



# Tax Alert – ITAT upholds internet domain registration receipts taxable as royalty

Tax Alert  
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Dear All,

Recently, Delhi bench of the Income Tax Appellate Tribunal ('ITAT') upheld the taxability of receipts earned by assessee<sup>1</sup> from internet domain registration fees as royalty within the meaning of Explanation 2 to clause (vi) of sub-section 1 of section 9 of the Income-tax Act, 1961 ('Act').

ITAT relied upon various rulings which hold that domain name has all the characteristics similar to a trademark and held that domain name is an intangible asset which is akin to trademark. Accordingly, the income earned from registration of domain name is royalty since the same is in the nature of providing services in connection with the use of trademark.

Relying on the facts of the matter and various judicial precedence, ITAT held as under:

## DECISION OF ITAT:

1. The assessee is a US limited liability company engaged in the business as accredited domain name registrar authorized by Internet Corporation for Assigned Names and Numbers ('ICANN').
2. The assessee is not a tax resident of USA and hence, could not claim any benefit under the India-USA tax treaty. Accordingly, ITAT examined the matter under the provisions of the domestic law i.e. section 9 of the Act.
3. The assessee's contented that for providing domain registration service, none of the employees of the appellant visited India, all services are provided from outside India. Further, the assessee does not have any fixed business presence in India in the form of any branch/liaison office and the business operations are undertaken from outside India.
4. Revenue's contented that the assessee has been accredited by ICANN to registered domain names and, as per the agreement between the assessee and ICANN, the assessee has the right to register, assign, transfer and manage specific domain names.
5. ITAT confirmed the revenue's contention that the domain name registration charges were paid to the assessee in India and hence, the amount received by the assessee towards domain name registration fee is in the nature of royalty within the meaning of Section 9(1)(vi) of the Act.
6. ITAT placed emphasis on the decision of the hon'ble Apex Court in the case of Satyam Infoway Ltd<sup>2</sup> in which the court held – *"It is apparent therefore that a domain name may have all the characteristics of a trademark and could found an action for passing off."*
7. Further, placed emphasis to the ruling passed by the Bombay High Court in the case of Rediff Communications Ltd<sup>3</sup> in which the court held - *"Internet domain names are of importance and can be a valuable corporate asset and such domain name is more than an Internet address and is entitled to protection equal to a trade mark. In view of the above decisions, I am satisfied that it is now settled law that with the advent of modern technology particularly that relating to cyberspace, domain names or Internet sites are entitled to protection as a trade mark because they are more than a mere address. The rendering of Internet services is also entitled to protection in the same way as goods and services are, and trade mark law applies to activities on Internet."*

<sup>1</sup> M/s GoDaddy.com LLC [ITA No. 1878/Del/2017] (Delhi ITAT)

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

<sup>3</sup> Rediff Communications Ltd. Vs. Cyberbooth AIR 2000 Bombay 27

8. Dismissed the assessee's reliance on Delhi High Court ruling in the case of Asia Satellite Telecommunications Co. Ltd<sup>4</sup> and Authority for Advance Rulings ('AAR') in the case of Dell International Services (India) Private Limited<sup>5</sup>, claiming that the cases had distinguished set of facts.
9. At the end, ITAT concluded based on hon'ble Apex Court ruling in case of Satyam Infoway Ltd and jurisdictional High Court ruling in case of Tata Sons Ltd<sup>6</sup> in which it was held that domain name is a valuable commercial right and has all the characteristics of a trademark and are entitled to protection as trademark as they are more than just an address.
10. Based on the above, ITAT held that rendering services for domain registration is in the nature of rendering of services in connection with the use of an intangible property akin to trademark and hence, domain registration services is royalty as per Explanation 2 to section 9(1)(vi) of the Act.

#### ELP COMMENTS:

The ITAT, in its ruling, has considered domain akin to trademark and termed the services in connection to such domain as royalty. While doing so, the ITAT has carved out an exception to an existing principal, duly upheld by various judicial rulings, that an automated process not involving human intervention is not regarded as royalty.

Further, the above ruling has wide reaching impact on the transactions linked to domain as the same has been considered as an intangible asset.

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<sup>4</sup> Asia Satellite Telecommunications Co.Ltd. Vs. DIT – [2011] 197 Taxman 263 (Delhi High Cour

<sup>5</sup> Dell International Services (India) Private Limited – [2008] 218 CTR 209 (AAR)

<sup>6</sup> Tata Sons Limited Vs. Mr. Manu Kishori & Ors. – 90 (2001) DLT 659 (Delhi)