



## Global Business Tax Alert Sharp Insights

Consideration received for live coverage of audio-video visuals is neither 'fees for technical services' nor 'royalty'

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**In this issue:**

Upcoming Dbriefs - Register  
Contacts

The Mumbai ITAT in its ruling rendered on 26<sup>th</sup> August 2015 in case of IMG Media Limited v DDIT held that production of 'program content', of live coverage of audio –video visuals, by using technical expertise is altogether different from provision of technology.

Assessee, a tax resident of UK, was engaged in capturing and delivering live audio and visuals coverage of Indian Premier League (IPL), 2008 and IPL 2009 events. It produced 'program content' of live coverage of cricket matches and delivered the same to 'licensees' in form of digitalized signals, who were in turn appointed by BCCI for further broadcasting of live coverage. Equipments were supplied by BCCI to assessee for carrying out the activity of producing 'program content'

For the relevant assessment year, assessee filed its tax return accepting a service PE in India and offered the income on net basis. Assessing Officer holding the consideration received by assessee to be in the nature of 'fees for technical services' and 'royalty' assessed the entire amount of consideration on 'gross' basis. Dispute Resolution Panel upheld the order passed by AO.

In the appeal before the Tribunal, the assessee challenged the decisions of AO and DRP. The ITAT observed that production of 'program content', of live coverage of audio –video visuals, by using technical expertise is altogether different from provision of technology. In case of production and delivering of the program content, recipient would only receive the product and he is free to use the product as per his convenience. Where, in case of provision of technology, recipient would be free to use the technology/know-how to develop any product of same/similar nature, consideration received thereof would be for making available know-how/technology to service recipient and therefore falls into the category of 'fees for technical services'. In the assessee's case, consideration is received for supply of product.

On the facts of the case, the ITAT observed that concept of 'make available' explained in the context of India-US treaty could be imported to understand the provision of Article 13(4)(c) of India –UK treaty, wherein similar terminology is used. The essential condition of 'make-available' is not satisfied in case of production of 'program content' by using technical expertise and accordingly, consideration received for rendition of aforesaid services was not exigible to tax in hands of recipient as 'fees for technical services'.

The ITAT relying on Delhi High Court judgment in **CIT vs Delhi Race Club (2015) (273 CTR 503)** held that a payment could be taxable as 'royalty' only if it is made 'for the use of, or the right to use any copyright etc. ITAT held that live coverage of events or broadcast does not have a 'copyright' and payment made for the same is not 'royalty'.

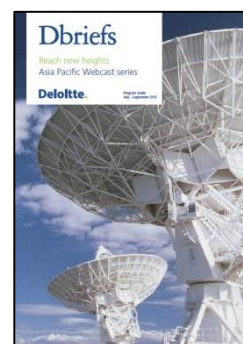
By virtue of this judgement, Mumbai ITAT has uphold the settled principal,<sup>1</sup> i.e. where the transferor retains the property right in the designs, secret formula etc. and allows the use of such right, the consideration received for such use is in the nature of Royalty. However, where there is an outright sale or purchase, wherein the transferor does not retain any property, the consideration is for transfer and cannot be termed Royalty.

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**On 10 September 2015 from 11:30 AM to 12:30 PM IST**

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<sup>1</sup> CIT vs. Davy Ashmore India Limited [190 ITR 626]

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