
Pr. Commissioner of Income Tax-2 Vs Mobisoft Tele Solutions P. Ltd.

ITAs-193-194-197-2015 (OandM)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 7, 2015

Citation: (2016) 237 TAXMAN 221

Hon'ble Judges: S.J. Vazifdar, Actg. C.J. and Gurmeet Singh Sandhawalia, J.

Bench: Division Bench

Advocate: Urvashi Dhugga, Advocate, for the Appellant

Judgement

S.J. Vazifdar, Actg. C.J.

1. These appeals are against the orders of the Income Tax Appellate Tribunal dated 28.10.2014 setting aside the order of the CIT (Appeals) for

the assessment years 2006-2007, 2007-2008 and 2008-2009.

2. The CIT (Appeals) dismissed the respondent/assessee's appeal against the order of the Assessing Officer adding back the amounts paid by the

assessee to one Tarun Mohan by way of royalty for the use of the brand name phoneytunes.com.

3. According to the appellant, the following substantial questions of law arise in these cases:--

(i) Whether on the facts and in the circumstances of the case and in law, the Hon"ble ITAT is justified in holding that royalty payment to a related

person would be allowable for business expenditure u/s. 37(1) of the Act whereas the same has not been exclusively and wholly incurred for

business purposes?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon"ble ITAT is justified in holding that royalty payment would be

allowable business expenditure u/s. 37(1) when the same has not been paid to the owner/holder of the patent, design, copyright and technical

know how or to an inventor and where there is no transfer/acquisition of any assets?

(iii) Whether on the facts and in the circumstances of the case and in law, the Hon"ble ITAT is justified in holding that royalty payment would be

allowable business expenditure u/s. 37(1) inspite of the fact that expenditure on royalty payment is capital in nature?

(iv) Whether on facts and circumstances of the case and in law, the order of the Tribunal is not perverse in holding that the transaction was not a

colourable device to reduce the tax liability of the company in which the Managing Director was none other than the beneficiary proprietor of

royalty particularly when no evidence of any patented product in possession of the proprietor could be produced and all the stipulations in the

agreement showed that it was for the exclusive benefit of the proprietor and also when no proof of brand value of phoneytunes.com was

established?

4. The matter is in fact uncomplicated. The said Tarun Mohan is also a Director in the assessee-company. He and his family members are the only

share-holders of the assessee-company. The said Tarun Mohan carried on business in the name and style of phoneytunes.com as the sole

proprietor thereof. The business comprised of providing value added telecom services to various mobile companies for ring tones, images, wall

papers etc. He had entered into agreements with various music companies under which he acquired their rights as also the right to make ring tones

on the basis thereof. In turn, he provided individual mobile users the tones through cellular operating companies. He paid royalty to the music

companies in consideration of these agreements. He in turn was remunerated by collecting fees from the customers for downloading the ring tones

etc. The Tribunal has come to a finding of fact that the said Tarun Mohan had invented technology through which ring tones can be created of the

said songs. Whether it was an invention or not is not relevant. The fact is that he devised the manner of providing the said services. It appears that

Tarun Mohan had also registered his copyright in respect of the word "phoneytunes.com".

5. On 18.02.2003, Tarun Mohan entered into an agreement with the respondent/assessee. Articles 2 and 3 of the agreement read as under:--

ARTICLE 2 - TRANSFER

In consideration of the agreement and subject to the terms and conditions hereto, PT hereby agrees to sell, assign, transfer and convey the assets

to ITIDA as provided herein and ITIDA would purchase and acquire the assets on and from the closing date subject to the terms and conditions

of this agreement. The assets relating to the business which are to be sold, assigned, transferred and conveyed shall include without limitation the

following:--

1. Fixed assets.
2. All inventories to the extent listed in Schedule-1.
3. The intellectual property rights in the business except the brand name of phoneytunes.com shall be transferred and for using the brand name

ITIDA has to pay 2% of gross revenue receipts as royalty after two years of the closing date.

4. All other current assets including cash & bank balances and loans & advances.

The assets as mentioned above shall be sold, transferred, conveyed and assigned to ITIDA free and clear from any encumbrances, liens, charges,

claims, restrictions of whatsoever nature.

ARTICLE 3 - CONSIDERATION

In consideration of PT agreeing to sell, assign, transfer and convey the assets to ITIDA on the terms and conditions stated in this agreement,

ITIDA shall pay to Mr. Tarun Mohan, sole proprietor of PT a purchase price or consideration of a sum of Rs. 5,81,231/- and in consideration of

all intellectual property rights (other than brand name) and for the use of brand name of phoneytunes.com a consideration of 2% of the gross

revenue receipts under the relevant business after 2 years of closing date.

6. It is clear, therefore, that Tarun Mohan retained the brand name phoneytunes.com. He merely permitted the assessee to use the intellectual

property right acquired by him, namely, the brand name/trade-mark phoneytunes.com. He had not assigned the same to the assessee, but only

licensed the same to the assessee.

7. The Assessing Officer and the CIT (Appeals) wrongly came to the conclusion that Tarun Mohan being a Director of the respondent was not

entitled to enter into an agreement for the transfer of his assets to the company. They held that the same person cannot enter into an agreement with

himself. This ignores the fundamental concept that the assessee being a company incorporated under the Companies Act, 1956 is a separate legal

juristic entity.

8. The Tribunal, therefore, rightly disagreed with this finding. The Tribunal also rightly observed that Tarun Mohan had in any event paid the entire

taxes in respect of the royalty received by him. That, however, would not make a difference for if the deduction sought by the assessee is wrongful,

the Assessing Officer is bound to disallow the same.

9. The CIT (Appeals) observed that there was no evidence to prove that Tarun Mohan had developed any product for which he had any

copyright or trade mark. Firstly, as we noted earlier, he had obtained the copyright in respect of the artistic work comprised in the name

phoneytunes.com. Registration of the copyright is, however, not compulsory. In any event, phoneytunes.com was a part of his trading style and

constitutes a trade mark. This is not a ground for challenging his entitlement to the trade mark. The assessee was entitled, therefore, to use the

trade mark as a licensee thereof. The payment of royalty for the same is nothing unusual or out of place.

10. In these circumstances, the deletion by the Tribunal of the addition of royalty by the Assessing Officer and confirmed by the CIT (Appeals)

was rightly set aside by the Tribunal. No question of law arises.

11. The appeals are accordingly dismissed.