

India; Australia

# Licence Fees for Programme Transmission Not Royalties Under Treaty, Amendment to Domestic Law Does Not Impact Treaties

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Report from our correspondent Urvi Asher, Chartered Accountant, India

The Delhi Income Tax Appellate Tribunal (ITAT), in the case of *Cricket Australia vs. Assistant Commissioner of Income Tax (ITA. No 1179/2022)*, has held that licence fees received by the Australian taxpayer for the transmission of programmes from an Indian entity cannot be considered "royalties" under the [Australia-India Income Tax Treaty \(1991\)](#) (the Treaty) and are not taxable in India.

(a) Facts. The taxpayer, a tax resident of Australia, earned licence fees from an Indian company (Sony Pictures) for the live and non-live transmissions of programmes, i.e. cricket matches held in Australia. The tax authorities opined that the payment of licence fees to the taxpayer involved the transfer of rights in respect of a "process" as per the amended provisions of Explanation 6 to section 9(1)(vi) of the Income Tax Act, 1961 (the Act) as well as under article 12 of the Treaty.

(b) Issue. The ITAT considered the issue as to whether the licence fees paid to the taxpayer had to be regarded as royalties as per the amended definition of "royalties" under the Act, and, accordingly, were taxable in India.

(c) Decision. The ITAT ruled in favour of the taxpayer and observed that:

- the tax authorities did not point out whether the Treaty was amended in line with the amendment made in the Act and accepted the taxpayer's argument that any change in the domestic law would not alter the terms of the Treaty; and
- in the absence of any change in the Treaty, the ratio laid down by the decision in *the Director of Income Tax vs New Skies Satellite BV* [2016] 68 taxmann.com 8 (Delhi) would continue to apply in the taxpayer's case. In this case, it was held that the mere amendment of section 9(1)(vi) of the Act cannot result in a change in international tax treaties.

Accordingly, the ITAT held that the tax authorities were not justified in making the impugned addition.

This decision, pronounced by the ITAT on 24 August 2023, is available [here](#).

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