

**IN THE HIGH COURT OF DELHI AT NEW DELHI  
ITA 527/2007**

**COMMISSIONER OF INCOME TAX DEL ..... Appellant  
Through:Ms.P.L.Bansal, Adv.**

**versus**

**ESTEL COMMUNICATIONS P.LTD. .... Respondent  
Through:Mr.R.M.Mehta, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE MADAN B. LOKUR**

**HON'BLE MR. JUSTICE V.B. GUPTA**

**O R D E R**

**07.03.2008**

**The Revenue is aggrieved by the order dated 8th September, 2007 passed  
by**

**the Income Tax Appellate Tribunal, Delhi Bench 'G' in ITA  
No.4560/Del/2003**

**relevant for the assessment year 2001-02.**

**According to the Assessee, it is providing Internet access of a certain  
bandwidth to its subscribers. The Main Server, on the basis of which the  
Internet services are provided is located in USA. For the services  
rendered by**

**the Assessee to the subscribers in India, it levies a charge and out of this,  
some amount is paid to the US party, that is, M/s Teleglobe International  
Corporation (for short Teleglobe).**

**According to the Assessing Officer, the Assessee was liable to deduct  
tax at source from the payments made to the US party. For**

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**arriving at this conclusion, the Assessing Officer invoked the provisions  
of**

**Section 9(1)(i) and Section 9(1)(vii) of the Income tax Act, 1961.**

**Feeling aggrieved by the order passed by the Assessing officer, the  
Assessee preferred an appeal which was allowed by the Commissioner of  
Income Tax**

**(Appeals). It was held that the Assessee was merely providing Internet services**

**to its subscribers and, therefore, there was no question of deduction of tax at**

**source in respect of payments made by the Assessee to Teleglobe.**

**Against the order passed by the CIT(A), the Revenue preferred an appeal before the Tribunal and we find from a perusal of paragraph**

**10 thereof that the application of Section 9(1)(i) of the Act was not pressed by**

**the departmental representative. The only question that arises, therefore, is**

**about the applicability of the Section 9(1)(vii) of the Act.**

**In so far as this is concerned, the Tribunal considered the agreement**

**that had been entered into by the Assessee with Teleglobe and came to the**

**conclusion that there was no privity of contract**

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**between the customers of the Assessee and Teleglobe. In fact, the Assessee was**

**merely paying for an Internet bandwidth to Teleglobe and then selling it to its**

**customers. The use of Internet facility may require sophisticated equipment**

**but that does not mean that technical services were rendered by Teleglobe to the**

**Assessee. It was a simple case of purchase of Internet bandwidth by the Assessee from Teleglobe.**

**Under the circumstances, the Tribunal came to the conclusion**

**that there were no technical services provided by Teleglobe to the Assessee and,**

**therefore, the provisions of Section 9(1)(vii) of the Act did not apply.**

**We find that the Tribunal has rightly dismissed the appeal after taking**

**into consideration the agreement between the Assessee and Teleglobe and the**

nature of services provided by Teleglobe to the Assessee. It was a simple case of payment for the provision a bandwidth. No technical services were rendered by Teleglobe to the Assessee.

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**On a consideration of the material on record, we find that no substantial question arises in the matter. The appeal is, accordingly dismissed.**

**MADAN B. LOKUR, J**

**MARCH 07, 2008 V.B. GUPTA, J  
Bisht**

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