

Subscription charges received from customers not taxable as royalty

Summary – The High Court of Bombay in a recent case of MSM Satellite (Singapore) Pte. Ltd., (the Assessee) held that subscription charges received from customers is not taxable as royalty

Facts

- The assessee was a Singapore based company and operated TV channels for exhibition of various programmes. The assessee collected subscription charges to enable individual customers to view the channels.
- The Commissioner (Appeals) assessed distribution receipts as royalty income.
- On appeal, the Tribunal treated same as business income.
- In the instant appeal before the High Court, the revenue contended that these payments made to the assessee was in the nature of royalty for use of copyright.

Held

- The HC stated that by way of subscription charges received for viewing the channels, the assessee was not parting with any of the copyrights for which payment can be considered as royalty payment. *Explanation 2* below sub-section (1) of section 9 describes the term 'royalty' for the purpose of said clause, as 'royalty' means consideration including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head 'capital gains'.
- Only if the payment in the instant case by way of a royalty as explained in *Explanation (2)* below sub-section (1) of section 9, the question of applicability of clause (vi) of sub-section (1) of section 9 would arise. This is not a case where payment of any copyright in literary, artistic or scientific work was being made.
- India Singapore Double Taxation Avoidance Agreement contains Article 12 pertaining to royalty and fees for technical service. Paragraph (3) of Article 12 defines the term 'Royalty' as payments of any kind received as a consideration for the use of, or the right to use: (a) any copyright of a literary, artistic or scientific work, including cinematograph film or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right, property or information; (b) any industrial, commercial or scientific equipment, other than payments derived by an enterprise from activities described in paragraph 4(b) or 4(c) of Article 8.
- Even going by the definition, the payment in question cannot be categorized as royalty.