

**APPELLATE TRIBUNAL INLAND REVENUE,
HEADQUARTERS BENCH, ISLAMABAD**

**ITA No.792/IB/2024
MA (AG) No.129/IB/2024
(Tax Year 2021)**

M/s Netflix PTE Ltd,
9 Straits View#14-07/12, Marina One West Tower,
Singapore. Appellant

Versus

Commissioner Inland Revenue, Zone-III,
Corporate Tax Office,
Islamabad. Respondent

Appellant by : Mr. Mayhar Qazi, advocate.
Respondent by : Mr. Osama Idrees, DR.

Date of Hearing : 18.09.2024
Date of Order : 26.09.2024

ORDER

TAUQEER ASLAM (Chairman):- Titled appeal has been filed by the appellant department against the impugned order in appeal bearing barcode No.100000194033209 dated 25.04.2024 passed by the learned Commissioner (Appeals-IV), Islamabad for tax year 2021 on the grounds as set forth in the memo of appeal.



Brief facts of the case are that the appellant taxpayer i.e. M/s Netflix PTE Ltd declared exempt revenue of Rs.1,309,323,564 and exempt income of Rs.1,209,116,549/-. The Additional Commissioner Inland Revenue finding the deemed assessment as erroneous as well as prejudicial to the interest of revenue issued show cause notice under section 122(5A) of the Income Tax Ordinance, 2001 (hereinafter referred to as "the Ordinance") confronted the appellant taxpayer for non-payment of tax under section 6 read with section 8 and section 152(1C) of the Ordinance regarding payment of fee for offshore digital services @10%. The appellant taxpayer duly replied the show cause

notice contending that its income is exempt under Article 7(1) of the Double Taxation Agreement between the Islamic Republic of Pakistan and the Republic of Singapore. The reply furnished by the appellant taxpayer did not find favor of the appellant. Consequently, order under section 122(5A) of the Ordinance was passed by the assessing officer creating tax demand of Rs.65,466,178/-.

3. Being aggrieved with the treatment meted out by the assessing officer the appellant filed appeal before the Commissioner (Appeals-IV), Islamabad, who decided the appeal vide order dated 25.04.2024. The appellant taxpayer being still aggrieved with the order of the commissioner (Appeals) filed this appeal on the grounds as set forth in memo of appeal.



The case was heard on 18.09.2024. Learned AR of the appellant taxpayer reiterated the contentions already submitted in the grounds of appeal. The learned DR argued that the Commissioner (Appeals) was not justified in confirming the amended assessment order without application of mind and in a non-speaking manner. He pleaded that the Commissioner (Appeals) has erred in law by stating that no documentary evidence is furnished by the appellant taxpayer. He argued that the Commissioner (Appeals) was not justified to hold that the appellant was engaged in selling contents in Pakistan which are not owned by it without correctly appreciating the nature of business of the appellant, that is a limited risk distributor that resells subscription member ships for the Netflix Service for the majority of APAC markets including Pakistan. He pleaded that the first appellate authority has

erred in law by holding that as per Article 22 of the Pakistan – Singapore tax treaty income of the appellant taxpayer has been correctly taxed in Pakistan without even discussing why the income of the appellant does not fall under Article 7 of the said treaty. The AR argued that the learned Commissioner has confirmed the treatment of the assessing officer without appreciating the facts of the case and the provision of DTA between Pakistan and Singapore. He prayed for vacation of orders of the authorities below. On the other hand, the learned DR opposed the appeal on the ground that learned Commissioner (Appeals) has passed a speaking order and there is no illegality or lacuna in his order. He, therefore, prays for rejection of appeal.



have given due consideration to the arguments of rival parties and perused the relevant available record. The main controversy in this case is that whether the income of the taxpayer fall within the purview of Article 7 or the DTA between Pakistan and Singapore or it attracts the provision of Article 22 of the said DTA. The appellant taxpayer has claimed its income as exempt from taxation in Pakistan in terms of Article 7 of the DTA, whereas the assessing officer is of the view that the income of the appellant is covered under section 6 read with section 152(1C) of the Ordinance being fee for offshore digital services, therefore the same does not fall within the purview of Article 7 of the DTA rather it attracts the provisions of Article 22 of the DTA and is taxable in Pakistan. Before the learned Commissioner (Appeals) the appellant taxpayer failed to substantiate its stance with documentary evidences. Consequently, the learned Commissioner (Appeals)

concluded with the treatment meted out by the assessing officer and confirmed the order passed by him. The appellant has contended that the subscription payment received by the appellant in Pakistan are covered under Article 7 of the Treaty, regardless of whether they constitute "fee for offshore digital services" under section 6 of the Ordinance. Article 7 of the treaty between Pakistan and Singapore is reproduced hereunder: -

"Article 7

Business Profits

The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other contracting state through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be tax in the other State but only so much of them as it is attributable to that permanent establishment."



5. The Article 3(1)(f) and 22 of the Treaty relied upon by the assessing officer are reproduced hereunder for ease of reference: -

"(f) the term "profits of an enterprise" does not include rents or royalties in respect of copy rights of literary, artistic or scientific work, motion picture films or of tapes for television or broadcasting or of mines oil wells, quarries, or other places of extraction of natural resources or timber or forest produce, or income in the form of dividends, interest, rents, royalties, or fees or other payments received from the management, control or supervision of the trade, business or other activity or any other enterprise or concern or payments for labour or personal services or income derived from the operation of ships or aircraft;"

"Article 22

Other income

Items of income of a resident of a contracting State not dealt with in the foregoing Articles of this agreement and arising in the other Contracting State may be taxed in that other state"

6. Article 3(1)(f) of the Treaty has categorically excluded the rents or royalties in respect of motion pictures from the purview of the profits of

an enterprise from business profit covered under Article 7 of the treaty. The appellant taxpayer is involved in the business of relying and streaming motion pictures, video, television programs and providing access to Netflix services which are not covered under Article 7 of the Treaty and Article specifically provides that items of a resident of a contracting State not dealt with in the other Article of the agreement and arising in the other contracting State may be taxed in that other State. This position has brought the Pakistan source income of the appellant



taxpayer within the purview of domestic tax law. Section 2(22B) of the Ordinance defines the term 'fee for offshore digital services in the following manner: services which are not covered under Article 7 of the

"2(22B) 'fee for offshore digital services' means any consideration for providing for or rendering services by a non-resident person for online advertising including digital advertising space, designing, creating, hosting or maintenance of websites, digital or cypher space or websites advertising, e-mails, online computing, blogs, online contents and online data, providing any facility or services for uploading, storing or distribution of digital content including digital text, digital audio or digital video, online collection or processing of data related to users in Pakistan, any facility for online sale of goods or services or any other online facility."

7. The above definition clearly shows that the business activity of the appellant taxpayer clearly falls within the purview of term "fee for offshore digital services" and attracts the provisions of section 6 of the Ordinance which is reproduced hereunder: -

"6. Tax on certain payments to non-residents.— (1) Subject to this Ordinance, a tax shall be imposed, at the rate specified in Division IV of Part I of the First Schedule, on every non-resident person who receives any Pakistan source royalty, fee for offshore digital services, fee for money transfer operations, card network services, payment gateway services, interbank financial telecommunication services or fee for technical services.

(2) The tax imposed under sub-section (1) on a non-resident person shall be computed by applying the relevant rate of tax to the gross amounts of receipts mentioned in sub-section (1)."

8. In view of the above discussed Articles of the DTA between Pakistan and Singapore and the provisions of the Ordinance it can be safely concluded that the appellant taxpayer's business activity has been excluded from the purview of business profits under Article 7 of the DTA in terms of Article 3(1)(f) of the DTA and in terms of Article 22 income of the appellant not dealt with in the Articles of the DTA is also taxable in other contracting State i.e Pakistan. Under the domestic law the business activity of the appellant taxpayer falls within the purview of "for offshore digital services" as defined in section 2(22B) of the Ordinance and is taxable under section 6 of the Ordinance. The appellant taxpayer at the time of its registration on its own choice has selected its principal activity i.e information and communication / motion picture, video and television programme activities / motion picture, video and television programme production activities. The plea of the appellant that its business activity is of distributor is an afterthought and without any substance and even if it accepted it is of no avail for the reason that it is still covered within the expression 'any other online activity' used in section 2(22B) of the Ordinance.

12. The appeal is disposed of in the above manner.

(TAUQEER ASLAM)
CHAIRMAN

(SAJID NAZIR MALIK)
MEMBER