Understanding the Concept of Virtual PE

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Understanding the problem involved

- Double Taxation Avoidance Agreements and the Definition of Permanent Establishment.
- Article 5
- Sample DTAA Article 5(1)
- ARTICLE 5
- **PERMANENT ESTABLISHMENT**
- *1*. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
- Construction PE, Service PE, Installation and Assembly PE, Equipment PE etc. Look at any one DTAA as an example.
- Brick and Motor Model

Technology and the rapid transition of business models

- For over two decades information technology has become an integral part of modern society. Moreover, technology has rapidly invaded everyday life and has brought with it a whole new industry, technological and telecommunication developments, and, most importantly, new ways in which business operates, encouraging globalization and integration of the markets (OECD, Action plan on BEPS, 2013, 7).
- In fact, due to the global integration of economies and markets it is possible for corporations that operate all around the world to shift manufacturing bases from high-cost to low-cost locations. Moreover, such enterprises manage risks and of developing by means of global models based on matrix management organizations and integrated supply chains that centralize several functions at a regional or global level. Additionally, globalization has allowed multinational corporations exploit intellectual property at different levels within such organizations (OECD, Action plan on BEPS, 2013, 8).

- Currently, the PE is understood as the fixed place of business through which the business of an enterprise is wholly or partly carried on (OECD Model tax Convention on Income and Capital, 2010). However, this concept has experienced a noteworthy dilution during the recent years to meet emerging commercial practices, where physical presence is not required. So far, although several theories has been formulated to adapt the current definition of permanent establishment to the challenges provided by the electronic commerce, the international organs, such as OECD, UN and other Governmental Authorities have not reached to a conclusion in the most effective framework to warrant the taxation of such transactions in the Country where economic activities occur and where value is actually generated.
- As it is well known, MNC's have exploited their digital presence to obtain significant income from different countries with low taxes, and in most of the cases without paying taxes. Thus, it has led to proposals to redefine the PE concept. According to this "Virtual PE" (VPE) theory, it is proposed that the taxing nexus for electronic commerce should be "the continuous commercially significant conduit of business activity", rather than the fixed place of business. The virtual PE approach applies to the jurisdictional criterion for source-based taxation of profits. Furthermore, the modern PE definition should be "reinvented" in order to apply to electronic commerce the original idea of taxation on basis of economic commitment and equivalence and establish common thresholds for differentiating commercial mainstream from auxiliary business activity.

Right Florists Case [2013] 32 taxmann.com 99(Kolkata –Trib.)

Order Dated- 12.04.2013

<u>Brief Facts-</u>

- The assessee-company based in India made advertisement payments to Google and Yahoo ("F.Co") - Google-Ireland and Yahoo-USA for advertising its business. (Online advertising fees paid to foreign search engine).
- The assessee didn't withhold the tax (TDS) u/s 195 of the Act for the payments made to F.Co for the reasons that F.Co has no PE in India therefore, the amounts were not taxable in view of the provisions of DTAAs.
- The Assessing Officer disallowed the payment u/s 40(a)(i) for for non-deduction of tax at source holding the amount as taxable in the hands of F.Co

Right Florists Case [2013] 32 taxmann.com 99(Kolkata –Trib.)

Order Dated- 12.04.2013

Tribunal's Observations on PE

It was examined whether a search engine like Google or Yahoo can be said to have a PE, within its primary meaning, in India.

- Tribunal observed that the traditional concept of PE, which was conceived at a point of time when internet and e-commerce was not even on the radar, does not really fit into the modern day world in which virtual presence through internet , in certain respects, is as effective as physical presence for carrying on businesses.

- A search engine presence in a location, other than the location of its effective place of management, is only on the internet or by way of a website, which is not a form of physical presence.

The Court held that-

- "**12.** Let us first examine as to what is primary meaning of a PE and whether a search engine like Google or Yahoo can be said to have a PE, within its primary meaning, in India. It is important to bear in mind the fact that the concept of PE evolved because in traditional commerce, physical presence was required in the source country if any significant level of business was to be carried on, but, with the development of internet, correlation between the size of business and extent of physical presence in the source country has virtually vanished. In that sense, the traditional concept of PE, which was conceived at a point of time when internet and e commerce was not even on the radar, does not really fit into the modern day world in which virtual presence through internet, in certain respects, is as effective as physical presence for carrying on businesses. At a policy level, taxation may infringe neutrality when it is dependent on the form of presence, i.e. physical presence *vis-a-vis* virtual presence, traditional commerce vis-à-vis ecommerce, direct presence *vis-à-vis* presence through a dependent agent. A search engine's presence in a location, other than the location of its effective place of management, is only on the internet or by way of a website, which is not a form of physical presence. As to whether an website can be PE or not, we find guidance from High Powered Committee Report which, while recognizing the need to make form of presence tax neutral but realizing the limitations of the scope of existing principles and rules, has also observed that, "The Committee, therefore, supports the view that the concept of PE should be abandoned and a serious attempt should be made within OECD or the UN to find an alternative to the concept of PE". Clearly, conventional PE tests fails in this virtual world even when a reasonable level of commercial activity is crossed by foreign enterprise. It is a policy decision that Government has to take as to whether it wants to reconcile to the fact that conventional PE model has outlived its utility as an instrument of invoking taxing rights upon reaching a reasonable level of commercial activity and that it does fringe neutrality as to the form of commercial presence i.e. physical presence or virtual presence, or whether it wants to take suitable remedial measures to protect its revenue base. Any inertia in this exercise can only be at the cost of tax certainty."

Right Florists Case [2013] 32 taxmann.com 99(Kolkata –Trib.)

Order Dated- 12.04.2013

Tribunal's Observations on PE

- As to whether website can be PE or not, guidance is found from High Powered Committee Report which, while recognizing the need to make form of presence tax neutral but realizing the limitations of the scope of existing principles and rules, observed that the Committee, supports the view that the concept of PE should be abandoned and a serious attempt should be made within OECD or the UN to find an alternative to the concept of PE.

- Clearly, conventional PE tests fails in this virtual world even when a reasonable level of commercial activity is crossed by foreign enterprise.

Right Florists Case [2013] 32 taxmann.com 99(Kolkata –Trib.)

Order Dated- 12.04.2013

Tribunal's Observations on PE

- In the light of the above discussions, even as per the High Power Committee, a website per se, which is the only form of Google's presence in India - so far as test of primary meaning i.e., basic rule PE is concerned, cannot be a permanent establishment under the domestic law.
- The interpretation of the expression 'permanent establishment' even in the context of tax treaties, does not, therefore, normally extend to websites unless the servers on which websites are hosted are also located in the same jurisdiction.
- A search engine, which has only its presence through its website, cannot, therefore, be a permanent establishment.

Verizon Communication Singapore Pte.Ltd Case
[2013] 39 taxmann.com 70(Madras) Order Dated- 07.11.2013

Brief Facts-

- Verizon Communication Singapore Pte. Ltd ("Assessee"), a Singapore based company, was engaged in the business of providing international connectivity services i.e. bandwidth services or telecom services in India for transmission of data and voice.
- A customer interested in taking a lease connection between its office in India and an overseas location had to enter into an arrangement with assessee for provision of international connectivity in overseas leg and with VSNL for Indian half of connectivity.
- Assessee used its telecom service equipment situated outside India in providing international half circuit and received payments for such services from customers in India.

Verizon Communication Singapore Pte.Ltd Case
[2013] 39 taxmann.com 70(Madras) Order Dated- 07.11.2013

Transaction Involved

- For providing the mentioned services the parties agreed for a particular bandwidth and the assessee had provided the necessary equipment at customer premises.
- To provide the assured bandwidth, the necessary equipment are placed at the customer's end in the Indian half that is compatible with the equipment in the other half outside India, so that the switching facility converts and receives the signal in the network and transmit through the transmission network cable to the ultimate destination.
- The configuration at the customer's end and at the assessee end and in the other half managed by the assessee match with each other and compatible for ensuring the integrated service to the customer. The arrangement between the assessee and the VSNL has to be necessarily integrated and technically and financially viable having regard to the close functional relationship between the two.

Verizon Communication Singapore Pte.Ltd Case
[2013] 39 taxmann.com 70(Madras) Order Dated- 07.11.2013

Finding on the aspect of technology-

In any event, in a virtual world, the physical presence of an entity has today become an insignificant one; the presence of the equipment of the assessee, its rights and the responsibilities of the assessee, *vis-a-vis* the customer and the customers' responsibilities clearly show the extent of the virtual presence of the assessee which operates through its equipment placed in the customer's premises through which the customer has access to data on the speed and delivery of the data and voice sent from one end to the other.

The *Explanations* inserted thus clearly point out that the traditional concepts relating to control, possession, location on economic activities and geographic rules of source of income recede to the background and are not of any relevance in considering the question under section 9(1)(vi) read with *Explanation 2*.

Verizon Communication Singapore Pte.Ltd Case [2013] 39 taxmann.com 70(Madras) Order Dated-07.11.2013

- **44.** Technological advancement in the field of communication has brought in sea change in public ability to connect and communicate seamlessly with people in different parts of the World. Computer and related services are considered as the basis of the modern information and communication sector. From a manual economy to automated economy, development of technology today has ushered in electronic commerce where business or trade is conducted over a network that uses computer and telecommunication.
- **45.** Internet, in the most simplest of the term, is a group of millions of computers connected by networks. It is the size of each network connection that determines how much bandwidth is available. Bandwidth therefore is a measure in bits (0 to 1). Bits are grouped in bytes which form words, texts and other information that is transferred between the computer and the internet. Thus, an user having a particular server connection to the internet has a dedicated bandwidth between the computer and the internet service provider. But the internet service provider may have thousands of service connections to their location. The service provider has enough bandwidth to serve a person's computing needs as well as that of the other customers.
- **46.** Bandwidth is the number of lanes as in the highway through which data at a speed designed is transmitted. Bandwidth is the capacity of transmission medium or amount of data, measured usually in bits per second that can be sent through a dedicated (leased) transmission circuit. Thus the equipment at the customer's premises must have the capacity to send and receive data at a required speed. Circuit is the complete path of an electric current, a communication link between two or more point.

Verizon Communication Singapore Pte.Ltd Case [2013] 39 taxmann.com 70(Madras) Order Dated-07.11.2013

- **87.** We do not agree with the assessee principally for the reason that the decision of the Delhi High Court reported in *Asia Satellite Telecommunications Co. Ltd.* (*supra*) and the Rulings of the Authority for Advance Ruling in *Dell International Services (India) (P.) Ltd.* (*supra*). *Cable & Wireless Networks India (P) Ltd.* (*supra*) on which heavy reliance was made were all rendered prior to the insertion of Explanation 5 and that the decision of the Delhi High Court rested on the facts therein. The amendments by insertion of Explanation 5 gives a very expansive meaning to the term 'royalty' and this has a bearing on the issue' so too the various clauses in the agreements which are to be looked at in a holistic manner. The agreement entered into between the assessee and the customer herein is for providing of seamless point to point private line so as to enable the customer to communicate between its office that are geograhically dispersed. The service order reveals that the parties had agreed for a particular bandwidth and in entering this the assessee had provided the necessary equipment at customer premises, configured and customised to ensure that the customer gets the uninterrupted connectivity from one end to the other end in different geographical point.
- **88.** A reading of the agreement with VSNL also shows that the configuration at the customer's end and at the VSNL end and in the other half managed by the assessee match with each other and compatible for ensuring the integrated service to the customer. The arrangement between the assessee and the VSNL has to be necessarily integrated and technically and financially viable having regard to the close functional relationship between the two. For this, the Indian customer pays through the single billing system called OSS for the integrated services. Thus the service agreement assuring the service is possible and workable only when the assessee and VSNL are considered as rendering the service jointly in their respective leg. Thus the two half being the mirror image of each other and going by the terms of the agreements, the assessee renders service in India and the consideration received attracts the incidence of taxation in India.

Verizon Communication Singapore Pte.Ltd Case [2013] 39 taxmann.com 70(Madras)

Order Dated- 07.11.2013

- **89.** Bandwidth is defined as the amount of traffic that is allowed to occur between the customer website and the rest of the internet. Bandwidth is measured in bits a single 0 to 1 and are grouped in bytes which form words texts and other information transferred between the computer and the internet. It is stated that an user having a particular IPLC service connection has a dedicated bandwidth between the computer and the internet provider though the provider itself may have 1000 such service connection to other location. Evidently, service provider has to have enough bandwidth to serve a person's computing needs as well as all of its other customers. Thus, being high speed internet connection, to achieve this, the equipment at the customer's end must have the capacity to send and receive data at the required speed. In order that the contracted bandwidth is provided, the Master agreement read with the service order clearly gives the selected bandwidth for each customer which is assumed end to end and to this end, the equipment at the customer's end are delivered by the assessee itself.

- **91.** It is a matter of record that the terminal equipment with the VSNL has to have the compatibility to match to the mirror like operation in the other half of the leg to see that the end to end connectivity is really assured to the customer. Being an end to end dedicated telecommunication transmission for customers' exclusive use, leased line are available only to those who seek private circuits. The customers' premises equipment thus refers to routers, switches, private board exchange, installed in a customers' premises. Thus, in the bandwidth services for transmission of data/voice through IPLC network, the data/voice are converted into signals at the customer' end which are then picked up by the local loop service provider and carried into the Indian carrier, namely, VSNL's half circuit. VSNL carries this to the international terminal which interconnects the domestic network to the international network. An international terminal is present in the appellant's side of half circuit performing identical function as in the Indian half circuit, where the steps in respect of Indian half circuit is replicated and the recipient receives the voice/data. The agreement is silent on what is involved in the ITOC in the current layout that interconnects the domestic network to the international network. Yet, looking at the various clauses in the agreement and the service order form, it is clear that the customer is assured of a particular bandwidth; to provide the assured bandwidth, the agreement ensures that the necessary equipment are placed at the customer's end in the Indian half that is compatible with the equipment in the other half outside India, so that the switching facility converts and receives the signal in the network and transmit through the transmission network cable to the ultimate destination.

U.A.E. Exchange Center Case [2020] 116 taxmann.com 379(SC)

Order Dated-24.04.2020

Brief Facts

- U.A.E. Exchange Centre ("Respondent") is a limited company incorporated in the UAE.
- It was engaged in offering remittance services for transferring amounts from UAE to various places in India.
- The funds were collected from the NRI remitter by the Respondent in UAE by charging one-time fee of Dirhams 15.
- After collecting the funds from the NRI remitter, the Respondent made an electronic remittance of the funds on behalf of its NRI customer on the request of the NRI remitter.
- Then the Respondent sent instruments/cheques through its liaison offices to the beneficiaries in India, designated by the NRI remitter.

U.A.E. Exchange Center Case [2020] 116 taxmann.com 379(SC)

Order Dated-24.04.2020

<u>Issue Involved:-</u>

- The dispute arises in respect of the second mode of remittance through the liaison offices in India.
- That is on account of the activity undertaken in the liaison office in India of downloading the particulars of remittances through electronic media and printing cheques/drafts drawn on the banks in India, which, in turn, are couriered or dispatched to the beneficiaries in India, in accordance with the instructions of the NRI remitter.
- While doing this, the liaison office of the Respondent remains connected with its main server in UAE, as the information is contained in the main server thereat, which could be accessed by the liaison office in India for the purpose of remittance of funds to the beneficiaries in India by the NRI remitters.

U.A.E. Exchange Center Case [2020] 116 taxmann.com 379(SC)

Order Dated-24.04.2020

Delhi High Court Ruling-

- The High Court held that the activity carried on by the liaison offices of the Respondent in India did not in any manner contribute directly or indirectly to the earning of profits or gains by the respondent in UAE and more so, every aspect of the transaction was concluded in UAE, whereas, the activity performed by the liaison offices in India was only supportive of the transaction carried on in UAE.
- The High Court also took note of Explanation 2 to Section 9(1)(i) and observed that the same reinforces the fact that in order to have a business connection, in respect of a business activity carried on by non-resident through a person situated in India, it should involve more than what is supportive or subsidiary to the main function referred to in clauses (a) to (c).

Note:- The Ruling of the Delhi HC was upheld by the Hon'ble SC.

U.A.E. Exchange Center Case [2020] 116 taxmann.com 379(SC)

Order Dated-24.04.2020

Hon'ble SC Held:-

- It was held that the Respondent was not carrying on any business activity in India as such, but only dispensing with the remittances by downloading information from the main server of respondent in UAE and printing cheques/drafts drawn on the banks in India as per the instructions given by the NRI remitters in UAE.
- To put it differently, no income as specified in section 2(24) is earned by the liaison office in India and more so because, the liaison office is not a PE in terms of Article 5 of DTAA (as it is only carrying on activity of a preparatory or auxiliary character).
- No tax can be levied or collected from the liaison office of the respondent in India in respect of the primary business activities consummated by the respondent in UAE. The activities carried on by the liaison office of the respondent in India as permitted by the RBI, clearly demonstrate that the respondent must steer away from engaging in any primary business activity and in establishing business connection as such. It can carry on activities of preparatory or auxiliary nature only.

U.A.E. Exchange Center Case [2020] 116 taxmann.com 379(SC)

Order Dated-24.04.2020

- By establishment in UAE —
- (*i*) by telegraphic instructions from Abu Dhabi through banking channels or by liaison offices
- in India—
- (*ii*) by dispatching through courier the instruments of cheques/drafts prepared by liaison
- offices to the beneficiaries at various places in India.
- Insofar as the first mode is concerned, the amount is remitted telegraphically by transferring directly from UAE through bank channel to various places in India and in such remittances the liaison offices have no role to play except attending to the complaints, if any, in India regarding the remittances in cases of fraud *etc*. This is undoubtedly a work of auxiliary character. However, where is undoubtedly a work of auxiliary character. However, where the applicant adopts the second mode for remitting the amounts in India -an activity approved by the RBI - the liaison offices of the applicant play an important role. They download the data from internet with regard to the amount to be remitted, the names and addresses of the beneficiaries and then print cheques/drafts and dispatch them to the addresses of the beneficiaries in India through courier. The role of liaison offices in remitting the amounts by adopting the second mode, is nothing short of performing the contract of remitting the amounts at least in part. This case presents a good example of an auxiliary activity to the main activities and an essential activity in performance of contractual obligation. Whereas in the first mode, the activity undertaken by the liaison offices in India may be said to be auxiliary in character, the same cannot be said of the second mode. Downloading the data, preparing cheques for remitting the amount, dispatching the same through courier by the liaison offices is an important part of the main work itself because without remitting the amount to the beneficiaries as desired by the NRIs, performance of the contract will not be complete. So the activities of the liaison offices in the second mode remittance, cannot be said to be work of auxiliary character. It is indeed a significant part of the main work of UAE establishment. It follows that the liaison offices of the applicant in India for the purposes of the second mode of remittance of amount would be a 'permanent establishment' within the meaning of the expression in DTAA

- **Play Games 24X7 Private Limited [TS-233-ITAT-2022(Mum)]- Payment for ‘Rummy’ banner on Facebook not Royalty/FTS; Application of section 195(2) not mandatory.**

- **Myntra Designs Ovt. Ltd. [TS-833-ITAT-2021(Bang)] – Advertisement charges paid by Myntra to Facebook, not Royalty; Follows Urban Ladder ruling**

- **Lenskart Solution Private Limited [TS-236-ITAT-2022(DEL)]- Lenskart not liable for TDS on advertising expenses paid to Facebook Ireland, absent PE in India**

Games 24X7 Private Limited [TS-233-ITAT-2022(Mum)]-23.03.2022

Brief Facts

- The assessee-company is engaged in the business of Online Games Services Sector and is a resident of India.
- During the course of assessment proceedings, the assessee was asked to explain as to why withholding tax on payment made to Facebook has not been deducted and why it should not be disallowed as per disallowance u/s 40(a)(ia) of the Act.
- After taking cognizance of the reply of the assessee, the Assessing Officer made disallowance on account of non-deduction of TDS u/s 40(a)(ia) of the Act.

Games 24X7 Private Limited [TS-233-ITAT-2022(Mum)]

- ITAT notes the admitted position that while uploading the advertisement on its server, Assessee did not have any control over the functioning of the interface and the entire operation and maintenance of the server was under the control of Facebook. The entire operation and maintenance of the server while providing the advertisement platform is under the control of Facebook, Ireland.
- ITAT observes that Assessee made use of the standard facility which was also provided to other global customers and also that equipment/installations are all owned by Facebook, Ireland and the Assessee did not have any role to play in either maintaining or involving into any managerial activities.
- Equipment/installations are all owned by Facebook, Ireland and the assesse company does not have any role to play in either maintaining or involving into any managerial activities with the Facebook, Ireland. There is no dedicated equipment/installation/any portion of equipment/installation is earmarked/provided by the Facebook, Ireland by the assessee company. As per the payment agreement between the Assessee company and Facebook, Ireland, the assessee company does not have any economic or possessory right with regard to the server of the Facebook and the server is not at the disposal of the assessee company. The assessee company does not get any right to modify/deal with the server in any manner. The server through which the advertisement is uploaded is not at all located in India. Further, there is no role played by the Facebook India Online Pvt. Ltd. in assessee's case and thus there is no element of permanent establishment of Facebook, Ireland in India.

Games 24X7 Private Limited [TS-233-ITAT-2022(Mum)]

ITAT Held

- ITAT finds that there is no role played by the Facebook India Online Pvt. Ltd. in assessee's case and thus there is no element of permanent establishment of Facebook, Ireland in India.
- ITAT holds that application to be made under Section 195(2) cannot be treated as a mandate in view of the language 'may make an application' and observes that in the instant case, Assessee was aware that Facebook, Ireland was a non-resident and thus payment made to it was outside the purview of TDS.
- ITAT acknowledges Assessee's reliance on the Bangalore ITAT rulings in Urban Ladder Home Décor, Kolkata ITAT ruling in Right Florists and the Karnataka HC ruling in Google India among others which were delivered in the context of advertisement expenses paid to non-residents and holds that there is no element of FTS or Royalty in advertisement expenditure.

Myntra Designs Pvt. Ltd [TS-833-ITAT-2021(Bang)] 03.09.2021

Brief Facts

- The assessee, M/s. Myntra Designs Pvt. Ltd. has filed these three appeals challenging the common order passed by CIT(A) and they relate to the assessment years 2012-13 to 2015-16.
- The AO noticed that the assessee has made payments to M/s Facebook Ireland Ltd. towards advertisement charges and the said payments were without deducting tax at source under section 195 of the Act. Hence the AO initiated proceedings under section 201(1) of the Act treating the assessee as an 'assessee in default.
- In all the three years, the CIT(A) has confirmed the demand raised by the AO under section 201(1) or 201(1A) treating the assessee as an 'assessee in default' for non-deduction of tax at source from the payments made to M/s Facebook Ireland towards advertisement fees.

Myntra Designs Pvt. Ltd [TS-833-ITAT-2021(Bang)]

<u>How Online Advertising Works</u>

- The contents are uploaded to Facebook by the business team of the assessee.
- Facebook provides many options to the businesses/advertisers to reach its database of users.
- To touch upon a few of the alternatives that Facebook provides – the businesses could choose their target market based on the age group, location, gender etc.
- The advertisement made in the Facebook platform is not a dormant or passive or broad-based advertisement as made in TVs, or newspapers or public hoarding. Unlike the traditional medium of advertisements, what Facebook offers is – dynamic, highly target group specific and real time monitored advertising.

Myntra Designs Pvt. Ltd [TS-833-ITAT-2021(Bang)]

How Online Advertising Works

- It is evident that the Facebook advertisements are nothing but the usage of Facebook technology and process to advance the business in the e-commerce era.

- The technology, design, process and equipment of Facebook are being used, in a complex manner, with very high efficiency levels, to reach out the target audience, within a fraction of the second of the target user logging in his/her account.

Myntra Designs Pvt. Ltd [TS-833-ITAT-2021(Bang)]

How Online Advertising Works

- The advertiser A1 (in the schematic) communicates its requirements (in terms of its target market, and the profile of the consumer it wants to serve) through its advertiser's account with Facebook. In turn, using complex algorithms and advanced processors and equipment, the network of servers throughout the world locates the users that are being targeted by the advertiser A1.

- And as soon as the target users log in, the ads/banners/web links, as determined by A1 will be displayed to the user near instantaneously. It can be termed as the most evolved form of online target advertising".

Lenskart Solution (P) L [TS-236-ITAT-2022(DEL)] 30.03.2022

- Lenskart made payment to Facebook Ireland Inc. for advertisement services for which it didn't deduct TDS u/s 195 of the Act for the reasons that the same is not chargeable to tax under Article 7 of India-Ireland DTAA.

- Revenue disallowed under Section 40(a)(i) for non-deduction of tax at source on marketing expenses paid to Facebook.

- CIT(A) deleted the disallowance so made accepting Assessee's contention that Facebook had no PE in India and payments made to it for advertising services were therefore not chargeable to tax in India as per Article 7 of India-Ireland DTAA; ITAT notes that CIT(A) had analysed the provisions of Section 9, Section 195 and provisions of India-Ireland DTAA and held that there was no liability of tax on payments made for advertising services to Facebook since it had certified that it has no PE in India and is a resident of Ireland for tax purposes.

- ITAT states that these facts remain uncontroverted and thus, no contrary view could be taken against the conclusion drawn by CIT(A) and accordingly upholds the deletion of disallowance under Section 40(a)(i).