

India; Germany

# Commissions on Sale, Marketing of Publications Are Not Fees for Technical Services, Says Delhi High Court

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The Delhi High Court (HC), in the case of *Commissioner of Income Tax v. Springer Nature Customer Services Centre GMBH (ITA. No. 306/2023)*, has held that commission received for the sale, promotion and distribution of books cannot be considered fees for technical services (FTS). Further, subscription fees for e-journals are also not in the nature of royalties.

(a) Facts. The taxpayer, a German company engaged in the publication of books and journals, executed a Commissionaire Agreement (the Agreement) with an Indian group company (SIPL) for the promotion, sale and distribution of books and journals published by SIPL in print and electronic format, as well as rendering support services for a commission of 9.9% on sales. The taxpayer also received a subscription fee from its affiliates for e-journals. The lower tax authorities sought to tax the commission as FTS as provided under section 9(1)(vii) of the Income Tax Act, 1961 and article 12 of the [Germany-India Income and Capital Tax Treaty \(1995\)](#), and subscription fees as royalties under section 9(1)(vi) of the Act. The income tax appellate tribunal, however, held that the payments were not in the nature of FTS/royalties and deleted the additions made by the lower tax authorities.

(b) Issue. The HC considered the issue whether commission and subscription fees received by the taxpayer were in the nature of FTS and royalties.

(c) Decision. The HC ruled in favour of the taxpayer as set out below.

## Commission

The taxpayer and the tax authorities were not in dispute about the nature of services rendered by the taxpayer under the Agreement. However, the said services, to be construed as FTS, should fall under one or more categories, i.e. managerial, technical or consultancy services.

There were no special skills or knowledge that the taxpayer's personnel were required to possess to render the services that were contemplated under the Agreement. The taxpayer also did not render any professional advice or service concerning a specialized field.

The title in the publications remained with SIPL, which the taxpayer could assign "property/licences" to third parties, albeit on behalf of SIPL.

Thus, promotion, sale or distribution of SIPL's publications, or rendering support services, although involving human intervention, could not be considered FTS.

## Subscription fees

Subscription amounts cannot be treated as royalties considering that there was nothing on record to suggest that the taxpayer granted the right in respect of copyright to the concerned subscribers of the e-journals. All that the taxpayer did was to sell the copyrighted publication to the concerned entities without conferring any copyright in the said material. For this purpose, the HC relied on the judgment rendered by the Indian Supreme Court in the case of Engineering Analysis.

Accordingly, the HC dismissed the appeal in the absence of any substantial question of law.

This decision was pronounced by the Delhi High Court on 12 July 2023.

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