

ITA 1064/2007 DIRECTOR OF INCOME TAX - versus – SAHARA INDIA FINANCIAL CORPORATION LTD International Treaty Taxation Royalty Definition: Sahara India Case: India Canada treaty:

Facts: The respondent/ assessee had entered into an agreement, as aforesaid, on 10.07.1996 with IMG. As per clause 2(a) of the said agreement, IMG was to provide to the assessee “the benefits” for the tournaments, subject to ICC regulations, in connection with the protected categories. The expression “benefits” has been defined in Clause 1(i) of the said agreement to mean the title sponsorship benefits in connection with the tournament set out in the Schedule. The word “tournament”, in turn, was defined in Clause 1(vi) to mean, *inter alia*, the Friendship Cup, to be known as “the Sahara Cup”, which would consist of a series of five one day international cricket matches to be played in Canada between the full Indian and Pakistan national cricket teams, as selected by the cricket authorities of their respective countries. The matches were to be recognized by the ICC as having full one day international cricket status ...

Appellant/ Revenue’s Contention: The revenue insists that the payment made by the respondent/ assessee to IMG Canada for the said rights of title sponsorship amounted to a royalty payment under Article 13 (3) of the said DTAA ...

Held:

“We have also examined the terms of the agreement between the respondent/ assessee and IMG Canada. It is clear that what has been paid for by the respondent / assessee is the right of title sponsorship and the benefits connected therewith, which have been set out in the Schedule to the said agreement and to which we have already referred to above

What the Commissioner of Income Tax (Appeals) failed to note was that there was no transfer of a copyright or the right to use the copyright flowing from IMG Canada to the respondent / assessee and, therefore, any payment made by the respondent/ assessee to IMG Canada would not fall within Article 13(3)(c) of the said DTAA. The reference in Article 13(3)(c) is to “any copyright” and it is not a reference to “any right”. 9. In these circumstances, we feel that the findings of fact and law and the conclusions arrived at by the Tribunal are correct”