

India; United States

Subscription Fees for Restricted Access to Information Not Royalty Under India-US Treaty, Says Indian Court

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The Bangalore Income Tax Appellate Tribunal (ITAT), in the case of *M/s. Pluralsight LLC v. Deputy Commissioner of Income Tax (ITA. Nos 37/2023)*, has held that subscription fees received by a non-resident entity for allowing limited video access to its subscribers were not in the nature of royalty under the [India - United States Income Tax Treaty \(1989\)](#) (the Treaty) and were not taxable in India.

(a) Facts. The taxpayer, a tax resident of the United States, provides an online technology learning platform on its website and earns subscription revenue from global customers. During the tax year 2016-17, the taxpayer earned subscription fees from its Indian customers and considered the same non-taxable in India under the Treaty. However, the tax authorities considered such revenue as royalty under section 9(1)(vi) of the Income Tax Act, 1961 as well as under article 12(3)(a) of the Treaty.

(b) Issue. The ITAT considered the issue whether the subscription fees earned by the taxpayer were in the nature of royalty under the Treaty and accordingly, taxable in India.

(c) Decision. The ITAT ruled in favour of the taxpayer and observed that the subscription revenue was not in the nature of royalty for the reasons set out below.

- Subscription fees for the use of or right to the use of any "copyright" cannot be considered as "royalty" as based on the terms of the master subscription agreement, the subscribers merely obtain "access" to the database to view the videos - which are akin to "copyrighted articles". The subscribers do not receive any right to use the copyright in the videos/database at any point in time.
- Further, in view of the principle laid down by the Apex Court in the case of *Engineering Analysis* [432 ITR 471 (SC)], the subscription fees received by the taxpayer do not amount to payment for the "use of or right to use copyright" but rather payments for access to copyrighted products, i.e. the videos on the taxpayer's database.
- Since the taxpayer received subscription fees merely to grant access to the database of videos and not for imparting any information concerning its own knowledge or experience of creating/maintaining the database, the said fees cannot be said to be for imparting of "any information concerning the industrial, commercial or scientific experience of the taxpayer".
- Payment made for viewing the videos on the database cannot be termed as consideration for use or right to use any industrial, commercial or scientific equipment.

The decision, pronounced by the ITAT on 21 August 2023, is available [here](#) (as a pdf in English).

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