IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MARCH, 2024

PRESENT

THE HON'BLE MR JUSTICE S.G.PANDIT

AND

THE HON'BLE MR JUSTICE C.M. POONACHA

INCOME TAX APPEAL NO.13 OF 2024

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
INTERNATIONAL TAXATION,
4TH FLOOR, BMTC BUILDING,
80 FEET ROAD, KORMANGALA,
BENGALURU – 560 095.

2. THE DEPUTY COMMISSIONER OF INCOME TAX
INTERNATIONAL TAXATION, CIRCLE 2(2)
4TH FLOOR, BMTC BUILDING,
80 FEET ROAD, KORMANGALA,
BENGALURU – 560 095.

…APPELLANTS

(BY SRI.Y.V.RAVIRAJ ADVOCATE A/W
SRI.M.DILIP, ADVOCATES)

AND:

Digitally signed by A K CHANDRIKA
Location: HIGH COURT OF KARNATAKA

M/S AL TELEKOM AUSTRIA
AKTIENGESELLSCHAFT, HB3,
ACC TAXES TELEKOM, AUSTRIA BUILDING,
LASSALLESTRASSE, 9, LEOPOLDSTADT,
WIEN 1020, AUSTRIA. ZIP CODE – 1020

…RESPONDENT

THIS INCOME TAX APPEAL FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:25.08.2023 PASSED IN IA(IT)A NO.339 /BANG/2023, FOR THE ASSESSMENT YEAR 2012-13 PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN & ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, ***S.G.PANDIT J.,*** DELIVERED THE FOLLOWING:

JUDGMENT

Heard Sri. Y.V.Raviraj, learned counsel along with Sri. M.Dilip, learned counsel for the appellants and perused the appeal papers.

2. Learned counsel for the appellants would submit that the question arises in this appeal is as to whether the Tribunal was right in holding that payments to Non-resident telecom operators for interconnect services and capacity transfer are not taxable as royalty without considering that the processes were triggered from India, thereby making the source of such income accure/arise out of India, for the Non-resident telecom operators to earn the income and the payments were made by the deductor by collecting it from the ultimate payer i.e., the end consumer in India for services rendered?

3. The above issue was considered by a Co-ordinate Bench of this court in ITA.No.160/2015 and connected appeals. By judgment dated 14.07.2023, it is held that interconnect service charges would not constitute royalty. Paragraph No.21 of the judgment reads as follows:

> *"The third question is, whether the payments made to NTOS for providing interconnect services and transfer of capacity in foreign countries is chargeable to tax as royalty. It was argued by Shri.Pardiwala, that for subsequent years in assessee's own case, the ITAT has held that tax is not deductable when payment is made to non-resident telecom operator. This factual aspect is not refuted. Thus the Revenue has reviewed its earlier stand for the subsequent assessment years placing reliance on Viacom etc[35], rendered by the ITAT. In that view of the matter this question also needs to be answered against the Revenue."*

Following the decision of Co-ordinate Bench dated 14.07.2023 in ITA No.160/2015 and connected appeals, the above appeal stands rejected.

Sd/-
JUDGE

Sd/-
JUDGE

SMJ