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TAX FLASH NEWS

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Distribution charges received for telecasting of TV channels in India are not taxable as 'royalty' under the Income-tax Act as well as under the India-Singapore tax treaty

Recently, the Bombay High Court in the case of MSM Satellite Pte. Ltd[1] (taxpayer) dealt with the taxability of distribution charges received on account of telecasting of TV channels in India under the provisions of the Income-tax Act, 1961 (the Act) as well as under the India-Singapore tax treaty (tax treaty). The High Court held that such receipts are not taxable as royalty since the taxpayer was not parting with any of the copyrights and the payment was not for any copyright in literary, artistic or scientific work.

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Facts of the case

The taxpayer, a Singapore based company, operates TV channels for the exhibition of various programmes i.e. entertainment, educational, etc. The taxpayer was having an Indian group company. The Indian group company through layers of multi-system operators and cable operators collects subscription charges to enable individual customers to view several channels and programmes telecasted on such channels. The revenue so collected from a large number of customers would eventually reach the taxpayer after adjustment of intermediary charges paid to the different agencies. The Assessing Officer (AO) held that these payments were in the nature of royalty for the use of copyright. However, the taxpayer contended that the same were taxable as business income. The Commissioner of Income-tax (Appeals) [CIT(A)] and the Tribunal held in favour of the taxpayer.

High Court's decision

The High Court relied on the decision of SET India Private Limited[2] wherein the Tribunal had held that the distribution is purely a commercial right, which is distinct from the right to use a copyright. The right granted to the taxpayer under the agreement was not to be construed to be a grant of any licence or transfer of any right in any copyright. Therefore, the payment cannot be considered as royalty.

The High Court observed that the taxpayer used to receive a part of subscription charges paid by a large number of customers through different agencies which enabled the customers to view channels operated by such taxpayer. Therefore, in the instant case also the taxpayer was not parting with any of the copyrights for which payment can be considered as royalty.

The tax department placed considerable reliance on clause (v) of explanation (2) to Section 9(1)(vi) by virtue of which the transfer of the rights in respect of copyright of a literary, artistic or scientific work including cinematograph film or films or tape used for radio or television broadcasting etc. would come within the fold of royalty. The High Court observed that in the present case the payment could not be covered within the said expressions. This was not the case where the payment of any copyright in literary, artistic or scientific work was being made.

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On reference to the definition of 'copyright' in the Copyright Act, it indicates that the copyright means exclusive right, to do or to authorise the doing of any of the specified acts in respect of a work or any substantial part thereof. The term 'work' is defined as to mean any of the works namely a literary, dramatic, musical or artistic work or a cinematograph film and a sound recording. The High Court observed that in the present case, the taxpayer had not created any literary, dramatic, musical or artistic work or cinematograph film and a sound recording.

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[1] CIT v. MSM Satellite (Singapore) Pte Ltd (ITA No. 103 of 2017) – Taxsutra.com

[2] SET India Private Limited (ITA No. 4372 of 2004, 25 April 2012)

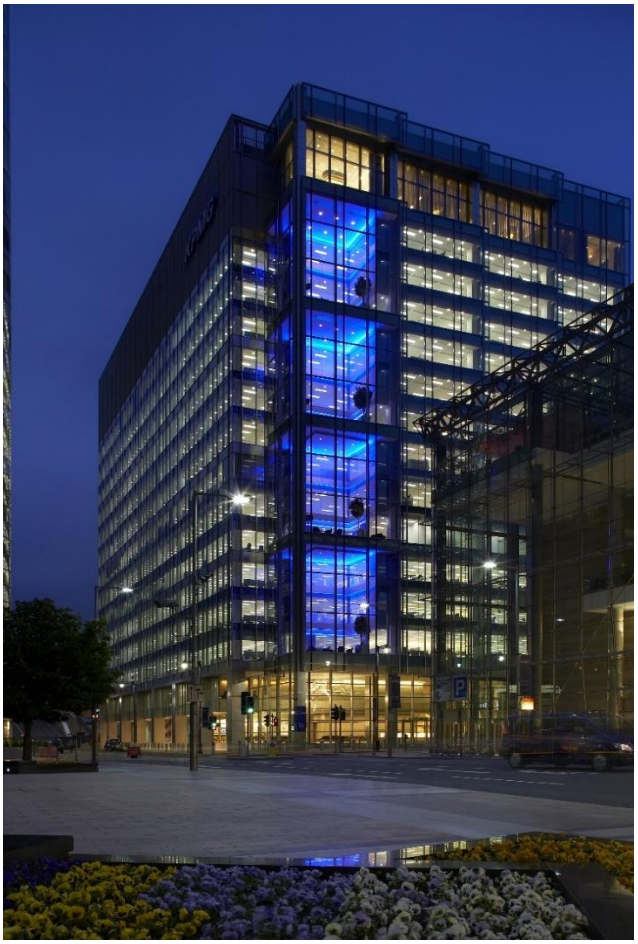
Therefore, it could not fall within the definition of royalty under Section 9(1)(vi) of the Act as well as under the tax treaty. Section 37 of Copyright Act separately defines broadcast reproduction right. It provides that every broadcasting organisation shall have special rights to be known as 'broadcast reproduction right' in respect of its broadcasts.

The High Court held that even going by the definition of Article 12 of the India-Singapore tax treaty, the income of the taxpayer cannot be categorised as royalty.

Our comments

The issue with respect to taxability of distribution charges received on account of telecasting of TV channels in India has been a subject matter of debate before the Courts/Tribunal. The Mumbai Tribunal in the case of Taj TV Ltd.[3] held that the distribution income on account of distribution of the pay channel to the various cable operators and ultimately to the consumers in India was not in the nature of royalty under the India-Mauritius tax treaty.

The Bombay High Court in the present case has held that distribution charges received on account of telecasting of TV channels in India are not taxable as royalty since the taxpayer was not parting with any of the copyrights. The High Court decision will provide clarity to the taxpayers on this issue.



[3] DDIT v. Taj TV Ltd [2016] 72 taxmann.com 143 (Mum)

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