

Sum received on transfer of right to host and Promote 'Formula F1 Race' isn't royalty

Summary – The High Court of Delhi in a recent case of Formula One World Championship Ltd., (the Assessee) held that Where FOWC a UK based company entered into a Race Promotion Contract(RPC) by which it granted to Jaypee Sports, right to host, stage and promote Formula One (F1) Grand Prix of India event for a consideration, however parties did not intend to license trademark, it would not amount to royalty under DTAA

Facts

- FOWC a UK based company entered into a Race Promotion Contract(RPC) by which it granted to Jaypee Sports the right to host, stage and promote Formula One (F1) Grand Prix of India event for a consideration of USD 40 million.
- An Artworks license Agreement contemplated in RPC was also entered into between FOWC and Jaypee the same day permitting the use of certain marks and intellectual property belonging to FOWC for a consideration of USD 1.
- Issue to be decided:
- Whether payment of consideration receivable by FOWC outside India in terms of RPC from Jaypee was or was not royalty as defined in article 13 of DTAA between UK and India?

Held

- In terms of the agreement, i.e. RPC, Jaypee was designated as the promoter or the event host. Under the RPC, FOWC clearly has the exclusive right to exploit the commercial rights in the championship and to award Jaypee the right to host, stage and promote F1 Grand Prix events .
- Amounts payable by Jaypee to FOWC under the RPC are really for the privilege of hosting and staging the championship race and not for the IP rights, which in any event, could be utilized by it only to promote the race and for no other purpose.
- Jaypee has no IP rights whatsoever independently of the staging and hosting of the event.
- The ALA also did not confer any additional rights, neither was a license nor any form of right to use the trademark given to Jaypee by FOWC which resulted in royalty payment within the meaning of Article 13 of the DTAA.
- Thus, payments made to FOWC under the RPC are not 'royalty' either under the Act or the DTAA, they most certainly are not for the use of trademarks or IP rights, but rather for the grant of the privilege of staging, hosting and promoting the Event at the promoter's racing circuit in Noida (NCR).