Payment made by Google India to Ireland group company for adwords is not royalty: ITAT Bangalore

Google India Pvt Ltd (IT(TP)A No.1513/Bang/2013 : Asst.Year 2009-2010 IT(TP)A No.1514/Bang/2013 : Asst.Year 2010-2011 IT(TP)A No.1515/Bang/2013 : Asst.Year 2011-2012 IT(TP)A No.1516/Bang/2013 : Asst.Year 2012-2013)

Facts:

1. The appeals at the instance of the assessee were originally disposed by the ITAT vide its common order dated 23.10.2017. On further appeal at the instance of the assessee, the Hon'ble High Court vide judgment dated 17.04.2021 in ITA No.883/2017, 897/2017 to 899/2017, restored the matter to the ITAT for de novo consideration.

2. The assessee is a company engaged in the business of providing Information Technology (IT) and Information Technology Enabled Services (ITES) to its group companies. Further, the assessee also acts as a distributor for Adwords Programme in India.

3. Under the Google AdWords Program Distribution Agreement dated 12.12.2005 (Agreement) entered into between GIPL and Google Ireland, Google India is appointed as a non-exclusive authorized distributor of AdWords program to the advertisers in India.

4. The issues involved in these appeals revolve around the taxability of payments received by GIL from the assessee, who is engaged in the business of online advertisement space to advertisers in India.

5. The Revenue had sought to characterize these payments received by GIL to be royalty as defined in section 9(1)(vi) of the I.T.Act r.w. Article 12(3) of the India-Ireland Double Taxation Avoidance Agreement (India-Ireland DTAA) and thus chargeable to tax in India in the hands of GIL.

6. The case of the assessee is that the said payments are in the nature of business profits, which are chargeable to tax in Ireland and not in India.

ITAT Bangalore held as below:

1. On a consideration of all the relevant agreements and the facts on record, we find that none of the rights as per section 14(a)/(b) and section 30 of the Copyright Act, 1957 have been transferred by Google Ireland to the assessee in the present case.

2. As held by the Hon'ble Apex Court in the case of Engineering Analysis Centre of Excellence Private Limited v. CIT & Anr., mere use of or right to use a computer program without any transfer of underlying copyright in it as per section 14(a)/(b) or section 30 of the Copyright Act, 1957 will not be satisfying the definition of Royalty under the Act / DTAA.

3. Similarly, use of confidential information, software technology, training documents and others are all 'literary work' with copyrights in it owned by the foreign entity and there was no transfer or license of copyrights in favour of the assessee company.

4. Hence, the impugned payments cannot be characterised as 'Royalty' under the DTAA