



Tax Flash News

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Fees received by the US company for providing domain name registration services are not taxable as royalty

Executive Summary

The taxability of fees received for domain name registration has been a debatable issue. While the tax department seeks to tax it as a royalty, taxpayers contend that they don't have ownership rights in the domain name and they are acting only as an intermediary for registering the domain name.

Recently, the Delhi High Court in the case of Godaddy.com LLC¹ (the taxpayer) held that fees received by the US company for providing domain name registration services are not taxable as royalty. The US company was merely acting as a registrar. It does not have any proprietorship rights in the domain name. Therefore, it could not grant the rights or transfer the right to use the domain name to another person or entity.

Facts of the case

- The taxpayer is a company based in the USA. It is an accredited registrar of the Internet Corporation for Assigned Names and Numbers (ICANN). It is engaged in the business of providing domain name registration services, web designing, and web hosting.
- For the relevant assessment years², the Assessing Officer (AO) held that the fees received by the taxpayer for providing domain registration services were for the right to use or for the use of servers maintained by the taxpayer. The AO taxed such fees as royalty under section 9(1)(vi) of the Income-tax Act, 1961 (the Act) as well as under Article 12(3)(a) of the India-USA tax treaty (the tax treaty).

- The Delhi Bench of the Income Tax Appellate Tribunal (ITAT) agreed with the conclusion of the AO. However, it provided a different rationale and equated a domain name with a trademark. The ITAT concluded that the fee received by the taxpayer was royalty since it was for the right to use or use of a trademark. The ITAT had relied on the decisions of Satyam Infoway³ and Tata Sons⁴.

High Court's decision

- The accreditation agreement between the taxpayer and ICANN establishes that the taxpayer acts as a registrar and, in that capacity, provides domain registration services to its customers. It does not have any proprietorship rights in the domain name.
- Since the taxpayer was not the domain name's owner, it could not confer the right to use or transfer the right to use the domain name to another person or entity.
- The Supreme Court in the case of Satyam Infoway held that it is the registrant (and not the registrar) who owns the domain name and can protect its goodwill by initiating a passing-off action against a subsequent registrant of the same domain name. The High Court in the case of Satyam Infotech was concerned only with the rights of the domain name owner and not the registrar. Thus, the Tribunal's reliance on this decision was misconceived.

¹ Godaddy.com LLC v. ACIT (ITA No. 891/2018) (Delhi High Court) - Taxsutra.com

² Assessment Years 2013-14, AY 2014-15, AY 2015-16

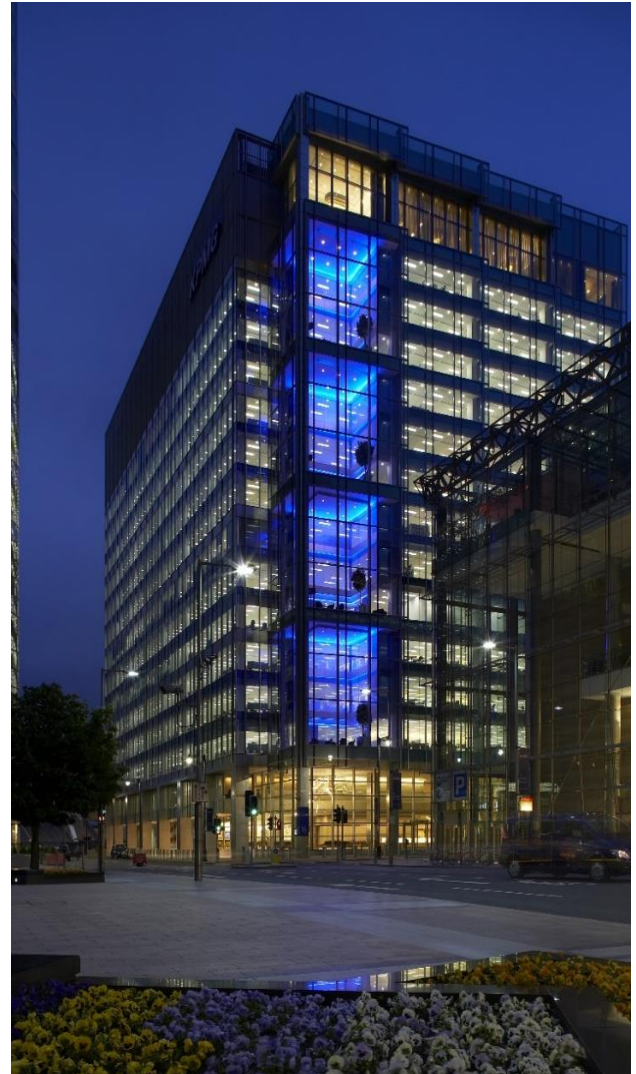
³ Satyam Infoway v. Siffynet Solutions [2004] 6 SCC 145

⁴ Tata Sons v. Manu Kishori and Ors. 90 [2001] DLT 659 (Del)

- Accordingly, the High Court held that the fees received by the taxpayer for the registration of domain name of its customers cannot be treated as royalty.

Our comments

The Delhi High Court has reversed the ITAT's decision and held in favour of the taxpayer. The High Court mainly relied on the agreement entered by the taxpayer to hold that the registrars like taxpayers are not owners of the domain. They don't have any rights to transfer and therefore the question of royalty does not arise. This decision will help the taxpayers who are in a similar business. It would be interesting to see how the Supreme Court will view this matter if the tax department decides to contest further.



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