

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.02.2010

+ **ITA 1064/2007**

DIRECTOR OF INCOME TAX ... Appellant

- versus -

SAHARA INDIA FINANCIAL CORPORATION LTD ... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Sanjeev Sabharwal
For the Respondent : Mr Persy Parlawala, Sr Advocate with
Mr Satyen Sethi and Mr Johnson Bara

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal preferred by the revenue is directed against the Income Tax Appellate Tribunal's order dated 28.07.2006 passed in ITA No. 1491/Del/2000 and relates to the assessment year 1998-1999.

2. The revenue is aggrieved by the finding of the Tribunal that the payment of US \$ 9,24,500/- by the assessee, as per the agreement dated 10.07.1996, to IMG Canada through IMC India, did not amount to a royalty payment under Article 13(3)(c) of the Double Taxation Avoidance Agreement entered into between India and Canada (hereinafter referred to as 'the said DTAA').

3. 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.

4. The Schedule to the said agreement specifies the details of the Title Sponsor Package, which included the right that all the matches and the tournaments would be referred to as “Sahara Cup”. It also provided for incorporation of the Sahara name and logo as the official tournament logo. The said Sahara name and logo was to be prominently displayed at either ends of the cricket ground on the outfield as also prominently displayed on the stumps and the score boards. The players clothing was also required to display the Sahara logo. Apart from these rights, certain other rights, such as provision for certain number of VVIP tickets, VIP tickets and season tickets were also part of the Title Sponsor Package. The official awards and trophies

were also required to carry the Sahara name and / or logo.

5. 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. The Tribunal has examined this submission made by the revenue, which had found favour with the Commissioner of Income Tax (Appeals), who held that the said payment was covered under Article 13(3)(c) of the said DTAA. The Tribunal, however, came to the conclusion that upon reading the various terms of the agreement between the respondent / assessee and IMG, the payment made for the title sponsorship right cannot be said to be a payment made for acquisition of or the right to use any copyright and, therefore, the question of applicability of Article 13(3)(c) of the DTAA would not arise. The Tribunal conclusively held that the payment made by the respondent / assessee to IMG Canada could not be called “royalty” as contemplated under Article 13(3) of the DTAA. Consequently, the Tribunal set aside the orders of the authorities below on this aspect of the matter.

6. 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. Article 13(3) describes the term “royalties” to mean payments of any kind including rentals received as a consideration for the use of or the right to use:-

- (a) any patent, trademark, design or model, plan, secret formula or process;
- (b) industrial, commercial or scientific equipments or information concerning industrial, commercial or scientific experience; and
- (c) any copyright of literary, artistic or scientific work cinematographic films and films or tapes for radio or television broadcasting.

It is apparent that unless and until the payment is in connection with the right to use or is by way of consideration for the right to use any of the aforesaid three categories, the payment cannot be termed as a “royalty”.

7. The learned counsel for the revenue contended that the expression “payment of any kind including rentals”, has a very wide meaning and, therefore, it includes the payment for “any” rights. Such a contention is not tenable in view of the fact that the payment, which may be of any kind and which may include rentals, has to be in connection with the right to use any of the rights specified in the three categories mentioned above.

8. It is apparent that the categories (a) and (b) obviously do not arise. It is for this reason that the Commissioner of Income Tax (Appeals) sought to include the payment made by the assessee to IMG Canada under the third category, that is, Article 13 (3)(c) of the said DTAA. Unfortunately, what the Commissioner of Income Tax (Appeals) failed to notice was that before any payment could be termed as a “royalty” under Article 13(3)(c), it would have to be either as consideration for the copyright or for the right to use a copyright in any of the four categories of works mentioned therein, namely,

(i) literary; (ii) artistic; (iii) scientific work; and (iv) cinematographic films and films or tapes for radio or television broadcasting. 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. No perversity has been pointed out. Consequently, no substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

FEBRUARY 19, 2010
SR