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Delhi HC Holds Investment in shares of Indian Subsidiary Not Income as it is in the Nature of Capital Account Transaction.

Facts

The assessee is a foreign company and a resident of Italy. The assessee had subscribed to 15,00,000 shares at face value of INR 10 each by making foreign inward remittance of INR 1,50,00,000 to its wholly owned Indian subsidiary in accordance with applicable regulations. Additionally, since the assessee had not earned any income from any source in India, no return of income was filed by it during the year.

Ruling

The Hon'ble High Court ruled in favor of the assessee. It observed that the settled law in India holds that investment in shares in an Indian subsidiary cannot be treated as 'income' as the same is in the nature of "capital account transaction". The Hon'ble Court cited the CBDT instruction No. 2 of 2015 which reiterated the view expressed in the case of Vodafone India Services Pvt. Ltd. Versus Union of India ((2014) 368 ITR 1 (Bom)) holding that no income arises on investment in shares since it is a capital account transaction.

Moreover, the Hon'ble Court also relied on the case of Nestle SA vs. ACIT (W.P. (C) No. 12643/2018) wherein it was held that the allegation of the Revenue holding the investment in the shares of Indian subsidiary amounted to 'income' is flawed.

Accordingly, all impugned orders under section 148A(d) of the Act were set aside by the Hon'ble Court after finding that there was no information to suggest any escapement of income to invoke section 147.

Source: High Court, Delhi in M/s. Angelantoni Test Technologies SRL vs. ACIT vide W.P.(C) 15928/2023 dated December 12, 2023.

ITAT Rules No Copyrights Subsists in Live Rights Hence Remittance in Lieu of the Same not Royalty.

Facts

The assessee is a company engaged in the business of broadcasting or sub-licensing the right to broadcast, sport events such as golf, cricket, soccer, on live and non-live basis. It filed its return of income on 30.11.2018 declaring total income of Rs. Nil.

During the Financial Year (FY) 2017-18, the assessee had entered into agreements with various non-residents for acquisition of two kinds of rights:

- Right to broadcast live sports events ("Live Rights"); and
- Right to use audio-visual recording of the sport events for subsequent telecasting, cutting small clips for advertisements, making highlights of the event etc. ("NonLive Rights").

The assessee had deducted tax at source under section 195 of the Income Tax Act, 1961 on the payment remitted in lieu of acquisition of "Non-Live Rights". It considered the same to be "Royalty" under the Income tax Act 1961 (the Act) chargeable to tax in the hands of the non-resident overseas rights holder in India.

In case of the live rights the assessee did not deduct any tax on the same.
However, he ld. CIT(A) passed the order under section 201 of the Act by observing that the payment for "Live Rights" is chargeable to tax as "Royalty" in the hands of the non-resident overseas rights holder and as such was liable to deduction of tax.

Aggrieved, the assessee filed appeal before the Tribunal.

Ruling

The Tribunal ruled in favour of the assessee by conducting an in-depth examination of the prior judicial pronouncements enumerated as follows:

1. CIT vs. Delhi Race Club [2014] 51 taxmann.com 550 (Hon'ble Delhi HC)
2. Fox Network Group Singapore Pvt. Ltd. vs. ACIT(IT) (2020) 121 taxmann.com 330 (ITAT Delhi)
3. Cricket Australia vs. ACIT(IT) (ITA No. 1179/Delhi/2022) (ITAT Delhi)
4. ESPN Star Sports vs. Global Broadcast News Ltd. 2008 (38) PTC 477 (ITA T Delhi)
5. DDIT(IT) vs. Nimbus Communications Ltd (2013) 20 ITR(T) 754 (ITAT Mumbai),

In line with the holdings of these judgements, the tribunal opined that, ***"Live events" does not amount to a work in which copyright subsists, meaning thereby right to broadcast live events i.e., "Live Rights", is not "copyright" and therefore any payment made thereto can't be said to be chargeable to tax as royalty under section 9(1)(vi)."***

Furthermore, the tribunal held that courts have continuously been of the opinion that when an agreement clearly bifurcates the consideration paid towards Live and Non-Live Rights, then the revenue cannot deem the payment for Live Rights to have been made for a bouquet of rights.

Source: Tribunal, Delhi in Lex Sportel Vision Pvt. Ltd. Vs. Income tax Officer vide ITA No. 2397/Del/2023 dated December 26, 2023.

Sponsorship Payment Not Taxable as Royalty; Relies on Hero MotorCorp Ruling

Facts

The assessee was appointed as the official sponsor of International Cricket Council (ICC) Events. On 16.12.2004 an agreement was entered between the Global Cricket Corporation PTE Ltd. Singapore (GCC), World Sports Nimbus PTE Ltd-Singapore (WSN) and the assessee.
The GCC had raised three invoices towards sponsorship including display of signage and other associated benefits during ICC Champions Trophy 2004 held in England and the ICC Trophy 2005 at Ireland.

The assessee filed an application dated 23.08.2006 before the DDIT(IT)- 3(1), Mumbai to issue an authorization for remittance of the aforesaid amounts to GCC without deduction of tax at source. It was categorically mentioned in the application that GCC-Singapore did not have a Permanent Establishment (PE) in India and that display of signage was done outside India. Therefore, as per Article-7(1) of India- Singapore Tax Treaty the said payment was not liable to tax in India in the absence of PE in India. The AO, however, rejected the application of assessee and held that the aforesaid amounts are in the nature of “Royalty” and directed the assessee to deduct tax.

Aggrieved against the aforesaid order, the assessee filed appeal before the CIT(A) who vide impugned order in principle upheld the observation of the AO but granted part relief to the assessee holding that 50% of the payment made is for the use of trademark, trade name and copy right, hence, to that extent the payment is in the nature of “Royalty” and taxable under Article-12 of the Treaty.

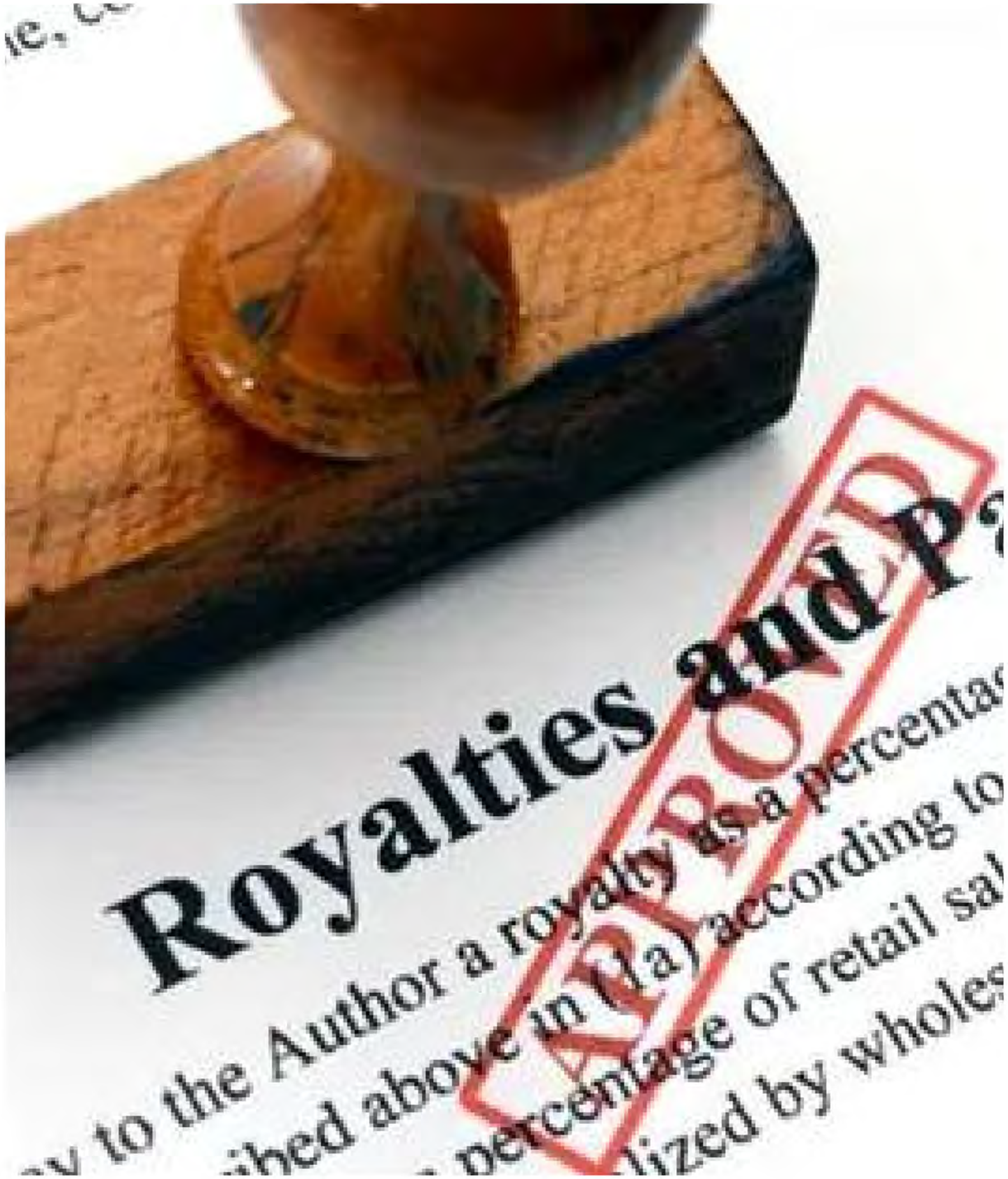
Consequently, the assessee preferred an appeal before the tribunal for relief.

Ruling

The tribunal ruled in favor of the assessee. It observed that the factual matrix and issue raised in the assessee's case were identical to those in Hero MotorCorp Ltd. Vs. Addl. CIT 36 taxmann.com 103 (Del-Trib), wherein it was held that as the amount paid was not for use of any trademark, brand name and there was no PE in India, the same could not be held as royalty.

On the basis of such view, the tribunal held that the payment made by the assessee was not taxable in India and hence, there was no need for tax to be deducted under section 195. Furthermore, the tribunal fortified that such payment was not in the nature of royalty as defined under the Act or Article- 12(3) of the India-Singapore DTAA.

Source: Tribunal, Mumbai in M/s. Indian Oil Corporation Ltd. Vs. DDIT vide ITO No. 987/MUM/2008 dated December 19, 2023.



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