IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH, NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No. 7364/DEL/2018 [A.Y 2015-16]

M/s Dow Jones & Company Inc. C/o M/s Princewaterhouse Coopers Pvt Ltd, Plot No. 18A, PWC House Gurunanak Road [Station Road] Bandra [W], Mumbai	Vs.	The A.C.I.T. International Taxation Circle -1(2)(3) New Delhi
PAN: AAFCD 3315 H		
(Applicant)		(Respondent)

Assessee By	:	Shri Dhanesh Bafna, CA, Adv Shri Hirali Desai, CA
Department By	:	Mrs. Anupama Anand, CIT- DR

Date of Hearing	**:**	**08.12.2021**
Date of Pronouncement	**:**	**14.12.2021**

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order dated 12.09.2018 framed u/s 143(3)/144 r.w.s 144C(13) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

2. The assessee has raised the following grounds of appeal:

"1. That on the facts and in the circumstances of the case and in law, the Learned Assistant Commissioner of Income-tax (International Taxation) 1(2X2), New Delhi ('the Learned AO') and the Dispute Resolution Pane! ('the DRP') erred in holding the sum of INR 1,31,02,703 as 'Royalty' under Section 9(i)(vi) of the Income-tax Act, 1961 ('the Act') and Article 12 of the Double Taxation Avoidance Agreement ('the DTAA[1]) entered into between India and USA.

2. That on the facts and in the circumstances of the case and in law, the Learned AO and the DRP erred in considering a rate of 20% instead of 15% under the DTAA entered into between India and USA.

3. That on the facts and in the circumstances of the case and in law, the Learned AO and the DRP erred in not considering that the sum of INR 1,31,02,703 is in the nature of "Business Profits" under Article 7 of the DTAA, not taxable in India as the Appellant did not have a Permanent Establishment in India under Article 5 of the DT.AA.

4. That on the facts and in the circumstances of the case and in law, the learned AO has erred in proposing to initiate penalty proceedings under section 27i(i)(c) of the Act without appreciating that none of the provisions of section 27i(i)(c) of the Act gets attracted in the facts of the Appellant's case.

The Appellant prays to Your Honours to kindly direct the Learned AO to drop/ abate the penalty proceedings and oblige."

3. The representatives of both the sides were heard at length, the case records carefully perused.

4. Briefly stated, the facts of the case are that the appellant company is a business corporation incorporated in USA and engaged in the business of providing information products and services containing global business and financial news to organizations worldwide. It offers information via newspapers, newswires, websites, applications, newsletters, magazines, proprietary databases, conferences and radio.

5. The appellant company appointed Dow Jones Consulting India Pvt Ltd [DJCIPL] on a principal to principal basis for distributing its products in the Indian market. Accordingly, the appellant company receives purchase price from DJCIPL at an arm's length price.

6. During the course of scrutiny assessment proceedings, the Assessing Officer was of the firm belief that the receipts from DJCIPL should be taxed in India as 'Royalty Income" under the provisions of the Act as well as India-USA DTAA.

7. Referring to the definition 'Royalty' given in Section 9(1)(vi) of the Act, the Assessing Officer treated the Indian receipts as taxable as 'Royalty'. The Assessing Officer further examined the relevant Article of India-USA DTAA and again formed a belief that Indian receipts are also taxable under the India-USA DTAA and concluded the proceedings by taxing the same.

8. Before us, the ld. counsel for the assessee vehemently stated that the assessee has received consideration for providing use of database by which it has allowed DJCIPL to used its copy right and has not given any coy of right, therefore, the impugned receipts cannot be taxed as 'Royalty' in the hands of the assessee.

9. Per contra, the ld. DR strongly supported the findings of the lower authorities.

10. We have given thoughtful consideration to the orders of the authorities below. At the very outset, we have to state that basis the provisions of section 92 of the Act, the assessee is entitled to invoke the provisions of India –USA DTAA to the extent it is more beneficial. Our view is fortified by the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Azadi Bachao Andalon 263 ITR 706. Accordingly, we will consider the beneficial provisions of the tax treaty to see whether the contention of the assessee that the alleged payment from DJCIPL is not royalty income.

11. As per Article 12 of the Tax Treaty, 'Royalty" is defined as under:

> "10.1.4.1 (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, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; 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 income, derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.

10.1.5 Thus, Article 12 of the Tax Treaty brings within the ambit of the definition of royalty, a payment made for the use of or the right to use a copyright of a literary, artistic or scientific work. Thus, only those payments that allow a payer to use / acquire a right to use a copyright in a literary, artistic or scientific work arc covered within the definition of royalty. Payments made for acquiring the right in use the product it sell, without allowing any right to use the copyright in the product, are not covered within the scope of royally winch may gel covered under the term 'Royalty' as per the Act. Further, unless the payments are made towards acquiring the right to use a copyright in a literary, artistic, or scientific work, definition of Royalty would not get attracted.

10.1.6 In the current case, there is no transfer of legal title in the copyrighted article as the same rests with the Applicant. All rights, title and interest in the licensed software, which is being claimed to be copyrighted article, are the exclusive property of the Applicant. DJCIPL has no authority to reproduce the data in any material form, to make any translation in the data or to make any adaptation in the data. Further, the end user cannot be said to have acquired a copyright

or right to use the copyright in the data and accordingly, the payments made by DJCIPL for accessing the database would not qualify as payments for the use of copyright.

10.1.7 The Applicant submits that the payments made by DJCIPL is not for the transfer of all or any rights in respect of the database Under the agreement, DJCIPL does not acquire any right in relation to the. products.

10.1.8 Thus in view of the above arguments, n shall be possible to conclude that the payment received by the Applicant cannot be treated as a consideration for the transfer of any 'copyright'. The transaction under consideration is tor the provision of accessing the database of the Applicant/financial products license, the same cannot he considered as 'royally' under Article 12 of the India-US DTAA.

10.1.9 Furthermore, in determining whether or not a payment is for the use of copyright, it is important to distinguish between a payment for the right to use the copyright in a programme and the right to use the programme itself. We have outlined below our detailed submission on the distinction between copyright and the copyrighted article:"

12. A perusal of the above Article shows that it brings within the ambit of the definition of 'Royalty' the payment made for use of, or the right to use any copyright of a literary, artistic, or scientific work. In our understanding of the Article, only those payments that allow a payer to use/acquire a right to use copyright in literary, artistic or scientific work are covered within the definition of 'Royalty'. In our considered view, the payments made for acquiring right to use product itself, without allowing any right to use the copy right in the product are not covered with the scope of 'Royalty' which may get covered under the term under Royalty as per the Act.

13. The facts of the case in hand show that there is no transfer of legal title in the copyrighted article as the same rests with the assessee. All rights, title and interest in the licensed software which is being claimed to be copyrighted article are the exclusive property of the assessee. DJCIPL has no authority to reproduce the date in any material form to make any translation in the date or to make adaptation in the data.

14. We further find that the end user cannot be said to have acquired a copy right or right to use the copy right in data. A perusal of the agreement with DJCIPL shows that DJCIPL does not acquire any right in relation to the products. In our considered view, in determining whether or not a payment is for use of copyright, it is important to distinguish between 'a payment for right to use the copy right in a program' and 'right to use the program itself'.

15. In the case in hand, the revenue derived by the assessee from granting limited access to its data base is akin to sale of book, wherein purchaser does not acquire any right to exploit the underlying copyright. In the case of a book, the publisher of the book grants the purchaser certain rights to use the content of the book, which is copyrighted. The purchaser of the book does not acquire the right to exploit the underlying copyright. When the purchaser reads the book, he only enjoys the contents. Similarly, the user of the database does not receive the right to exploit the copyright in the database he only enjoys the product in the normal course of his business.

16. In the present case, the appellant is only granting access to its database to DJCIPL. In our considered opinion, the payments received cannot be said to be 'Royalty' in nature. The transaction under consideration is for provision of accessing database of the assessee. Hence the same cannot be considered as 'Royalty' under Article 12 of the India-US DTAA. We, therefore, set aside the findings of the Assessing Officer and direct the Assessing Officer to delete the impugned addition. Ground No. 1 is, accordingly, allowed.

17, Since we have allowed Ground No. 1, the other grounds become otiose.

18. In the result, the appeal of the assessee in ITA No. 7364/DEL/2018 is allowed.

The order is pronounced in the open court on 14.12.2021.

Sd/- **Sd/-**

[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 14th December, 2021
VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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Date on which the typed draft is placed before the dictating Member	
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Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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