

DIRECT TAX

Judicial Rulings

Income derived from transmission of 'live feed' not taxable as 'royalty income' u/s 9(1)(vi)

- Respondent assessee, Fox Network Group Singapore Pte Ltd. entered into a tripartite agreement ('Novation Agreement') with ESS Singapore ('ESS') and Star India Private Limited ('SIPL') which novated all the existing agreements between SIPL and ESS regulating the distribution of channels, advertisement sales, license agreements and other aspects governing the contractual relationship between them.
- For AY 2015-16, respondent assessee had offered Rs 65,44,67,199 as royalty income in its return of income, subject to tax in terms of the provisions contained in Section 9(1)(vi) of the Act. The income was stated to be earned from sublicensing of broadcasting 'non-live' content as per the Master Rights Agreement ('MRA') which formed part of the Novated Agreement.
- Respondent assessee was asked to furnish an explanation as only Rs 65,44,67,199 was offered to tax as royalty out of total license fee earned. Respondent assessee submitted that out of gross consideration of Rs 1181.63 crores which was earned from sub-licensing of sports broadcasting rights, it had earned Rs 65,44,67,199 from 'non-live' feed and that the balance amount of Rs 1115.91 crores was attributable to 'live' feed which would not fall within the ambit of Section 9(1)(vi) of the Act.
- It was further contended, referring to Novation Agreement that in the bifurcation of the royalty earned in the ratio of 95% and 5%, only 5% was liable to be recognized as revenue generated from 'non-live' feed.
- The Court relied on CIT v. Delhi Race Club wherein it was held that the "broadcast/live telecast is not a work within the definition of 2(y) of the Copyright Act and also that broadcast/live telecast does not fall within the ambit of section 13 of the Copyright Act, it would suffice to state that a live telecast/broadcast would have no copyright"

- Accordingly, the court opined that once the Court had concluded that a live telecast would not fall within the ambit of the expression 'work', it would be erroneous to hold that the income derived by respondent in respect of 'live feed' would fall within Clause (v) of expression 2 to Section 9(1)(vi) of the Act.
- The Court further took note of the submission of appellant that respondent's revenue earned from 'live feed' would be taxable in accordance with Clause (i) of Explanation 2 to Section (9)(1)(vi) of the Act and opined that the explanation covered the activity of transmission by satellite. However, in the instant case, appellant admitted that the actual transmission of content was undertaken by SIPL and not by respondent. Thus, the explanation did not detract from the opinion of ITAT.
- The Court upheld that the impugned orders and further held that the fees received by respondent towards live transmission could not be classified as royalty income under Section 9(1)(vi) of the Act.

*Fox Network Group Singapore Pte Ltd.
[TS-28-HC-2024(DEL)]*

Mauritian entity not filing tax return is not liable for reassessment on investment sale remittance

- The appellant, a Mauritius-based investment company, purchased shares & CCDs of Skeiron Renewable Energy Private Limited in India during FY 2016-17.
- The appellant also earned certain capital gain on sale of such shares which is exempt in view of Article 13(4) as the share sold before 31 March 2017. The appellant has also not filed the Return of Income for FY 2016-17.
- AO issued a notice under section 148, alleging an escapement of income due to the appellant's failure to file a return for the assessment year 2017-18. The reasons recorded for reopening the case indicated the large remittances made by the appellant, raising suspicions of unreported income generation.

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- Article 13(4) of the DTAA confers the power of taxation of the gains derived by a resident of a contracting state from the alienation of specified property only in the state of residence i.e. Mauritius. Accordingly, there are no tax implications in the hands of the Appellant in India in connection with the capital gains earned by the Appellant during FY 2016-17.
- The hon'ble Tribunal held that notice under section 148 is void ab initio, rendering the assessment null and void in absence of a clear basis for concluding income escapement believing
 - ✓ Reasons recorded lacked a prima facie satisfaction regarding the escapement of income.
 - ✓ The appellant had duly remitted funds and filed form 15CA, indicating the sale of investments.

*AEP Investments (Mauritius) Ltd
[TS-30-ITAT-2024 (DEL)]*

INDIRECT TAX

Changes in Budget

- Finance Bill proposes amendment in the definition of 'Input Service Distributor' (ISD), redefines scope of ISD to receive invoice of input services and services on which tax is paid under section 9(3) and 9(4) of CGST Act, for or on behalf of distinct persons referred in under Section 25.
- Further, substitute section 20, mandates that any office of the supplier, receiving tax invoices for distinct persons under Section 25, must register as an ISD and distribute credit in the prescribed manner.

- The companies with branches in multiple cities will now need to register for input service distribution, ISD to claim input tax credit for services provided by the head office to the branch offices a move expected to reduce disputes significantly. The budget proposed to make this rule mandatory besides the requirement of a separate registration that allows the headquarters of the company to distribute their input tax credit with their branch offices. Earlier it was an option for the companies to register for ISD

Advisories

Advisory on Payment through Credit Card (CC)/Debit Card (DC) and Unified Payments Interface (UPI)

To facilitate easier and more convenient payment methods for GST registered taxpayers, the Government has introduced two new facilities under e-payment in addition to net-banking. These new methods are Cards and Unified Payments Interface (UPI).

Details of New Payment Facilities:

- **Cards Facility** - Cards facility includes both Credit Card (CC) and Debit Card (DC), Mastercard, Visa, RuPay, and Diners (CC only).. Cards must be issued by any Indian bank to be eligible for use.
- **Unified Payments Interface (UPI)**- UPI is a real-time payment system that allows users to instantly transfer funds between bank accounts using a mobile platform.

Advisory for furnishing bank account details by registered taxpayers under Rule 10A of the Central Goods and Services Tax Rules, 2017

All registered taxpayers are required to furnish details of their bank account/s within 30 days of the grant of registration or before the due date of filing GSTR-1/IFF, whichever is earlier.

- Failure to furnish bank account details within the stipulated time will result Suspension of taxpayer registration after 30 days, with intimation issued in FORM REG-31.

THE DIMENSIONS

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- Debarment from filing further GSTR-1/IFF.
- Revocation of Suspension - Updating bank account details in response to the intimation in FORM REG-31 will automatically revoke the suspension.
- if bank account details are not updated even after 30 days of issuance of FORM REG-31, the registration after suspension may be taken up for cancellation process by the Officer.
- Enabling the Appellant to file return for the month of July, 2017 and thereby permitting the Appellant to file the returns for the subsequent months as well. Therefore, the Appellant filed the required returns for the said period on 24-01-2018.
- The GST Authority issued a Recovery Notice against the Appellant, demanding the payment of interest for alleged belated payment of GST for the said period

Judicial Rulings

Assessee not liable to pay interest when GST amount deposited within prescribed time period but returns Form GSTR-3B were filed belatedly post due-date

- The Appellant paid the required amount of GST by using Input Tax Credit (“ITC”) and the remaining amount of tax through cash.
- At the time of introduction of GST, the Appellant had accumulated balance of CENVAT Credit which was to be transitioned into GST Regime for which Form GST TRAN 1 was filed, though, at later stage due to a technical glitch on GST Portal. However, the credit sought to be transitioned was not available on furnishing of Form GST TRAN-1
- As the amount of Transitional Credit could not reflect in the Electronic Credit Ledger, the Appellant was not in a position to file monthly return under Form GSTR-3B for the month of July, 2017, causing delay in filing of Form GSTR-3B for subsequent months from August, 2017 to December, 2017.
- The Appellant for the period of July, 2017 to December, 2017 (“**the Period**”) deposited the tax amount in the Electronic Cash Ledger into the Government account within the due date for each month.
- The Accumulated CENVAT Credit was also not transitioned, due to which the Appellant was Constrained to file revised Form GST TRAN-1 after which the transitioned credit was reflected in the Appellant Electronic Credit Ledger.
- Hon’ble HC Madras held that once the amount is paid by generating GST PMT-06, the amount will be initially credited to the account of the government immediately upon deposit, thereby the tax liability of registered person would be discharged to the extent of amount deposited with the government.
- The tax liability of registered person would be discharged from the date when the amount was credited to the account of the government. Also, as per Section 50(1) of the CGST Act, registered person is liable to pay the interest only for the delayed period i.e. when there is any default in payment of GST subsequent to the date of filing monthly returns i.e. on or before 20th day of every succeeding month.

Eicher Motor Ltd. v. Superintendent GST and Central Excise, Madras High court [W.P. No. 16886 of 2023, January 23, 2024]