

Internet domain name registration taxable as royalty – Delhi Tribunal

Summary

In a recent decision¹ Delhi bench of Income Tax Appellate Tribunal ('ITAT') has evaluated the taxability of domain registration fees. The ITAT relied upon ruling of Apex Court and Delhi High Court in the context of Intellectual Property Right disputes to hold that payment for use of domain name is in connection with use of intangible property which is similar to trademark and hence it is taxable as royalty.

Facts of the case

- Godaddy.com LLC ('the taxpayer') is a limited liability company located in the USA, engaged in the business as accredited domain name registrar authorised by Internet Corporation for Assigned Names and Numbers ('ICANN').
- The taxpayer filed its tax return declaring income from web hosting services as income from royalty and claimed that income from domain registration fees not taxable in India.
- The Assessing Officer ('tax officer') assessed web hosting services as fees for technical services ('FTS') and domain registration fees as royalty.
- The taxpayer argued that it is merely facilitating registration of domain names in the name of customers who are paying a price for availing this service. Hence, the receipt in respect of domain name registration is not in the nature of royalty.
- On the ground of characterisation of income from web hosting services as royalty by the taxpayer and as FTS by Revenue, taxpayer chose not to contest this issue since the rate of tax for royalty as well as for FTS is the same, making this discourse purely academic in nature.

¹ Godaddy.com LLC [TS-157-ITAT-2018(DEL)]

Held by the ITAT

- ITAT relied on SC ruling in the case of Satyam Infoway Ltd.² wherein it was held that domain name is a valuable commercial right and it has all the characteristics of a trademark and accordingly, it was held that the domain names are subject to legal norms applicable to trademark.
- ITAT discussed the Delhi HC ruling in the case of Tata Sons Limited³ which held that domain names are entitled to protection as a trademark because they are more than an address.
- Relying on the above precedents, ITAT, concluded that domain name is an intangible asset which is similar to the trademark. Registration of a domain name was held to be a service in connection with its use.
- On the basis of these two limbs, the ITAT held that the rendering of services for domain registration is rendering of services in connection with the use of an intangible property which is similar to trademark. Therefore, the charges received by the taxpayer for services rendered in respect of domain name is royalty.

Our comments

The domain name comes into existence only after registration. This aspect appears not to have been argued before the ITAT, which has gone by the nature of the asset. While characterisation of domain name as intangible property is settled, it would be interesting to see how the higher courts would regard the proposition that registration of a domain name is not a service in connection with use of that property.



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² Satyam Infoway Ltd. Vs. Sifynet Solutions Pvt.Ltd. – [2004] Supp (2) SCR 465 (SC).

³ Tata Sons Limited Vs. Mr. Manu Kishori & Ors. – 90 (2001) DLT 659 (Delhi).