there is a very high requirement of Servers. Since 'purchase/maintenance of servers and its upkeep require skilled manpower, BPRS does not have the same. Hence servers are taken on hire from Amazon, in is cloud units. Ledger copy attached Extract of web agreement also attached."*

14. *Further, the assessee has also pointed out the nature of its business vide written note before the Assessing Officer and explained as under:—*

'1. Primarily the "a" requires servers to run the various online recharges. Due to this there is a very high requirement of servers. Since purchase/maintenance of servers and its upkeep require skilled manpower, the "a" does not have the same. Hence servers are taken on hire from Amazon, in its cloud units. Information about Amazon Web Services and its

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benefits as provided on website http://aws.amazon.com/what-is-aws is enclosed for your reference.'

....

18. *Now, coming to the next aspect raised by assessee which is linked to as to whether retrospective amendment in Income Tax would override the Treaty Laws where no amendment has been made. It is clear that retrospective amendment has changed the definition of 'royalty' from the year 2012 under the Income Tax Act, but the position of DTAA between two countries has not been effected. No such amendment has been made to the Treaty Laws and in DTAA, position similar to Explanation 5 is not envisaged at all. This is the plea raised by the learned Authorized Representative for the assessee. He further pleaded that in order to construe meaning of royalty as per DTAA, since the provisions of DTAA takes precedent over the provisions of Income Tax Act, where the assessee does not possess and does not have any control over the server or servers space, being deployed by Amazon, while providing e-services as per agreement, then there is no scope to construe that e-service charges paid to Amazon could be described as royalty. There is merit in the plea of assessee. If we construe the meaning of royalty as per DTAA, then we have to consider the possibility of position and control of server/server space, which admittedly, is not possessed by the assessee. Hence, as per Treaty Laws, the assessee cannot be held to have paid royalty to Amazon. Consequently, the payment made by assessee for web hosting services is not taxable in accordance with DTAA and the same cannot be held to be taxable, only because there was retrospective amendment to section 9(1)(vi) of the Act. In any case, the Courts have held that when there is no amendment to the Treaty Laws, then the said Treaty Laws would override the amendment, if any, whether retrospective or otherwise to the Income Tax Act. Such a view has been taken in New Skies Satelite BV (supra). Consequently, there is no merit in holding that the assessee was liable to deduct withholding tax out of such payments made to Amazon and for such non-deduction or withholding of tax, the assessee can be held to be at*

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default and the payment made by assessee being not allowed as deduction in its hands, in view of provisions of section 40(a)(i) of the Act. We reverse the orders of authorities below in this regard. We are not going into the issue raised by assessee that Amazon is not having PE in India and hence, no liability to deduct tax in India.

19. *Now, another issue which needs to be seen is whether charges paid to Amazon for various services provided by it are in the nature of royalty, if any, or not. The assessee has placed on record the copy of agreement with Amazon, which we have referred in the paras hereinabove. He has also placed on record the copies of bills raised by Amazon online. The perusal of details filed by assessee of monthly charges paid, it transpires that the same are fluctuating from month to month and there is no regular payment being made to Amazon. In case of provision of royalty to a person, then as seen from the terms and conditions of various agreements, there is fixation of price to be paid and there may be variation on account of use of certain services but first there has to be basic price fixed. However, in the facts of present case, looking at the documentation, the billing is segregated into various services i.e. AWS services, storage services, etc. and the assessee before us has filed a chart of summary of services availed. The first such services are on account of service charges for Elastic Compute Cloud. As per clause 1, it is on account of use of service provider Linux; as per clause 1.2, Windows and as per clause 1.3, Windows & SQL Server stanard and clause 1.4 of Bandwidth. The total service charges for Elastic Compute Cloud are USD 40,253.17. The month-wise details of said payments made by assessee from September, 2009 to March, 2010 reflected that in the first month, charges totaled to USD 4269.02, in October at USD 5599.36 and there on.*

20. *The Hon'ble High Court of Madras in Skycell Communications Ltd. (supra) have held that web hosting charges are not in the nature of royalty. The said principle has further been applied in various*

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*decisions of the Tribunal as relied upon by the learned Authorized Representative for the assessee. (sic.)***

***21.** The aspect which needs to be seen is whether the assessee is paying consideration for getting any right in respect of any property. The assessee claims that it does not pay for such right but it only pays for the services. The claim of assessee before us was that it was only using services provided by Amazon and was not concerned with the rights in technology. The fees paid by assessee was for use of technology and cannot be said to be for use of royalty, which stands proved by the factum of charges being not fixed but variable i.e. it varies with the use of technology driven services and also use of such services does not give rise to any right in property of Amazon.......”*

19. (**) The decision in the case of Skycell Communications Ltd (251 ITR 53) has been rendered by Hon'ble Madras High Court in the context of "Fees for Technical Services" on applicability of sec. 194J r.w. Explanation 2 to 9(1)(vii) of the Act. However, following observations made by Hon'ble Madras High Court are relevant in this case also:-

*“**7.** In the modern day world, almost every facet of one's life is linked to science and technology inasmuch as numerous things used or relied upon in every day life is the result of scientific and technological development. Every instrument or gadget that is used to make life easier is the result of scientific invention or development and involves the use of technology. On that score, every provider of every instrument or facility used by a person cannot be regarded as providing technical service.*

***8.** When a person hires a taxi to move from one place to another, he uses a product of science and technology, viz., an automobile. It cannot on that ground be said that the taxi driver who controls the vehicle and monitors its movement is rendering a technical service to the person who uses the automobile. Similarly, when a person travels by train or in an aeroplane, it cannot be said that the railways or airlines is rendering a technical service to the passenger and, therefore, the passenger is under an obligation to deduct tax at source on the payments made to the railway or the airline for*

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having used it for travelling from one destination to another. When a person travels by bus, it cannot be said that the undertaking which owns the bus service is rendering technical service to the passenger and, therefore, the passenger must deduct tax at source on the payment made to the bus service provider for having used the bus. The electricity supplied to a consumer cannot, on the ground that generators are used to generate electricity, transmission lines to carry the power, transformers to regulate the flow of current, meters to measure the consumption, be regarded as amounting to provision of technical services to the consumer resulting in the consumer having to deduct tax at source on the payment made for the power consumed and remit the same to the revenue.

9. *Satellite television has become ubiquitous and is spreading its area and coverage, and covers millions of homes. When a person receives such transmission of television signals through the cable provided by the cable operator, it cannot be said that the home owner who has such a cable connection is receiving a technical service for which he is required to deduct tax at source on the payments made to the cable operator.*

10. *Installation and operation of sophisticated equipments with a view to earn income by allowing customers to avail of the benefit of the user of such equipment, does not result in the provision of technical service to the customer for a fee.*

11. *When a person decides to subscribe to a cellular telephone service in order to have the facility of being able to communicate with others, he does not contract to receive a technical service. What he does agree to is to pay for the use of the airtime for which he pays a charge. The fact that the telephone service provider has installed sophisticated technical equipment in the exchange to ensure connectivity to its subscriber, does not on that score, make it provision of a technical service to the subscriber. The subscriber is not concerned with the complexity of the equipment installed in the exchange, or the location of the base station. All that he wants is the facility of using the telephone when he wishes to, and being able to, get connected to the person at the number to which he desires to be connected. What applies to cellular mobile telephone is also applicable to fixed telephone service. Neither service can be regarded as 'technical service' for the purpose of section 194J"*

The above said decision clarifies the point that mere usage of a facility does not give rise to provision of any technical service. Under same analogy, mere usage of facility provided by the above said non-residents does not render the payments as "royalty

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payments", since the core point of parting of any "copy right" attached to the said facilities does not arise at all.

20. In the case of Engineering Analysis Centre of Excellence (P) Ltd (supra), the issue related to "issuing of license to use software", i.e., the software purchased by a person shall be used by the buyer for his own business purposes. Since the license was granted without parting the copy rights attached to the software, the Hon'ble Supreme Court held that the payments received by the non-resident software companies cannot be taxed as "royalty" under the provisions of DTAA and hence there is no requirement to deduct tax at source from the payment made to them by a resident assessee.

21. In the instant case, the recipients, i.e, M/s Facebook and Rocket Science group only allow the assessee to use their facilities for the purpose of creating advertisement content. The payment made to Amazon Web Services (AWS) is only for using the information technology facilities provided by it, that too the billing would depend upon the extent of usage of those facilities. In fact, these non-resident companies do not give any specific license for use or right to of any of the facilities (which include software) and those facilities are not going to be used for the use in the business of the assessee. The right to use those facilities, as stated earlier, is intertwined with the main objective of placing advertisements in the case of Facebook and Mailchimp. In the case of AWS, the payment is made only for using of information technology infrastructure facilities on rental basis. Hence the question of transferring the copy right over those facilities does not arise at all. The agreements extracted above also make it clear that the copyright over those facilitating software is not shared with the assessee. In

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any case, the main purpose of making payment is to place advertisements only and not to use the facilities provided by the non-resident companies. Thus the facilities provided by the non-resident companies are only enabling facilities, which help a person to place his advertisement contents on the platform of Facebook or to use MailChimp facility effectively. In case of AWS, the payment is in the nature of rent payments for use of infrastructure facilities.

22. Accordingly, we are of the view that the these non-resident recipients stand on a better footing than those assessees before the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Ltd (supra). Accordingly, following the ratio laid down by Hon'ble Supreme Court, we hold thatthe payments made to the above said three non-resident companies do not fall within the meaning of "royalty" as defined in DTAA. The AO has not made out an alternative case that these payments are taxable as business income in India. Hence, there is no necessity for us to deal with that aspect.

23. We have noticed earlier that the Ld CIT(A) has followed the decision rendered by Hon'ble Karnataka High Court in the case of Samsung Electronics Co Ltd (supra). In the case of Engineering Analysis Centre of Excellence Private Ltd (supra), the decision rendered by Hon'ble Karnataka High Court in the above said case has been overruled by Hon'ble Supreme Court. Hence on this reasoning also, the decision rendered by Ld CIT(A) would fail.

24. In view of the foregoing discussions, we are of the view that the payments made by the assessee to the three non-resident companies referred above cannot be considered ad "royalty payments" and hence they do not give rise any income chargeable

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in India under Indian Income tax Act in all the three years under consideration. In that view of the matter, there is no requirement to deduct tax at source from those payments u/s 195 of the Act. Hence the assessee herein cannot be considered as an assessee in default u/s 201(1) of the Act.

25. Accordingly, we set aside the orders passed by Ld CIT(A) for the years under consideration and direct the AO to delete the demand raised u/s 201(1) of the Act and also the consequential interest charged u/s 201(1A) of the Act in all the three years under consideration.

26. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 17th Aug, 2021

Sd/-	Sd/-
(George George K.)	**(B.R. Baskaran)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 17th Aug, 2021.
VG/SPS

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Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.