

# IN THE INCOME TAX APPELLATE TRIBUNAL DELHI BENCH 'D', NEW DELHI

**BEFORE SH. RAMIT KOCHAR, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.335/Del/2025  
Assessment Year: 2022-23

GoDaddy.com LLC 2155, E Go Daddy Way, Tempe AZ 85284 C/o Go Daddy India Domains and Hosting Services Private Limited 01A167,First Floor, We Work Bristol Chowk, Platina Tower, MG Road, Sector - 28, Gurgaon	<b>Vs.</b>	<b>ACIT</b> <b>Circle</b> <b>Intl. Tax – 1(3)(1)</b> <b>Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Ravi Sharma, Advocate Ms. Shruti Khimta, AR Ms. Supriya Mehta, CA
Respondent by	Sh. Vizay B. Vasanta, CIT DR

Date of hearing:	07/04/2025
Date of Pronouncement:	30/04/2025

**ORDER****PER SUDHIR KUMAR, JUDICIAL MEMBER:**

This appeal is preferred by the assessee is against the order dated 30.12.2024 passed by the Assessing Officer under Section 143(3) r.w.s. 144C of the Income tax Act 1961[ here in referred “the Act”]

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

1. *Ground 1 On the facts and circumstances of the case and in law, the final assessment order dated December 30, 2023, passed by the Ld. Assistant Commissioner of Income Tax Circle 1(3)(1), International Taxation, Delhi ("Ld. AO") under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 ("the Act"), making an addition of INR 4,65,32,43,941/- to the returned income of the Appellant, is contrary to provisions of the Act and void-ab-initio.*

2. *Ground 2 On the facts and circumstances of the case and in law, the final assessment order passed by the Ld. AO under section 143(3) read with section 144C(13), and the consequential notices issued/ orders passed in*

*pursuance thereof, are bad in law and void ab-initio as the final assessment order is in violation of the statutory timelines prescribed under section 153 of the Act.*

*3. Ground 3 On the facts and circumstances of the case and in law, the Ld. AO as well as Ld. Dispute Resolution Panel ("DRP") erred in holding that the Appellant is not entitled to the benefits 3 provided under the Double Taxation Avoidance Agreement ("DTAA") between India and the United States of America ("USA") as the Appellant does not qualify as a tax resident under Article 4 of the India-USA DTAA.*

*4. Ground 4 On the facts and circumstances of the case and in law, the Ld. AO as well as the Ld. DRP grossly erred in holding that the Appellant's receipts from domain name registration services amounting to INR 2,60,75,70,148/- be brought to tax as royalty and in doing so, have failed to appreciate: 4.1 that the receipts are not taxable in India under section 9(1)(vi) read with section 115A of the Act 4.2 that the receipts are not taxable in India under Article 12(3) of the India-USA DTAA. 4.3 that*

*the decision pronounced by the Hon'ble Delhi High Court in Appellant's own's case (ITA Nos. 891/2018, ITA 261/2019 and ITA 75/2023) holding that domain name registration charges cannot be taxed as 'royalty' under the provisions of the Act is binding on the Ld. AO.*

*5. On the facts and circumstances of the case and in law, the Ld. AO as well as the Ld. DRP erred in holding that the Appellant's receipts from web hosting, sale of on demand products, web designing, SSL certification services etc. amounting to INR 2,04,56,73,793/- be charged to tax as fee for technical services and in doing so, have failed to appreciate : 5.1 that the receipts are not taxable in India under section 9 (1)(vii) read with section 115A of the Act. 5.2 That the receipts are not taxable in India under Article 12(4) of the India-USA DTAA.*

*6. Ground 6 On the facts of the case and in law, the Ld. AO erred in levying interest under section 234B and 234C of the Act.*

*7. Ground nO.7. on the facts and circumstances of the case and in law, the Ld. AO erred in mechanically*

*initiating proceedings under section 274 read with 270 A of the Act.*

3. The brief facts of the case are that the GoDaddy.com LLC a limited liability company is one of the world's largest Internet Corporation, for Assigned Names and Numbers ("ICANN") accredited domain name registrars and provided other web services to its customers across the world. The Appellant, through its website (Godaddy.Com) is engaged in the business of providing facilitation of domain name registration, web hosting, web designing, SSL certification and other services. The nature of the services provided by the Appellant are outlined in the submission of the Appellant as below:

a) **Domain name registration and transfer services:** GD LLC registers and transfers both top level domains, including the prominent domains such as.com, .net, .org, and .info, as well as country code top level domains including, .us, .ca, .mx, .fr, .it, .de and .es. Any user

desirous of obtaining particular domain can access the website of GD LLC registers and place a request for the same. GD LLC checks the availability of a particular domain name with registry of domain names, as appointed by ICANN. Upon confirmation, GD LLC registers and desires domain for registration of the domain in its own name directly with GD LLC and also pays for such services through the channels as provided by GD LLC.

b) **Website hosting and e-mail:** GD LLC provides web hosting services which allow its users to develop their own websites / webpages by using the development tools and applications which are available online on GD LLC website. GD LLC hosts the website of its users on its servers/dedicated servers located outside India. Such websites are accessible from the servers by anyone on a 24x7 basis. GD LLC also offers to install and configure supporting applications for such websites on its servers.

c) **Web Designing services:** GD LLC assists its users in creating various designs for website header, website content, website logo, business card, letterhead etc., so that the users can build their own website. The relevant tools and applications required for the above services are available on the website of GD LLC itself.

d) **Sale of on-demand products:** GD LLC provides its domain users with email, calendar and other standard services with limited features. Additional features (like multiple email ids', additional space, synchronization etc.) are also available to the users for a service fee, which varies based on the service level requested by the users.

e) **SSL certification services:** GD LLC also provides SSL certification services, which ensures that the message to be sent is properly encrypted and reaches the intended recipient, GD LLC is a "Certifying Authority" ("CA") and is

eligible to issue SSL certificates to the users, who request for such certificate for a defined consideration. As a CA, GD LLC is required to maintain detailed records of what certificates have been issued and the information used to issue such certificates. Further, GD LLC may be subject to audit regularly to make ensure that it has followed defined procedures. An SSL is a software that encrypts messages flowing to and from a web page it protects to avoid eavesdropping or overhearing of such messages by any person. While an SSL certificate is not really necessary to secure a data, a certificate ensures that the certificate holder is really who he claims to be. Without a trusted signed certificate, while the data may be encrypted, the party with whom the communication is being undertaken may not be the one who is the intended recipient of the communication.



4. During the year under consideration, the Appellant had rendered the aforementioned services to its Indian customers from outside India. The details of revenue earned by the Appellant from various streams during the year under consideration are set out below:

Particulars	Amount ( INR)
Income from domain name registration services	2,60,75,70,148
Income from web hosting services, web designing, SSL certification services and sale of on-demand products (together “non domain services)	2,04,56,73,793
Total	4,65,32,43,941

5. For the year under consideration, the assessee filed its return of income on 22-11-2022 declaring total income of Rs 22,02,590/-and claimed refund for Rs. 2,27,50,450/-. The case of the assessee was selected for scrutiny under CASS and notice u/s 143(2) of the Act was served on the assessee. In the compliance of the notice the assessee furnished its return of income along with acknowledgment of filing return and copy of computation of income in the subject A.Y. The assessee provided the details of revenue received by in the subject A.Y. and submitted that assessee has received royalty and FTS for web hosting services/ on demand sale and web designing /SSL Certification services respectively. The assessee also filed a detailed submission providing factual and legal arguments as to why such income should not be charged to tax as royalty or FTS under the provisions of the Act read with India- USA tax treaty.

6. In conclusion of the scrutiny assessment proceedings, the Assistant Commissioner of Income-tax, Circle -1(3)(1), International Taxation, New Delhi ("Ld. AO") vide draft assessment order dated February 13, 2024, held as under:

**a. Income from domain name registration charges** - The Appellant's receipts from facilitation of domain name registration charges squarely fall within the definition of 'royalty' as per section 9(1)(vi) of the Act as well as Article 12(3)(a) of India-USA Double Taxation Avoidance Agreement ("DTAA" or "tax treaty") as (i) they are received for granting the right to use the servers of the Appellant, (ii) providing domain name registration services is a precondition for rendering web hosting etc. services, (iii) it is a highly technical process and (iv) because of its inherent quality.

**b. Income non-domain services** - The Appellant's receipts from provision of non-domain services such as web hosting, web-designing services etc. are taxable as fees for technical

services ("FTS") as per section 9(1)(vii) of the Act as well as Article 12(4)(a) of India-USA DTAA as (i) they are ancillary and subsidiary to the application or enjoyment of domain registration, (ii) involve high-technique, and (iii) fulfil the make available criteria as provided under Article 12(4)(b) of India-USA DTAA.

**c. Denial of the benefit under the India-USA tax treaty-**

The Appellant is not entitled to benefits under the India-USA tax treaty as only persons or entities that are 'liable to tax' under the laws of that country are considered to be residents for the purpose of tax treaties and since LLCs are fiscally transparent entities according to tax laws of the USA, their income is not 'subject to tax in their own hands in the USA and should not qualify as 'residents' of USA in terms of Article 4 of the India-USA DTAA.

6. Aggrieved with the draft assessment order, the Appellant filed its objections before the Hon'ble DRP on March 11,

2024. The Hon'ble DRP, vide directions issued under section 144C(1) of the Act, affirmed the findings and conclusion in the draft assessment order.

7. Consequently, the Ld. AO, following the directions of the Hon'ble DRP, passed a final assessment order, dated December 30, 2024. Aggrieved, the Appellant filed the subject appeal before the Hon'ble Tribunal.

8. Ld. Counsel of the assessee has argued the issue ground wise and as regard ground no. 1 & 2 the Ld. Counsel not pressed these grounds, hence decided against the assessee as not pressed.

9. Ground no.3-arising out of eligibility of the assessee benefit of DTAA and taxability of income from non-domain services such as web hosting, web designing services etc. The Ld. Counsel for assessee has submitted that Appellant had claimed that the income earned by it from provision of non- domain services was not chargeable to tax in India in

accordance with the provisions of the Act read with India-USA DTAA. However, in the assessment order, the Ld. AO had held that the income earned by the appellant was taxable in India as FTS /FIS as per section 9(1)(vii) of the Act as well as 12(4) (a) of India -USADTAA.

10. Ld. Counsel for assessee has submitted that in the assessment order, the AO had denied the benefits of the India-USDTAA to the assessee by alleging that since LLCXs are fiscally transparent entities according to USA tax laws, their Income is not liable to tax in USA and thus, they should not qualify as 'resident' of USA as per Article 4(1) (a) of the India -Usa DTAA for the purpose of availing benefits provided therein. Furthermore, the LD. AO had also held that since the appellant is a corporation as per the USA tax laws, it should also not come under the provision of Article 4(1)(b) of India-USA DTAA which state that entities like partnerships, estates or trusts can be considered to be

residents of the USA if the income derived by them is 'subject to tax' in the USA either own hands or in the hands of their partners / beneficiaries.

11. In this context the Id. Counsel has submitted that the issue is no more res integra after the decision of co-ordinate bench in the appellant's sister concern, Wild west domains, LLC vs ACIT (ITA No. 1774/Del/2022) the co-ordinate bench held that fiscally transparent entities are entitled to the benefits of the relevant DTAA where a valid TRC has been issued by the revenue authorities of the concerned jurisdiction. The co-ordinate bench in the assessee's own case in ITA No. 1558 to 1561 /Del/2022 and 3027/Del/2023 wherein the tribunal made a distinction between liability to taxation and actual payment tax. The Tribunal has clarified that liability to taxation refers to the fundamental power to tax an income through the incidence

of taxation, which may differ from the actual payment to tax

The Co-ordinate bench in the assessee's own case held that:

*11.8 Ld. Counsel has submitted that in the instant case, it is relevant to note that the Appellant offers various packages to its customers for, hosting their websites on its servers, procure various tools for designing their web pages and avail other web services. Such services remain active for a fixed time period. Upon expiry of such fixed period, the service package is required to be renewed and the users are not permitted to continue using such services on their own. Furthermore, the users are not equipped to apply or deploy such services on their own independently without resorting back to the Appellant. Accordingly, rendition of such services in no manner 'makes available' any technical knowledge, experience, skill, know-how, or processes or involves development or transfer of any technical plan or technical design to the users.*

*11.9 As with regard to the above, our attention is drawn towards the following judicial precedents wherein it has*



*been opined that the consideration received from provision of web hosting services is not subject to tax as FTS / FIS:- Decision of the coordinate bench of this Tribunal in the case of/ Millennium Infocom Technologies Ltd. [2009] 117 ITD 114 (Delhi) wherein it was opined that providing of space on the servers by the non-residents for the purpose of hosting of the website will not result in the provision of technical service for a fee and accordingly, such payments cannot be taxed as FTS / FIS in India.*

*Recent decision of coordinate bench of this Tribunal in the case of/ Campus Eai India Pvt. Ltd. [TS-631-ITAT-2023(DEL)] wherein, following the decision of Millennium Infocom Technologies Ltd. (supra), it was held that the income from web hosting services do not constitute 'royalty' or FTS as per the provisions of the Act read with India-Mauritius DTAA.*

*Decision of coordinate bench of this Tribunal in the case of Amazon/ Web Services, Inc. [TS-419-ITAT-2023(DEL)] wherein it was held that the payments made for cloud computing / AWS services, which inter alia includes cloud*

*hosting, is not taxable as FTS / FIS under the provisions of the Act read with India-USA DTAA. The Tribunal concluded that the AWS services provided by the assessee are standardized services that do not provide any technical services to its customers nor satisfy the ‘make available’ test as the customer will not be able to make use of the technical knowledge, skill, process etc. used by the assessee in providing cloud services by itself in its business or for its own benefit without recourse to the assessee in future.*

*Decision of Pune Tribunal in the case of ITO vs.M/s Sunguard/ Availability Services LLP (ITA No.258/PUN/2021) wherein the Bench held that Cloud Infrastructure Managed Private Cloud and Colocation services provided by the assessee does not satisfy the condition stipulated by Article 12(4)(b) of India-USA DTAA which requires that the services concerned should “make available technical knowledge” to the recipient/payer such that that the payer concerned is independently able to*

*make use of the technical know-how etc. coming from the service provider's side.*

*Decision of Ahmedabad Tribunal in the case of Esm Sys Pvt. Ltd. vs.) ITO [TS-347-ITAT-2020(Ahd)] wherein the Tribunal held that payment of web hosting charges by the Appellant to a USA Co. do not constitute FIS as it does not involve any sharing of knowledge or know-how or any technology or fulfils the 'make available' condition as enshrined in Article 12(4) of the India-USA DTAA.*

*12. Ld. DR has relied the order of ld. Tax authorities below.*

*13. After taking into consideration all submissions and the material on record we find that ld. AO has erred in giving a findings that being a LLP the assessee is not eligible for treaty benefits. The law in this regard is quite settled as it is now settled that the term, 'liability to taxation' has to be distinguished from actual payment of taxation. 'Liability to taxation' indicates the powers of taxing an income though the incidence of taxation and actual payment may be*

*different. The reliance of the ld. counsel on the decision of the coordinate bench in the case of Wild West Domains, LLC (supra) certainly takes care of the issue wherein relying the decision of the Mumbai Bench of the Tribunal in the case Linklaters LLP vs. ITO (Int. Taxation) 40 SOT 51 and Herbert Smith Freebills LLP vs. ACIT (TS 822-ITAT-202 (Del Trib.) the coordinate bench has given benefit of DTAA, irrespective of the fact that the assessee in that case was fiscally transparent entity in USA, like the present assessee. Accordingly, ground No.2 is sustained in favour of the appellant.*

12. In the back ground of the aforesaid discussions and respectfully following the above decision we hold that the assessee should be qualify as a resident under article 4 of the India-USA DTAA and entitled to avail the benefits under the India-USAA DTAA. Ground raised by assessee is decided in favour of the assessee.

13. Ground No 4: Ld. Counsel for assessee submitted that during the year under consideration the Appellant had

earned income amounting to INR 2,60,75,70,148/- from providing domain name registration services to Indian Customers. The return of income filed by the assessee was picked up for scrutiny assessment. In the compliance of notices u/s 143(2) and 141(1) of the Act the Appellant furnished the detailed submissions providing factual and legal arguments as to why the income from domain name registration services should not be charged to tax as 'royalty' or FTS/ Fee for included services ("FIS") under the provisions of the Act read with India- USA DTAA.in the compliance of notices u/s 143(2) and 141(1) of the Act. However, the AO had passed the assessment order and held that the income from domain name registration services squarely fell within the definition of 'royalty' as per section 9(1)(vi) of the Act as well as Article 12(3) (a) of the India-USA DTAA.

14.As with regard to the same the Ld. Counsel submitted that Appellant is an ICANN accredited domain name registrar which, facilities the registration of domain names. Any Registrant/ customer desirous of registering a domain name can approach any one of these registrars including the Appellant) to check whether the proposed domain name is available. The Appellant would then ask the relevant registry whether the proposed domain name is available, which would the its data based and inform the ‘registrar’(i.e. Appellant) accordingly. If the domain name is available ( i.e. it is not registered in the name of any else), the customer would get the domain name registered with registry with the help of the appellant and would pay a periodical fee to the Appellant, a portion of which would be retained by the Appellant with the other parts going to the relevant registry and ICANN.

15. The Appellant, being a Registrar, is not the owner of domain that it helps to register and does not hold any proprietorship rights in the names used domain names. This is affirmed by clause 3.5 of the accreditation agreement between the Appellant and ICANN and reference to page no.161 of the paper book and clause 2 of the agreement between the Appellant and its customers available at page no. 56 of the paper book was made. It was submitted that in the absence of ownership over domain name, the Appellant cannot confer the right to use or transfer the right to use such domain names to another person/ entity. Therefore, the income earned by the Appellant from domain name registration services is not chargeable to tax in India as 'royalty' under the provision of section 9(1) (vi) of the act as well as Article 12(3) of India-USADTAA.

16. We find that this view has also been affirmed by the Coordinate Bench in ITA No. 1558 to 1561/Del/2022 & ITA No. 3027/Del/2023 Go Daddy. Com, LLC vs ACIT relying the Hon'ble High Court decision in the Assesse's own case for A.Y. 2013-14 to 2015-16 (ITA No. 891/2018, ITA 261/2019 and & 75/2023) wherein, vide order dated 01-01-2025 it was held that the income earned by the Appellant from providing domain name registration services to Indian customers is not taxable in India under either section 9(1) (vi) of the Act or Article 12(3) of the India-USADTAA. The relevant findings are reproduced as under as under:

*“8. We find that this view has also been affirmed by Hon'ble Delhi High Court in the Appellant's own case for AY 2013-14 to AY 2015-16 (ITA Nos. 891/2018, ITA 261/2019 and ITA 75/2023) wherein, vide order dated December 11, 2023, it has been held that the income earned by the Appellant from assisting customers in registration of domain names cannot be treated as 'royalty' under the provisions of*



*section 9(1)(vi) of the Act itself. The relevant findings are reproduced hereunder:*

*“15.2 A close perusal of the aforementioned clause would show that what is agreed between the appellant/assessee and its customers is that mere registration of a domain name does not create any proprietorship rights in the name used as the domain name or in the domain name registration either in the appellant/assessee or the customers or even any other third party.*

*15.3 Therefore, the submission advanced on behalf of the appellant/assessee, i.e., that since it is not the domain name's owner, it cannot confer the right to use or transfer the right to use the domain name to another person/entity, deserves acceptance.*

*16. We are also of the view that passing off and injunction actions are entertained by the Courts where domain name registrations are brought about in bad faith or to perpetuate fraud. The Courts tend to grant injunctive relief where the defendant, in such actions, is seen to be feeding off the plaintiff's goodwill and causing confusion amongst its customers regarding the origin of the subject goods and services. Such reliefs are granted on the basis that the definition of the expression "mark" includes a "name", and in turn, the expression*

*"trademark" so defined to include a mark, distinguishes the goods and services of one person from those of others. Therefore it is possible in a given situation that a domain name may have the attributes of a trademark. [See section 2m read with section 2zb of Trademarks Act, 1999].*

*16.1 The Supreme Court, in Satyam Infoway, held that it is the registrant (and not the Registrar) who owns the domain name, and can protect its goodwill by initiating passing off action against a subsequent registrant of the same domain name/a deceptively similar domain name. The observations made in the following paragraphs of Satyam Infoway, being apposite, are extracted hereafter:*

*"What is important for the purposes of the present appeal is the protection given to intellectual property in domain names. A prior registrant can protect its domain name against subsequent registrants. Confusing similarity in domain names may be a ground for complaint and similarity is to be decided on the possibility of deception amongst potential customers. The defences available to a complainant are also substantially similar to those available to an action for passing off under trademark law... What is also important is that the respondent admittedly adopted the mark after the appellant. The appellant is the*

*prior user and has the right to debar the respondent from eating into the goodwill it may have built up in connection with the name..."*

*16.2 From a perusal of the above, it is clear that the Court in Satyam Infotech was concerned only with the rights of the domain name owner and not the Registrar, while determining whether passing off action can be initiated in relation to domain names. Given this position, the Tribunal's reliance on this judgment is misconceived.*

*16.3 In this case, however, we need not travel down this path, as the appellant/assessee is only acting as a Registrar and thus offering its services to its customers for having their domain names registered.*

*16.4 The aforementioned principle may have been attracted if the appellant/assessee had granted rights in or transferred the right to use its domain name, i.e., Godaddy.com, to a third person. Therefore, the fee received by the appellant/assessee for registration of domain names of third parties, i.e., its customers, cannot be treated as royalty."*

16. The Ld. DR fairly admitted that the issue is covered by the assessee's own case. Respectfully following the decision of the Co-ordinate bench and ratio decided by the Hon'ble

High Court the ground raised by the assessee is decided in favour of the assessee.

17. Ground No. 5 Id. Counsel for the assessee submitted that during the year under consideration the Appellant had earned income amount to INR 2,04,56,73,793/-from providing services (such as web hosting, web designing, SSL certification services and sale of on-demand products) to Indian customers. He further submitted that domain name registration services are distinct from web hosting services. Domain name registration services involve assisting customers with registration of their domain names whereas web hosting services allow the customers to make their website accessible to users. Whilst these services work together to create a functioning website, they operate independently, and customers have the flexibility to purchase them from different providers based on their specific needs and preference. The webhosting services

should not be classified as ancillary and subsidiary to the application or enjoyment of domain registration. He also submitted that appellant is entitled to avail the beneficial provisions of the India-USDTAA. The Co-ordinate bench in the assessee's own case in ITA nO.1558 to 1561/Del/2022 and ITA No. 3027/Del/2023 held that the income from provision of non-domain services (such as web hosting, web designing services etc.) do not make available any technical knowledge, experience, skills, know-how, or processes or result in transfer of any technical plan or technical design to the users. The relevant findings are as under:

*14. Next we have no hesitation to accept the proposition set up by the ld. Counsel that once ground no. 3 is decided in favour of assessee and the receipts from domain name registration services are held to be not liable to be taxed as royalty income then by alleging them to taxable being ancillary and subsidiary to the application or enjoyment of a right, property or information for which are royalties are received, cannot be accepted.*

14.1 In fact it is even questionable that non-domain name services can be ancillary and subsidiary to the application or enjoyment of a right, property or information for domain name services. As for this we need to examine what exactly is scope non-domain service. Here we will like to examine the discussion of the Id. AO on this count and we find that Id. AO on page 15 of impugned order has observed as follows:-

“It can be seen that domain registration is an integral part of the services which are offered by the assessee. The assessee in its submissions has not distinguished how domain registration charges are different from web hosting charges, the latter being duly admitted by the assessee itself as royalty which is duly reflected in its return of income. Domain registration partakes the character of web hosting charges since without domain registration being in place, web hosting is not possible. As domain registration charges have been essentially charged for granting right to use the servers of the assessee, domain registration being the precondition to web hosting etc, and same being highly technical process and because of its inherent quality, the same squarely falls under the definition of royalty under the provisions of the Act and the

*Double Taxation Avoidance Agreement. Besides, both the services/facilities ie. web hosting and domain name registration flow from the same server, it is only because of the peculiar nature of the two i.e. web hosting and domain name registration fall under different categories i.e. the first under FTS (because it involved high technique and make available condition is fulfilled as discussed earlier) and latter under royalty (because of the right it confers and the equipment it 24 provides as discussed earlier). Here, it is likely that the assessee is not offering receipts from domain registration because it has to pay certain fixed percentage to ICANN which is not being paid by the US Government. However, it is the relationship of assessee and ICANN which should not affect the Indian Revenue in any way. In case, the assessee feels the burden of taxation because of ICANN payments, the assessee should recover the same (tax) payable to India from ICANN.”*

*14.2 The aforesaid findings of ld. AO show a lack of understanding of the nature of non-domain services. Though domain names and web hosting are often purchased together, they are actually two different things. A domain name is the permanent address of a website on the Internet. It's what*

people type into their web browsers to find a particular website. Purchasing, registering, and using a domain name for a website, will make it much easier for site visitors to remember the entity connected to the domain name. When they enter domain name in their browsers, their computer sends a request to a cluster of servers called the Domain Name System (DNS). We don't really need to know what goes on behind-the-scenes here. The important thing to remember is that the DNS then responds with the IP address of that website's hosting server, which is how people are able to use domain name to reach a website of a particular entity or individual.

14.3 Web hosting is where website files are stored. Hosting is the disk space, bandwidth, and tools used to create and maintain a website. It is like the home of website where it actually lives. A good way to think about this is if the domain name were the address of an individual's house, then web hosting would be the actual house that the address points to. All websites on the internet need web hosting. This web hosting company may be the same company which has provided the domain name or a different company. This computer, also known as a hosting server, contains website's



files and sends them back to the users' web browsers. Web hosting companies specialize in storing and serving websites. They provide resources like RAM, bandwidth, and CDN, which help improve the speed and performance of a website. Web server is basically a computer that usually runs websites. It is used to host websites and contain one or more websites. It stores web server software and website's component files. It processes network requests of users and serves them with files that create web pages. A web host provides multiple web servers to host many different websites, ensuring they are accessible on the internet. One can even set up a web site on two separate servers from two different hosting companies with the same domain just by ensuring that domain names are set up on both servers. 14.4. So the ld. AO has erred in concluding that for web hosting and domain same server of assessee is used and that makes it integrated services. While the fact is that they are entirely different set of services with different set of technical aspects involved in making a web site come live. A person may buy domain and hosting from different providers. It even has benefits like buying domains and hosting from different providers can give you more flexibility and

*control over your website, as such person is able to choose the best provider for each service. It is sometimes more cost-effective, as one may find better deals on either domain or hosting by shopping around. Thus ld. AO has fallen in error to consider web hosting charges and other non-domain services charges as FTS, being ancillary and subsidiary to the application or enjoyment of domain name registration.*

*15. Next examining the 'make available' aspect we find that same has been sufficiently clarified in various decisions cited before us. It is essential to apply the 'make available' clause that there should be some element of transmitting technical knowledge by which an enduring benefit ensues. However, in a case of purchase of domain name or hosting services or other non-domain name services, there is actually no transmission of technical knowledge and the person acquiring domain name or availing hosting services merely pays for customized services available with the service providers. The customized technology and services of the provider are fairly available to everyone who proceeds to acquire a domain name or pays for web hosting services. There is no transfer of any knowledge or know-how by the service provider which can deliver any*

*enduring benefit to said person. In fact, to make the website operational on the basis of ownership of a domain name and having services of web hosting, the person creating a website has to independently engage its technological inputs which may be unique to the needs of that person in terms of the objectives of the website.*

*15.1 Thus the income from provision of non-domain services (such as web hosting, web designing services etc.) do not 'make available' any technical knowledge, experience, skill, know-how, or processes or result in transfer of any technical plan or technical design to the users. Accordingly, the consideration received by the Appellant for rendering such services should fall outside the ambit as FIS as per Article 12(4)(b) of the India-USA DTAA. Ground no. 4 is sustained.*

18. Respectfully following the decision of the Co-ordinate bench, we decided the ground no 5 raised by the assessee in favour of the assessee.

19. In the background of the aforesaid discussions and by respectfully following the decision of the Co-ordinate bench the appeal of the assessee is partly allowed.

20. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30.04.2025

**Sd/-**  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

\*Neha, SR. PS \*

Date: 30.04.2025

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI