

Sum paid to acquire rights of telecasting from outside India, in absence of its link with PE in India, wasn't royalty

Summary – The High Court of Bombay in a recent case of Set Satellite (Singapore) Pte Ltd., (the Assessee) held that sum paid to acquire rights of telecasting cricket matches from outside India had no connection with the marketing activities carried out through Permanent Establishment ('PE') of assessee in India - Thus, there was no economic link between the payments - The liability to pay royalty had not been incurred in connection with and was not borne by the PE of the payer in India - Thus, impugned payments couldn't be deemed as royalty in view of Article 12(7) of India-Singapore DTAA.

Facts

- The assessee, a Singaporean company, was engaged in the business of acquiring rights in television programmes and exhibiting the same on its television channels from Singapore.
- The issues for consideration before High Court were:
 - (i) Whether the payment to G (a Singaporean Company) for acquisition of telecasting rights were in the nature of 'royalty' covered by *Explanation 2* to section 9(1)(vi)(c)? Even if payments would be deemed as royalty, whether they would not be chargeable to tax as per Article 12(7) of India-Singapore DTAA?

The High Court held as under:

- The appellate authorities had already held that payment was made only for broadcasting operations carried out from Singapore, which had no connection with the marketing activities carried out through alleged Permanent Establishment ('PE') of assessee in India.
- Thus, there was no economic link between the payments. The payer was not a resident of India and the liability to pay royalty had not been incurred in connection with and was not borne out by the PE of the payer in India.
- The absence of economic link was thus the foundation on which the Tribunal's conclusions were based. Thus, the Appeal was to be dismissed as no substantial question of law was involved.