

# Tax Hotline

June 14, 2002

## PAYMENTS TO NON RESIDENTS FOR SATELLITE SIGNALS NOT LIABLE TO TAX IN INDIA, RULES INCOME TAX TRIBUNAL IN CHENNAI, INDIA

The Chennai Income Tax Tribunal (“ITAT”), in a ruling, which would impact most of the television companies in India, has held that the payment by an Indian TV company to a UK company for signals beamed from satellites would not be liable to tax in India.

Raj TV of Chennai, filed an appeal against the income tax demand on the payment made by it to the London based Reuters Television (“RTV”), which provided Raj TV with uplinking facilities through a Russian satellite, Intersputnik.

The Income Tax Department (“Department”) claimed that the payments were in the nature of royalty and fees for technical services and hence taxable in India under the provisions of the Income Tax Act, 1961 (“ITA”). The Department contended that the services were rendered in India by beaming signals across the taxable territory of India, which was utilized by local channels.

The ITAT rejected the Department’s stand. The ITAT observed that the payment was not for any right to use a specified intellectual property rights or for imparting any industrial, commercial or scientific information. The payment was for hiring transponders only. ITAT pointed out that RTV did not own the transponders through which the programmes were beamed. RTV is an international television news organization with access to satellite transponder space and uplinking facilities from time to time.

In view of the ITAT’s decision, the payment for the use of industrial, commercial or scientific equipment, which normally falls within the purview of the definition of “royalty” under Double Taxation Avoidance Agreements, is outside the scope of royalty as defined under the ITA (*NOTE: Finance Act 2001 has amended the definition of royalty in the ITA with effect from April 1, 2001 to include “equipment royalty”*).

The ITAT opined that the payment could also not be construed as fees for technical services. In this case, Raj TV was entitled to use the satellite, which was located outside the Indian territory and this could only be classified as a business arrangement, not provision of technical service. It could not therefore be taxed as fees for technical services.

It was held that since the payment was not subject to tax in India, Raj TV was not required to withhold tax at source while making the remittance to RTV, London.

Source : The Economic Times, June 14, 2002

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