IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'D': NEW DELHI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA Nos.1960, 1961 and 2146/DEL/2024
[Assessment Years: 2013-14, 2014-15 and 2015-16]

TRANS WORLD INTRNATIONAL LLC, C/o- International Merchandising Company LLC-India Branch Office, Vatika Business Centre 2nd Floor, Business Suites No.24 & 25, First India Place, Sushant Lok-1, Phase-1, Block –B, Mehrauli Gurgaon Road, Haryana-122002	Vs	Deputy Commissioner of Income Tax Circle (International Taxation)-3(1)(1) E-2 Block, Civic Centre, Near Minto Road, New Delhi-110002
PAN-AAGCT0812L		
Appellant		Respondent

Appellant by	Shri K.M. Gupta, Adv. & Ms. Supriya Mehta, AR
Respondent by	Shri Vijay B. Vasanta, CIT-DR Shri Sahil Kumar Bansal, Sr. DR

Date of Hearing	**21.03.2025**
Date of Pronouncement	**18.06.2025**

ORDER

PER BRAJESH KUMAR SINGH, AM,

These bunch of three appeals by the assessee are directed against the order of the Assessing Officer dated 04.03.2024 and 05.03.2024 passed u/s 147 r.w.s.144C(13) of the Income Tax Act, 1961 (hereinafter 'the Act') arising out of order of Dispute Resolution

Panel all dated 27.02.2024 pertaining to Assessment Years 2013-14, 2014-15 and 2015-16 respectively.

ITA No.1960/Del/2024 (AY 2013-14)

2. Brief facts of the case: The M/s Trans World International, Inc. (TWI Inc.) was a non-resident corporation established in Ohio, USA and was engaged in the business of production of theatrical and non-theatrical motion pictures and video tapes. For the year under consideration, TWI Inc. was carrying on the business of licensing broadcasting rights with both residents as well as non-residents and entered into direct contracts with the broadcasters for the licensing of broadcasting rights. On 05.05.2014, the 'TWI Inc. merged with Iris Trans World International Inc. and post that the surviving entity converted itself into a limited liability company and was named Trans world International LLC on 05.05.2014. In the instant case, information was received vide letter dated 26.02.2018, filed by the assessee company itself, wherein, it stated that during FY 2010-11 to 2013-14 and part of 2014-15 (till 4 May 2014), another group entity, incorporated in USA. namely Trans World International Inc. (TWI Inc.) had performed similar business activities and TWI Inc. had also obtained PAN in India- AADCT7478H. TWI Inc. merged with Iris Trans World International Inc. on May 05, 2014 (IRS Inc.) and IRIS was converted to a Limited Liability Company namely Trans World International LLC(TWI LLO) (ie. the captioned assessee), it was further

informed that the company had been recently informed that for certain payments there can be litigation regarding the taxability as royalty in its hands. Accordingly, in order to avoid litigation, the company had filed its return of income for FY 2015-16 and FY 2016-17 offering royalty income to tax and has paid self-assessment tax including interest) of INR 68,99,070/-. On the same lines, it was informed that the company intends to undertake compliances for FY 2010-11 to FY 2014-15 (till 4 May, 2014) for TWI Inc. & FY 2014-15(from 5 May 2014) for TWI LLC. Further, the assessee company vide its letter dated 12.04.2018 has informed that it had earned USD 394,264, Euro 2,115 and GBP 250 during AY 2013-14 but the same had not been offered to tax in India and the assessee has not filed its return of income for the given AY. Therefore, the Assessing Officer noted that information suggests that income amounting to Rs. 2,16,07,733/-, equivalent to Euro 2115 (INR 1,47,077/-, estimated on the basis of RBI reference rate as on 28.03.2013), GBP 250 (INR 20,580/-, estimated on the basis of RBI reference rate as on 28.03.2013), and USD 394264(INR 2, 14,40,076/-, estimated on the basis of RBI reference rate as on 28.03.2013), has escaped assessment for A. Y 2013-14 and issued notice u/s 148 of the Act dated 28.06.2021.

3. During the year, the assessee submitted its receipts from resident as well as non-resident for licence and broadcasting rights.

The details of which are reproduced in para no.6 of the assessment order, which is reproduced as under:-

Sl. No.	Nature of receipts	Payer Details	Amount in Rs.	Offered for tax or not
1	Recorded content	Aetn 18 Media Private Limited	11,78,869	Yes taxed as Royalty income
2	Recorded content	NDTV	8,50,185	Yes taxed as Royalty income
3	Recorded content	Wallace sports & research foundation	1,41,031	Yes taxed as Royalty income
4	Recorded content	Taj Television limited	37,11,125	Yes taxed as Royalty income
5	Recorded content	Sony pictures networks India Private limited	39,90,472	Yes taxed as Royalty income
6	Live & recorded coverage	Sony Pictures Networks India private limited	1,02,23,056	5% taxed as Royalty income
7	Live & recorded coverage	Taj television limited	17,81,340	5 % taxed as Royalty income
	Total		**2,18,76,078/-**	

3.1. From the above table, it is seen that there is no dispute in respect of item no.1 to 5 and the dispute is only with respect to item no.6 and 7, where the consideration has been received for bundled rights i.e. both for broadcasting for live and recorded coverage of Sony Pictures Networks India Pvt. Ltd. and Taj television Private limited. The assessee as per the above table offered only 5% of the bundled receipts towards royalty income i.e. it considered only 5% of the consideration receipts towards recorded content and balance 95% towards live coverage of events. The Assessing Officer asked the

assessee to justify the above bifurcation i.e. only 5% towards recorded events and offering it as royalty income and claiming balance 95% towards live coverage and claiming it as exempt.

3.2. In reply, the assessee submitted that in the media and entertainment industry, with respect to the broadcasting contact for a sports event, the consideration attributable towards the live telecast is more in comparison to the record feed. It was further submitted that the rationale behind the same was that the live telecast of the sport events always attracts substantial massive viewership and sponsors for the broadcasters and accordingly, it results in far more revenue for the Broadcasters from Advertisement and other sources. Accordingly, it was submitted that the consideration attributable towards the live telecasts was substantially higher in comparison to the recorded telecast of the same event. The Assessing Officer further noted that during the year under consideration, the assessee had entered into two agreements comprising both live coverage as well as recorded coverage of the sports events Taj TV Limited on 08.08.2012 and MSM Satellite (Singapore) Pte. Ltd.(now known as Sony Pictures India Private Limited) on 18.05.2012. On the basis of both agreements, the assessee submitted that agreement with Taj TV Ltd. was for broadcasting of football matches, DFB Pokal Cup Knockout Competition (the German FA Cup), wherein, the duration of live streaming is 90% vis-a-vis recorded streaming which comprises only

10% of the total time. Regarding the agreement with Sony India Pvt. Ltd. for broadcasting of badminton matches to be held for Thomas & Uber Cup, World Championship and Sudirman Cup, the assessee submitted that some of the agreement entered into by the assessee explicitly mentions the percentage of amount to be attributed to live and recorded content. In this regard, the assessee submitted that the agreement entered into by the assessee with Lex Sportel Vision Pvt. Limited which is entered for similar bundled contract in question containing both live and recorded content, wherein, 95% value has been attributed towards the live transmission and 5% value has been attributed towards non-live transmission.

3.3. The Assessing Officer after noting the above submissions of the assessee did not agree with it and held that the assessee's rationale of apportionment into non live and live component in the ratio of 5%:95% is flawed. Firstly, he held that each contract/licensor grant different rights to licensee in respect to each sporting event and hence the standard apportionment cannot be followed in each and every case of bundled contract. Secondly, regarding the contract with Lex Sportel Vision Pvt. Ltd., the Assessing Officer observed that mere mentioning of the apportionment of the live and recorded programme in an agreement will not truly influence the nature of the contract. Referring to various judicial pronouncements, he observed that the Hon'ble Courts have upheld that the doctrine of 'substance over form'

meaning that contract/arrangement has to be read/understood for the intent of which it was entered into and not mere by its legal form. The Assessing Officer referred that this agreement has been discussed in detail in assessment proceedings for AY 2017-18, wherein, it was highlighted that the assessee was granted rights to telecast the matches live and also other events. The relevant finding of the Assessing Officer is reproduced as under:-

> *"that assessee was granted rights with respect to use of excerpts of minimum of 153 matches, 45 electronic weekly magazine programme, right to distribute, promote and broadcast on live or delayed basis all the matches, right to copy, reproduce, transmit, publish, download(including clips, highlights, still images) for unlimited time, to market and promote itself as the official broadcast partner, to transmit and publish via the licensed channels the trademarks, logos etc. Hence, the agreement gives a bundle of right to assessee/licensee to reproduce and record the matches and exploit the same along with trademarks, logos, promotion as official broadcaster etc. The consideration is more for enjoyment of the rights based on recorded content than the live feed. Further, live feed is given to assessee to infact create the copyright in the form of new material and use it for its commercial benefits."*

3.4. Based on the above description of the rights given in the said agreement, the Assessing Officer held that the consideration was more for enjoyment of the rights based on recorded content than the live feed and further that live feed is given to the assessee to infact create the copyright in the form of new material and use it for its commercial benefit.

3.5. Further, the Assessing Officer observed that the assessee by relying on the analysis made with respect to number of hours of live

or recorded content given in the contract of Taj TV Limited has contradicted its own stand of standard apportionment of 5%-95%. Accordingly, the Assessing Officer observed that this very analysis shows that apportionment cannot be standard for each and every contract of sporting event but has to be decided on contract-to-contract basis. The Assessing Officer noted that while bifurcating the apportionment assessee has only considered live and recorded content and nowhere it has considered rights with respect to use or create highlights/clips/still images, promotion or marketing, use of trademarks, logos, advertisement, right to show interviews etc. The Assessing Officer observed that no importance has been granted to these rights which are more important in the time and age of social media, internet where contact is consumed for longer periods and can be used in different contexts and stay relevant and in use for different period of times. The Assessing Officer further observed that the analysis of various judgements on this issue by Tribunals and courts also highlight the fact that courts have attributed from 4% to 25% towards non live content based on different contracts and hence, there cannot be a single criteria for apportionment and the same is case specific.

3.6. Thereafter, the Assessing Officer referred to the respective agreement which are subject matter of dispute in this appellate proceeding and observed that apart from rights for live broadcast,

various other rights were also incorporated in said agreement. The details of which as highlighted by the Assessing Officer are reproduced as under:-

First Agreement with Taj TV Limited dated 08.08.2012

"Designated Rights: Exclusive rights of all forms of free to air television, pay television, IPTV broadcast, Direct to Home (DTH), Mobile, Internet, Linear and Non Linear Pay per view, Video on demand on its channels, namely Ten Sports, Ten Action, Ten HD and other channels of group/associate/affiliate company(s) of License."

Second Agreement with Sony Pictures India Private Limited dated 18.05.2012

(a) The right to telecast and simulcast the Matches live, tape delayed or by way of deferred telecast on the Designated Platforms during the License Period;

(b) The right to telecast/stream the Matches live On Demand via the Digital Platforms during the License Period;

(c) The right to telecast the Matches as Recordings via the Basic Platforms during the Licensed Period (live, tape delayed or deferred live) of each of the Programme;

(d) The right to telecast/stream the Match Highlights and Official Film on the Designated Platforms during the License Period; and

(c) The right to use Clips of the Programmes for promotional and marketing purposes and to promote and market the television services of the Licensee during the License Period.

3.7. In view of the above facts as detailed by the Assessing Officer, the Assessing Officer concluded that these agreement are not merely for live broadcasting of the matches/events but also provides the additional rights which can only be given when the live feed is stored. The Assessing Officer held that the assessee company was in

receipt of the payment against assigning the use or right to use of copyright as the duplication of any programme which is only possible when such programme has been stored somewhere and the person who, is making the duplication work of the same has assigned rights from the owner of the copyright programme. The Assessing Officer also observed that in the given case the assessee company has assigned power to duplicate the work and hence the payment which it has received during the year under consideration is "Royalty" income and falls under section 9(1)(vi) of the Act. Accordingly, the Assessing Officer held that receipts in the hands of the assessee are consideration for use of, or the right to use, any copyright, the trade mark or other like property or right and therefore, such consideration constitutes royalty under the provisions of Section 9(1)(vi) of the Act.

3.8 Thereafter, referring to the definition of royalty under the domestic law of India, wherein, royalty has been defined in Explanation 2(1) to Section 9(1)(vi) of the Act as any consideration for transfer of all or any rights (including the granting of a license) in respect of the following:-

i. Patent
ii. Invention
iii. Model
iv. Design
v. Secret formula
vi. Process

vii. Trademark or

viii. Similar property

3.9. Thereafter, the Assessing Officer referring to the Explanation-6 inserted by the Legislature to specifically clarify that the expression 'process' used in Explanation-2 would include and should be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic-fibre or by any other similar technology whether or not such process is secret. Thus, according to the Assessing Officer this clarificatory explanation was expressly inserted by the Legislature to take within its ambit, the license fee paid for transfer of any rights for transmission by satellite by any process, whether secret or not. Thus, under the amended law, the license fees received for transfer of rights of transmission by the assessee would indubitably partake the character of royalty in terms of the domestic law of India referred to above. He further held that even under Article 12 of the India-USA Treaty, the expression royalty is widely worded to include all payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent. trade mark, design or model, plan, secret formula or process, or for

information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof.

3.10. Thereafter, the Assessing Officer placing reliance on the decision of the Tribunal of Mumbai Bench in the case of Viacom 18 Media (P.) Ltd. vs ADIT [2014] 44 taxmann.com 1 (Mumbai), in which the Tribunal relied upon the judgment of Hon'ble Madras High Court in the case of Verizon Communications Singapore (P.) Ltd. held that in view of the above explanation a process could only be regarded as including a process/es as specified in Explanation-6 to Section 9(1)(vi) of the Act and the same must, therefore, be regarded as within the contemplation of the said term and, thus, the term 'royalty' as defined by Explanation 2 to section 9(l)(vi) and Article 12(3) of the Indo-US DTAA. The Tribunal further held that, the term 'process' being not defined, the extant definition of the same, i.e. as per the domestic law, shall apply in terms of Article 3(2) of the said treaty. To conclude, the Assessing Officer held that in view of the exposition of Explanation-6 referred above by the Hon'ble Madras High Court and Mumbai Bench of the Tribunal, he had no hesitation in holding that license fee for transfer of rights through transmission by satellite by any cable, optical fibre or any other similar technology would constitute a royalty under the domestic law of India.

3.11. Thereafter, the Assessing Officer observed that though the assessee had nowhere contested that broadcast rights are not royalty as per the India USA DTAA but the same was discussed in the assessment order, which is reproduced as under:-

> *"8.1 Receipts constitute royalty for the use of, or the right to use, tape or other means of reproduction for use in connection with radio or television broadcasting*
>
> *Article 12(3) of the India-USA DTAA defines the term 'royalty' as under:*
>
> *"The term "royalties" as used in this Article means :*

(a)		*payments of any kind received as a consideration for the use of, or the right to use. any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and*
(b)		*payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8."*

3.12. Thereafter, the Assessing Officer referring to the contention of the assessee that similar treatment of 5% towards live streaming and 95% towards recorded content was accepted by the Assessing Officer in AY 2011-12 observed that the agreements are

different for different assessment year and in each year a different factual exercise has to be done to each and every agreement. Accordingly, the Assessing Officer held that therefore, there is no change in stand and the assessment being done based on the material on record for the year under consideration. Further on the reliance by the ld. Counsel for the assessee placed reliance on the judgment of Hon'ble Supreme Court in the case of Radhasoami Satsang vs CIT, the Assessing Officer observed that the same could not be accepted as the agreements are different one from the previous year and each agreement is distinguishable from the other agreements. The Assessing Officer further held that there was change in the fact of the case from the facts of previous year and accordingly the Assessing Officer held that complete receipts are royalty under the provisions of the Act as well as the DTAA on account of use of, or the right to use any copyright, trademark, as well as process royalty as under:-

> *8. In view of the above discussion, the receipts of Rs.2,18,76,078/- on account of receipts from Taj Television Limited and Sony Pictures networks India Pvt. Ltd. is held to be royalty as under:-*
>
> *a. Consideration for use of, or the right to use; any copyright, trademark, or other like property or right,*
>
> *b. Consideration for use of, or the right to use, tape or other means of reproduction for use in connection with radio or television broadcasting*
>
> *c. Consideration for use of, or the right to use, any process*

3.13. Accordingly, the Assessing Officer taxed the above amount of Rs.2,18,76,078/- as per the following computation, wherein, he taxed the amount of Rs.21,17,085/- received from resident payers and Rs.1,97,05,993/- was received from non-resident payers @15% as per Article 12 of DTAA more beneficial as reproduced as under:-.

	Returned Income	*Nil*
Addition	*Royalty income as discussed above*	*Rs.2,18,76,078/-*
	Total income	*R.2,18,76,078/-*

Out of the total receipts of Rs. 2,18,76,078/-, Rs. 21,70,085/- was received from Resident payers and Rs. 1,97,05,993/- was received from Non-Resident payers. The royalty income received from resident payers and non resident payers is taxable at the rate of 15% as per Article 12 of DTAA being more beneficial."

4. The above draft assessment order was passed on 31.05.2023 and against the said draft assessment order, the assessee filed its objection before the Ld. Dispute Resolution Panel on 28.06.2023. The ld. Dispute Resolution Panel vide order dated 27.02.2024 issued a direction u/s 144C(5) of the Act, wherein, the Ld. Dispute Resolution Panel did not find any infirmity in the draft assessment order and rejected the objections of the assessee on all ground. Accordingly, the Assessing Officer passed the final assessment order u/s 147/144 on 04.03.2024 as per the income on computation of taxation as per the draft assessment order as referred above.

5. Against the above directions of the Dispute Resolution Panel and final assessment order, the assessee is in appeal before us on the following grounds of appeal.

1. That in the facts and circumstances of the case & in law, the final reassessment order passed by the Ld. Deputy Commissioner of Income-tax, Circle 3()O), International Taxation, New Delhi (Ld. AO') under section 147 read with section 144C(13) of the Income Tax Act, 1961 (the Act), in pursuance to the directions of the Learned Dispute Resolution Panel - 2, New Delhi (Ld. DRP'), assessing the income of the Appellant at INR 2,18,76,078/- is bad-in-law and invalid.

2. That in the facts and circumstances of the case & in law, notice issued under section 148 on June 28, 2021, of the Act for impugned Assessment Year 2013-14 is barred by time limitation as the Ld. AO while issuing the notice has not considered the time limit specified under first proviso to Section 149(1) of the Act. The benefit and relaxations conferred under The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('TOLA' will not extend the limitation provided under the first proviso to section 149(1) of the Act.

3. That in the facts and circumstances of the case & in law, the Ld. AO has erred in issuing notice under section 148 as the same cannot be issued as per the provisions of section 149(1)(b) in the absence of any income escaped assessment represented in the form of 'asset'.

4. That in the facts and circumstances of the case & in law, the Ld. AO as well as the Ld. DRP has erred in holding that license fees received by the Appellant from resident and non-residents with respect to live content for granting broadcasting rights of various events is taxable as 'royalty income under section 9(1)(vi) read with India-USA Double Tax Avoidance Agreement ('DTAA').

4.1. The Ld.AO as well as the Ld. DRP has erred in facts and in law holding that receipts for live content from granting broadcasting rights involve transfer of rights in respect of 'process' as per Explanation 6 to section 9(J)(vi) of the Act as well as under Article 12 of India-USA DTAA

5. That in the facts and circumstances of the case & in law, the La. AO as well as the Ld. DRP has erred in rejecting the rationale provided by the Appellant for bifurcation of receipts into live content and non-live content in case of bundled contracts and consequently, erred in holding that the entire

receipts of the plan in the case of bundle contracts fl within the ambit of 'royalty' under the provisions of the Act as well as under Article 12 of India-USA DTAA.

6. That in the facts and circumstances of the case & in law, the Ld. AO has erred in taxing the receipts from non-resident payers @40% (plus surcharge and cess) instead @15% in accordance with the India-USA DTAA.

7. That in the facts and circumstances of the case & in law, the La. AO has erred in taxing the receipts from resident payers @40% (plus surcharge and cess) instead @10% in accordance with the Section 115A of the Act.

8. That in the facts and circumstances of the case & in law, the Ld. AO has erred in not allowing credit of tax deducted at source ('TDS') amounting to INR 1,77,696/- and self-assessment tax credit of INR 31,22,870/- whilst computing the tax liability of the Appellant for the year under consideration.

9. That in the facts and circumstances of the case & in law, the Ld. AO has erred in initiating penalty proceedings under section 274 read with 271F of the Act and section 271(1)(c) of the Act for the subject year as the same is bad in law.

10. That in the facts and circumstances of the case & in law, the Ld. AO erred in levying interest under section 234A and 234B of the Act."

6. At the time of hearing, the ld. AR submitted that ground no.1, 2 and 3 are not pressed and this was also mentioned in the written submission. Therefore, the above ground no.1, 2 and 3 are dismissed as not pressed.

7. Regarding the action of the Assessing Officer and the Ld. Dispute Resolution Panel in holding that license fee receipt with respect to live content for granting broadcasting rights of various events as taxable as 'royalty' income u/s 9(1)(vi) r.w.s DTAA the assessee made the following submission.

7. During the year under consideration, the Appellant has entered into agreements for live contract as well as bundled contracts, details of which has been mentioned in the order passed by the Ld. AO (Refer Page 13 to 14 of Appeal Set). The Ld. AO / DRP has concluded that income from broadcasting rights is for use of, or right to use of "process" and therefore, qualified as royalty income as per the provisions of the Act and in India-USA tax treaty.

8. The Ld. AO/DRP further relied upon explanation 2 and 6 of Section 9(1)(vi) of the Act and its applicability in the present facts to hold that the receipts are liable to be taxed under Section 9(1)(vi) of the Act.

9. The aforesaid interpretation of the Ld. AO is contrary to the decision of the Jurisdictional High Court in the case of Delhi Race Club (supra) and subsequent decision of various benches of courts and tribunals.

10. Be that the Ld. AO/DRP had relied upon explanation 2 and 6 of Section 9(1)(vi) of the Act to contend that the broadcasting rights is for use of, or right to use of "process". The above reliance is completely misplaced and Hon'ble Delhi High Court while re-affirming the decision in the case Delhi Race Club (supra) [page 1-21 of the CLC] and in the case of CIT vs Fox Network Group Singapore Pte Limited [2024] 158 taxmann.com 434 (Delhi)[05-01-2024] in this regard as held as under:

> *"11. Notwithstanding the above, Mr. Rai, learned counsel appearing for the appellant, additionally sought to place the respondent's income in clause (i) of Explanation 2 to Section 9(1)(vi) of the Act and sought to contend that the word 'process' as occurring therein would make revenue earned from live feed ' taxable.*
>
> *12. The aforesaid submission essentially proceeded on the basis of Explanation 6 to Section 9(1)(vi) which reads as under: -*
>
> *"Explanation 6—For the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret;"*
>
> *13. As is evident from a reading of the said Explanation, the clarification which is entered pertains to "transmission by satellite (including up-linking,*

amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology.....

The aforesaid Explanation is thus hinged upon the activity of transmission by satellite. It is the aforesaid activity which is sought to be captured and included in clause (i) of Explanation 2 to Section 9(1)(vi) of the Act.

14. However, in the facts of the present case, it is admitted to the appellant that the actual transmission of content was undertaken by SIPL and not by the respondent. The Explanation, therefore in our considered opinion does not detract from the correctness of the view as ultimately expressed by the ITAT."

(refer to para 11 to 14 at Page no 28 to 29 of the CLC)

11. From the above, it is clearly evident that the Hon'ble Delhi High Court had rejected the contention of the revenue on application of Explanation 2 & 6 of section 9(1)(vi) of the Act and upheld the decision of the Coordinate Bench of Delhi Tribunal in the case of Fox Network Group Singapore Pte Limited s ACIT, 121 taxmann.com 330 (Delhi - Trib.) (refer pg. 35-48 of CLC).

12. In the present case, the limited examination is restricted whether there is a transfer of a right in respect of any copyright, literary, artistic or scientific work including films or videotapes for use in connection with television or tapes for use in connection with radio broadcasting, etc, as defined in clause (v) to section 9(1)(vi) of the Act.

13. The term 'copyright' has not been defined in the India-USA tax treaty or under the Act and thus, the reference has been made to Section 14 of the Copyright Act, 1957 wherein the term "copyright" has been defined as an exclusive right, subject to the provisions of the Copyright Act, to do or authorise to doing of any of the acts specified in the said provision in respect of a 'work' or any substantial part thereof. Section 2(y) of the Copyright Act, 1957 defined "work' as to mean any of the works namely:

a. a literary, dramatic or artistic work; or

b. a cinematographic film; or

c. a sound recording.

14. In the instant case, it is amply clear from the above definition of work' that licensing of broadcasting rights of sports events cannot fall within the expression literary, dramatic or artistic work' or 'sound recording'. Thus, the issue left for consideration is whether the licensing of broadcasting rights could fall within the ambit of copyright in respect to a

'cinematograph film'. This issue is no longer res integra and has been adjudicated upon by the Hon'ble Jurisdictional High Court in the case of CIT - IV v. Delhi Race Club (2015), 228 taxman 185 where it was held that the broadcast/live telecast is not a work within the definition of section 2(y) of the Copyright Act. It was further held that broadcast/ live telecast doesn't fall within the ambit of Section 13 of the Copyright Act, and a live telecast/broadcast would have no 'copyright' and thus, would not be qualified as 'royalty income under the Act. Kindly refer to para 16 and 17 at page no 16 to 18 of the CLC.

15. Further, the Appellant also referred to the following decisions where the Hon'ble Tribunals held that payment for broadcasting rights for live events cannot be regarded as 'royalty' income in the absence of any transfer of copyright:

a) Cricket Australia vs ACIT, ITAT Delhi (ITA No.1179/Del/2002) (refer to Page no 49-55 of the CLC)

b) Neo Sports Broadcast Private Limited [2011], ITAT Mumbai, (15 taxmann.com 175) (refer to Page no 56-70 of the CLC)

c) DDIT vs. Nimbus Communication Ltd, (2013) ITAT Mumbai (32 taxmann.com 53) (refer to Page no 71-79 of the CLC)

16. Further, the Appellant also humbly submits before Hon'ble Bench that section 9(1)(vi) of the Act provides a similar definition of royalty as provided under India-USA tax treaty and thus, analysis and case laws discussed above in the context of the provisions of India-USA tax treaty is equally applicable/relevant to the provisions of the Act.

17. Recently, in the case of Lex Sportel Vision Pvt. Ltd. Vs ITO (ITA No. 2397/Del/2023) (which is also one of the contractees of the Appellant) wherein Hon'ble Delhi ITAT held that right to broadcast live events is not a copyright and thus, payment should not be qualified as royalty itself under section 9(1)(vi) of the Act. Kindly refer to para 5, 6 and 13 to 17 on page no 80-92 of the CLC for the relevant findings of Hon'ble ITAT.

18. Hence, it can be concluded that the consideration received by the Appellant from broadcasting rights is not for use of "process" and therefore, should not be qualified as royalty income as per provisions of the Act as well as the India-USA tax treaty.

19. The appellant further submits that Article 12(3) of India-USA tax treaty provides that consideration for the use or right to use of "process" shall be characterized as royalty income under India-USA tax treaty. However, the term "process" is not defined

in the India-USA tax treaty and accordingly, the Ld.AO as well as Ld. DRP referred the Explanation 6 to section (9)(vi) of the Act to construe the meaning of term 'process' mentioned in the royalty definition under India-USA tax treaty. Explanation 6 to section (9)(vi) of the Act clarifies that expression "process" includes and shall be deemed to have always included transmission by satellite including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

20. In this regard, it is respectfully submitted that unless there is a similar change in the definition of royalty under the India-USA tax treaty, Explanation 6 to section (9)(1)(vi) cannot be imported into beneficial provisions of India-USA tax treaty. In this regard, the Appellant placed reliance on the decision of the Hon'ble Jurisdictional High Court in the decision of New Skies Satellite BV [2016] 68 taxmann.com 8 (Delhi) (refer page 93 to 115 of CLC) wherein it was held that no amendment to the Act, whether retrospective or prospective can be read in a manner so as to extend in operation to the terms of an international treaty unless there is a similar amendment in such treaty as well, This view of Jurisdictional High Court was duly fortified by the Hon'ble SC in the case of Engineering Analysis Centre of Excellence Private Limited vs CIT & ANR (432 ITR 471) and held that mere amendment to section 9(1)(vi) cannot alter the provisions of the tax treaty (para 155 of the SC judgement on page 338 of CLC).

21. It is the respectful submission of the Appellant that the Ld. AO and the DRP have misdirected themselves by completely misunderstanding the nature of rights granted by the Appellant and have based the entire conclusion by equating 'broadcasting rights' with the actual activity of 'transmission of programmes.

22. In doing so, the Ld.AO as well as Ld. DRP relied on the decision of Viacom 18 Media (P.) Ltd. Vs ADIT (2014) 44 taxmann.com 1 (Mumbai) [refer page 219 to 229 of the CLC] wherein the payment pertaining to the transmission of programmes by satellite was held as royalty by applying Explanation 6 to section 9(1)(vi) of the Act. It is submitted the instant case is distinguishable on fact as the payment received by the Assessee for providing broadcasting rights of the programme which inter alia include live and recorded content and has nothing to do with the actual transmission of programmes. Thus, receipts from broadcasting rights can in no manner qualify as royalty income under the Act and in India-USA tax treaty.

23. Reliance in this regard is placed on:

a. Fox Network Group Singapore Pte Limited (supra) wherein the Hon'ble Delhi High Court recently noted this

distinction and clarified that the actual transmission of content was undertaken by another entity and not by the Appellant. Thus, it was held that receipts for providing broadcasting rights would not fall within the definition of 'process' as envisioned in Explanation 6 to section 9(1)(vi) of the Act. (refer Page no 22-34 of the CLC).

b. Lex Sportel Vision Pvt. Ltd. (supra) where the Hon'ble Delhi Tribunal similarly held that the Assessee had made the payments for broadcasting rights and neither to satellite operators nor for use of satellite and thus, should not be qualified as 'process under section 9(1)(vi) of the Act. (refer Page no 80-92 of the CLC).

24. In the light of the above discussions, it is submitted that the issue of taxability of income from granting the broadcasting rights of live content is no longer res integra and hence the re-characterization by the Ld. AO/DRP as royalty income as per the provisions of the Act and in India-USA tax treaty is liable to be rejected and the additions so made should be deleted."

8. The ld. CIT-DR relied upon the findings of the authorities below.

9. We have heard both the parties and perused the materials available on record. In this appeal, the main issue is as to whether there is any copyright in a live coverage of a sporting event and whether it amounts to Royalty. In the final assessment order, the Assessing Officer held that the receipts from the Live Contracts as well as from the bundled contracts are liable to tax under Section 9(1)(vi) of the Act being the consideration received by the assessee for the use of, or the right to use, any copyright, trademark or other like property or right. The aforesaid view of the Assessing Officer was upheld by the Ld. DRP on similar finding that of the Assessing Officer i.e. licensing of the transmission rights is chargeable to tax under section 9(1)(vi) of the Act as the same being the use or right to use of any 'process' and the process includes transmission by satellite,

therefore the same was chargeable to tax under section 9(1)(vi) read with Explanation 2 and 6 of the said section. In addition to the above, though the entire receipts of the live and bundled contracts were brought to tax on gross basis, the Assessing Officer/DRP further held that apportionment by the appellant in bundled contracts between the live and non-live contracts is also not correct. Therefore, the Assessing Officer has considered the live coverage being royalty on account of being it a copyright. The Hon'ble Delhi High Court in the case of CIT(A) vs Delhi Race Club (1940) Ltd. in ITA No.6/2014 (where the issue before the Hon'ble Court was as to whether payment for live telecast of horse race is a payment for transfer of any 'copyright' and as such 'royalty' or in the alternative whether the live telecast of the horse race would be termed as a 'scientific work' and payment thereof would be 'royalty') considered the clause (v) to Explanation 2 to clause (vi) of sub section (1) of Section 9 to explain the scope of copyright in the said section. The Hon'ble Court referred to section 2(y) of the Copyright Act defining the term 'work' to mean (i) A literary, dramatic or artistic work; (ii) A cinematographic film; (iii) A record. Further, in the same para the Hon'ble Court also dealt with section 2(dd) of the copyright Act defining the word 'broadcast' and the section 2(ff) of the Copyright Act defining communication to the public. Further, the Hon'ble Court also dealt with the provisions of section 13 of the Copyright Act stipulating the work in which the

copyright subsists. The Court also referred to section 14 of the Copyright Act defining the meaning of 'Copyright'. Thereafter analysing the above sections, the Hon'ble Court observed in para no.16 about 'live TV coverage' of any event and the relevant observation of the Hon'ble Court in Para no.16 is reproduced as under:-

> *16. A live T.V coverage of any event is a communication of visual images to the public and would fall within the definition of the word "broadcast" in Section 2(dd). That apart we note that Section 13 does not contemplate broadcast as a work in which "copyright" subsists as the said Section contemplates "copyright" to subsist in literary, dramatic, musical and artistic work, cinematograph films and sound recording. Similar is the provision of Section 14 of the Copyright Act which stipulates the exclusive right to do certain acts. A reading of Section 14 would reveal that "copyright" means exclusive right to reproduce, issue copies, translate, adapt etc. of a work which is already existing.*

10. Thereafter, the Hon'ble Court referring to the facts of the cited case held that 'broadcast'/live telecast is not 'work' within the definition of section 2(y) of the Copyright Act and also that broadcast/live telecast does not come within the ambit of section 13 of the Copyright Act and it would be suffice to state that the live telecast/broadcast would not have any copyright. Further, the Hon'ble Court also observed referring to provisions of the Copyright Act, 1957 that it was a clear manifestation of legislative intent to treat copyright and broadcasting reproduction right as distinct and as separate rights. The Hon'ble Court by taking into account the distinction between the copyright of broadcast right held that broadcast or live coverage does not for a copyright. The Hon'ble Court

also quoted the judgment of jurisdictional High Court in the case of Akuate Internet Services (P) Ltd. & Anr. Vs Star India (P) Ltd. & Anr. In FA(OS) 153/2013, wherein, the Division Bench applied the test of 'minimum requirement of creativity' for claiming a right under the Copyright Act, which was held to be by the Hon'ble Court to be absent in a 'live telecast of an event'. The Hon'ble Court also noted the observations of the United States Court of Appeal Second Circuit Ruling in National Basket Ball Association and NBA Properties NIC vs Motorola INC 105 F3d841(1997) which held that a sports event is a performance and not a work and it was not copyrightable. The relevant discussion of the Hon'ble Delhi High Court in the aforesaid case is reproduced as under:-

> *16. A live T.V coverage of any event is a communication of visual images to the public and would fall within the definition of the word "broadcast" in Section 2(dd). That apart we note that Section 13 does not contemplate broadcast as a work in which "copyright" subsists as the said Section contemplates "copyright" to subsist in literary, dramatic, musical and artistic work, cinematograph films and sound recording. Similar is the provision of Section 14 of the Copyright Act which stipulates the exclusive right to do certain acts. A reading of Section 14 would reveal that "copyright" means exclusive right to reproduce, issue copies, translate, adapt etc. of a work which is already existing.*
>
> *17. Adverting to the facts of this case we note that the assessee was engaged in the business of conducting horse races and derived income from betting, commission, entry fee etc. and had made payment to other centres whose races were displayed in Delhi. It is not known whether such races had any commentary or analysis of the event simultaneously. It is not the case of the Revenue that the live broadcast recorded for rebroadcast purposes. Having held that the broadcast/live telecast is not a work within the definition of 2(y) of the Copyright Act and also that broadcast/ live telecast doesn"t fall within the ambit of Section 13 of the Copyright Act, it would suffice to state that a*

live telecast/broadcast would have no „copyright". This issue is well settled in view of the position of law as laid down by this Court in ESPN Star Sports case (supra), wherein this Court after analysing the provisions of the Copyright Act was of the view that legislature itself by terming broadcast rights as those akin to „copyright" clearly brought out the distinction between two rights in Copyright Act, 1957. According to the Court, it was a clear manifestation of legislative intent to treat copyright and broadcasting reproduction rights as distinct and separate rights. It also held that the amendment of the Act in 1994 not only extended such rights to all broadcasting organizations but also clearly crystallized the nature of such rights. The Court did not accept the contention of the respondent that the two rights are not mutually exclusive by holding that the two rights though akin are nevertheless separate and distinct.

18. In view of the aforesaid position of law which brought out a distinction between a copyright and broadcast right, suffice would it be to state that the broadcast or the live coverage does not have a „copyright." The aforesaid would meet the submission of Mr.Sawhney that the word „Copyright" would encompass all categories of work including musical, dramatic, etc. and also his submission that the Copyright Act acknowledges the broadcast right as a right similar to „copyright". In view of the conclusion of this Court in ESPN Star Sports case (supra), such a submission need to be rejected.

In this regard we also quote for benefit the judgment of this Court in the case of Akuate Internet Services (P) Ltd. & Anr. vs. Star India (P) Ltd. & Anr. FA(OS) 153/2013 as relied upon by learned counsel for the respondent assessee wherein a Division Bench of this Court has applied the test of „minimum requirement of creativity" for claiming a right under the Copyright Act, which is absent in a „live telecast of an event".

We note for benefit that the United States Court of Appeal Second Circuit Ruling in National Basket Ball Association and NBA Properties NIC vs. Motorola INC 105 F3d 841 (1997) held that a sports event is a performance and not a work. It is not copyrightable.

xxxxxx

20. In view of our discussion above, we are of the view that no question of law arises in the present appeals. We dismiss the appeals filed by the appellant Revenue."

11. Similar view has also been taken in the following cases:-

a) Cricket Australia vs ACIT, ITAT Delhi (ITA No.1179/Del/2002)

b) Neo Sports Broadcast Private Limited [2011], ITAT Mumbai, (15 taxmann.com 175)

c) DDIT vs. Nimbus Communication Ltd, (2013) ITAT Mumbai (32 taxmann.com 53)

12. Further, with respect to the finding of the Assessing Officer that broadcasting rights is use of, or right to use of 'process', the Hon'ble Delhi Court in the case of Fox Network Group Singapore Pte. Ltd. vs ACIT(supra) distinguished between transmission and broadcasting and held that since, the transmission of the content was undertaken by another entity and not by the assessee company but by SIPL, therefore, it would not come under the term 'process'. The relevant observation of the Hon'ble High Court is reproduced as under:-

10. Be that the Ld. AO/DRP had relied upon explanation 2 and 6 of Section 9(1)(vi) of the Act to contend that the broadcasting rights is for use of, or right to use of "process". The above reliance is completely misplaced and Hon'ble Delhi High Court while re-affirming the decision in the case Delhi Race Club (supra) [page 1-21 of the CLC] and in the case of CIT vs Fox Network Group Singapore Pte Limited [2024] 158 taxmann.com 434 (Delhi)[05-01-2024] in this regard as held as under:

> *"11. Notwithstanding the above, Mr. Rai, learned counsel appearing for the appellant, additionally sought to place the respondent's income in clause (i) of Explanation 2 to Section 9(1)(vi) of the Act and sought to contend that the word 'process' as occurring therein would make revenue earned from live feed ' taxable.*
>
> *12. The aforesaid submission essentially proceeded on the basis of Explanation 6 to Section 9(1)(vi) which reads as under: -*
>
> *"Explanation 6—For the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by*

> *satellite (including up-linking, amplification, conversion for down-linking of any signal, cable, optic fibre or by any other similar technology, whether or not such process is secret;"*
>
> *13. As is evident from a reading of the said Explanation, the clarification which is entered pertains to "transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology....."*
>
> *The aforesaid Explanation is thus hinged upon the activity of transmission by satellite. It is the aforesaid activity which is sought to be captured and included in clause (1) of Explanation 2 to Section 9(1)(vi) of the Act.*
>
> *14. However, in the facts of the present case, it is admitted to the appellant that the actual transmission of content was undertaken by SIPL and not by the respondent.The Explanation, therefore in our considered opinion does not detract from the correctness of the view as ultimately expressed by the ITAT."*

13. Further, on perusal of para no.5 of the assessment order, it is seen that the Assessing Officer also noted that the assessee had entered into direct contract with broadcaster for the licensing of broadcasting rights. The relevant observation of the Assessing Officer in para no.5 is reproduced as under:-

> *"5. Brief Facts: The M/s Trans World International, Inc. (TWI Inc.) was a nonresident corporation established in Ohio, USA and was engaged in the business of production of theatrical and non-theatrical motion pictures and video tapes. For the year under consideration, TWI Inc. was carrying on the business of. licensing broadcasting rights with both residents as well as non-residents and entered into direct contracts with the broadcasters for the licensing of broadcasting rights. On 05.05.2014, the 'TWI' Inc. merged with Iris Trans World International Inc. and post that the surviving entity converted itself into a limited liability company and was named Trans world International LLC on 05.05.2014. It carried on the same business as was carried on by TWI Inc. Therefore, given that the old entity i.e. 'TWI Inc' is not in existence anymore, all the compliances under the provisions of Income Tax Act are now required to be and are being carried out by the assessee i.e.*

M/s Trans World International LLC in respect of income earned by 'TWI Inc.' for the year under consideration."

Emphasis supplied

14. Further, the assessee in its written submission, as reproduced above in para 22 of its written submission has asserted that the assessee was providing broadcasting rights of the programme/inter alia included live and recorded content and had nothing to do with actual transmission of programmes. The said para no.22 of the written submission is reproduced as under:-

"22. In doing so, the Ld.AO as well as Ld. DRP relied on the decision of Viacom 18 Media (P.) Ltd. Vs ADIT (2014) 44 taxmann.com 1 (Mumbai) [refer page 219 to 229 of the CLC] wherein the payment pertaining to the transmission of programmes by satellite was held as royalty by applying Explanation 6 to section 9(1)(vi) of the Act. It is submitted the instant case is distinguishable on fact as the payment received by the Assessee for providing broadcasting rights of the programme which inter alia include live and recorded content and has nothing to do with the actual transmission of programmes. Thus, receipts from broadcasting rights can in no manner qualify as royalty income under the Act and in India-USA tax treaty."

15. Similar view has been taken in the following cases:-

a. Fox Network Group Singapore Pte Limited).[ITA 812/2023] (Hon'ble Delhi High Court)

b. Lex Sportel Vision Pvt. Ltd [ITA No.2397/Del/2023] (Mumbai Tribunal)

16. Further, we also observe that the view of the Assessing Officer that the assessee is covered by the term 'process' as defined in Explanation-6 to (9)(1)(vi) cannot be imported into provisions of India-USA tax treaty unless there is a similar change in the definition of royalty under the India-USA tax treaty, in view of the Court decisions.

The Hon'ble Jurisdictional High Court in the case of New Skies Satellite BV [2016] 68 taxmann.com 8 (Delhi), held that no amendment to the Act, whether retrospective or prospective can be read in a manner so as to extend in operation to the terms of an international treaty unless there is a similar amendment in such treaty as well. This view of Jurisdictional High Court was duly fortified by the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Limited vs CIT & ANR (432 ITR 471) and held that mere amendment to section 9(1)(vi) cannot alter the provisions of the tax treaty. The said view of the Ho'ble Supreme Court as laid down in para 155 of the judgement is reproduced as below:-

> *155. In DIT v. New Skies Satellite BV [2016] 68 taxmann.com 8/28 Taxman 577/382 ITR 114 (Delhi) "New Skies Satellite"], a Division Bench of the High Court of Delhi correctly observed that mere positions taken with respect to the OECD Commentary do not alter the DAA'S provisions, unless it is actually amended by way of bilateral re-negotiation. This was put thus:*
>
> > *"68. On a final note, India's change in position to the OECD Commentary cannot be a fact that influences the interpretation of the words defining royalty as they stand today. The only manner in which such change in position can be relevant is if such change is incorporated into the agreement itself and not otherwise. A change in executive position cannot bring about a unilateral legislative amendment into a treaty concluded between two sovereign states. It is fallacious to assume that any change made to domestic law to rectify a situation of mistaken interpretation can spontaneously further their case in an international treaty.*
>
> *Therefore, mere amendment to Section 9(1)(vi) cannot result in a change. It is imperative that such amendment is brought about in*

the agreement as well. Any attempt short of this, even if it is evidence of the State's discomfort at letting data broadcast revenues slip by, will be insufficient to persuade this Court to hold that such amendments are applicable to the DTAAS."

(emphasis in original)

17. In view of the above decision, the view of the Assessing Officer relying upon the order of Mumbi Bench of the Tribunal in the case of Viacom 18 Media (P) Ltd. vs ADIT (supra) that in view of the amendment by way of insertion of Explanation-6 to Section 9(1)(vi) of the Act defining 'process' to include transmission by satellite and by virtue of Article-3(2) of the DTAA would also be read in the definition of Royalty in Article-12(3) of the DTAA and therefore the license fees received for telecast of live matches would also constitute royalty is not acceptable because no such amendment as referred by the Assessing Officer has been brought in the DTAA expanding the scope of 'process' as relied by the Assessing Officer.

18. Therefore, in view of the above facts, we are of the considered view that finding of the Assessing Officer and confirmed by the Ld. Dispute Resolution Panel that entire license fees of Rs.2,18,76,078/- was taxable as royalty including the receipts received on account of live coverage to be royalty is not justified, subject to apportionment of license fees towards live coverage and recorded coverage in bundled rights as discussed later in this order. Hence, ground no.4 and 4.1 of the appeal are allowed accordingly.

19. In ground no.5, the assessee submitted that the Assessing Officer/ld. Dispute Resolution Panel erred in rejecting the rationale of the assessee for bifurcation of receipt into live content and non-live content of bundled rights and contracts and submitted as under:-

> *25. The above issue has been raised by way of abundant precaution as no separate addition being made on account of the bifurcation of live and recorded feed under the bundled contracts in the impugned assessment order by the Ld. AO, though the assessment order, the Ld.AO/DRP cast apprehension on the bifurcation of such revenue considered by the appellant in the return of income. However, the Ld. AO while completing the assessment has proceeded to tax the entire receipts as Royalty under Section 9(1)(vi) of the Act in respect of the bundled contract.*
>
> *26. The Ld. AO has contended that bifurcation of consideration received for Live (95%) and recorded content (5%) is not an industry standard. The Ld. AO further contended that there is no industry standard for deciding the bifurcation of the consideration in respect of live vs non-live transmission of program. Even the Ld. AO in its order, though principally agreed that the bifurcation needs to be done between the live and recorded content in the bundled contract and had observed that the various decisions on the Courts/Tribunals made such appointment between the live and recorded content in the range of 4 to 25% in cases of bundled contracts.*
>
> *27. The Ld. AO in principle agreed with order passed by the Hon'ble Mumbai ITAT in the case of Neo Sports Broadcast (P) Ltd. (supra) and order passed by the Hon'ble Delhi ITAT in the case of Fox Network Group Singapore Pte Ltd (supra) wherein the consideration was bifurcated as 4% and 5% respectively for recorded transmission of the programme.*
>
> *28. It is an undisputed fact that the Appellant has entered into a bundled contract, the predominant objective of which is to grant the right to broadcast live sports event. It is pertinent to mention that right to broadcast the recorded feed or the highlights is merely an incidental right granted to the recipient for promotional purposes.*
>
> *29. The consideration received for such bundled contracts is for the right to broadcast live event which is the main driver of the market value of the consideration for such bundled contracts. This is because, the live sports events have a unique appeal that consistently draws in a large number of viewers, which in turn*

attracts significant sponsorship deals for broadcasters. This high viewership is the cornerstone of a broadcaster's revenue stream, primarily through advertising and other related income sources.

30. It is further submitted that, the right to broadcast the recorded content under the bundled contract is merely complementary to the right to broadcast the live content. The value of recorded contract under such contract is minimal or insignificant. This can also be ascertained from the fact that there are agreements to this effect which have received the sanction of the Tribunals itself (refer of Neo Sports Broadcast (P) Ltd. (supra) and Fox Network Group Singapore Pte Ltd). It is emphasized that from these cases it can be reasonably ascertained that such a bifurcation is representative of common industry practice.

31. In addition to the above, it is important to note that though in the year under consideration there are certain contracts which do not have the bifurcation of the revenue between live and recorded content, however, the Appellant has duly placed other agreements (agreement with Lex Sportel Vision Put Limited at Page 196- 245 of PB; agreement with Star India Private Limited at Page 246-258 of PB) which are entered by the Appellant in other years wherein the bifurcation between live and recorded content has been given. The above fact clearly demonstrates that there is industry wide practice of bifurcating the consideration of live and recorded content of the program that uniformly is 95% for live content and 5% for recorded content in bundled and composite contracts.

32. In light of the above, the Appellant submits that the bifurcation of the consideration in 95:5 ratio should be accepted in the present case. It is pertinent to note that this bifurcation has been accepted by the Ld. AO in earlier years where the AO after scrutinizing the contracts has accepted the bifurcation (refer to Page no 30-34 and 35-39 of PB for assessment order for AY 2011-12 and AY 2012-13 respectively).

33. Thus, it is the respectful submission of the Appellant that since there has been no change in the facts of the case from the previous years, therefore, the position of law as determined/affirmed in the preceding years on an identical issue must be followed. Reliance can be placed upon following judgements:

(i) Radhasoami Satsang vs CIT [1992] 60 Taxman 248/193 ITR 321 (Supreme Court)

(ii) CIT vs Excel Industries Ltd [2013] 358 ITR 295 (Supreme Court)

34. The Appellant further submits that the apportionment of revenue in the case of bundled contract needs to be carried out in case of composite contract, and the same being always subject to guesswork especially in the absence of any pre-defined formula prescribed under the Act.

35. The aforesaid proposition has been approved and acknowledged by the Hon'ble Supreme Court in the case of Hukam Chand Mills Ltd. v. CIT [1976] 103 ITR 548 (SC) wherein it was held that:

"The question as to what proportion of the profits of the sales in categories (a), (b), (c) and (d) arose or accrued in British India is essentially one of fact depending upon the circumstances of the case. In the absence of some statutory or other fixed formula, any finding on the question of proportion involves some element of guess work. The endeavour can only be to be approximate and there cannot in the very nature of things be great precision and exactness in the matter. As long as the proportion fixed by the Tribunal is based upon the relevant material, it should not be disturbed." (refer Page no 116-119 of the CLC)

36. Similar view has also been expressed regarding attribution of profit in case of a permanent establishment in the case of Convergys Customer Management Group Inc. v. ADIT [2013] 34 taxmann.com 24 (Delhi - Trib.) (refer Page no 120-152 of the CLC).

37. It is further submitted that the jurisdictional High Court in the case of CIT v. EHPT India (P.) Ltd [(2011) 16 taxmann.com 305 (Delhi)] (refer Page no 153-159 of the CLC) has held that the where the method was a reasonable method having regard to the nature of business and other factors and the method was consistently followed by the Appellant and accepted by the department in the past, then such method cannot be disturbed and should be accepted by the tax authorities.

38. Accordingly, the bifurcation of consideration done by the Appellant i.e., 95% for Live content and 5% for recorded content should be accepted."

20. In ground no.5 of the appeal, we note that in this case the assessee had offered 5% as royalty income by considering 5% of the total receipt towards recorded coverage and the balance amount 95% towards live coverage. The assessee submitted before the Assessing Officer that in the media and entertainment industry, with respect to

the broadcasting contact for a sports event, the consideration attributable towards the live telecast is more in comparison to the record feed. It was further submitted that the rationale behind the same was that the live telecast of the sport events always attracts substantial massive viewership and sponsors for the broadcasters and accordingly, it results in far more revenue for the Broadcasters from Advertisement and other sources. Accordingly, it was submitted that the consideration attributable towards the live telecasts was substantially higher in comparison to the recorded telecast of the same event.

21. On the other hand, the Assessing Officer submits that recorded coverage of the broadcast of programmes, there are many other rights as described earlier in this order in para no.3.5. and 3.6 for which the payment has been received by the assessee. On perusal of the above agreement under consideration, we note that the agreement with M/s Taj TV Ltd. is for telecast of football matches, whereas, the agreement with M/s Sony Pictures Networks India Pvt. Ltd. is for telecast of badminton matches event broadcast. As per the first agreement time proportion for live and recorded was 90% towards live coverage and 10% towards recorded coverage. Regarding the agreement with M/s Sony Pictures Networks India Pvt. Ltd., the assessee, relying upon the similar agreement entered into by the assessee with Lex Sportel Visions Pvt. Ltd. which is entered for similar bundled contract in

question containing both live and recorded content, wherein, 95% value has been attributed towards the live transmission and 5% value has been attributed towards non-live transmission.

22. On the other hand, the Assessing Officer as well as the Ld. CIT-DR has relied upon the decision of the Mumbai Bench of the Tribunal in the case of ADIT(IT)-3(1) vs Global Cricket Corporation Pte Ltd. in ITA No.3130/Mum/2009 and Ors., wherein the Tribunal held that 25% of licensee fee was fair estimation of the licensee fee attributable to the non-live exhibitions and recorded content in 'Live Feed' as there was no material placed on record by both the sides to arrive at more precise or better estimation/apportionment. The relevant observation of the Tribunal is reproduced as under:-

> *"5.60. This takes us to the issue of allocation/apportionment of the Licensee Fee income received by GCC from SET in terms of the Heads Agreement. We have concluded that the Licensee Fee paid by SET to GCC is not only for exhibition of the „Live" Feed of match (hereinafter referred to as „Live Exhibitions") but also for other exhibitions to be made after the conclusion of match (hereinafter referred to as „Non-Live Exhibitions") as specified in Part 4 of Schedule 1 annexed to the Heads Agreement. Therefore, the Licensee Fee would have to be allocated between Live Exhibitions and Non-Live Exhibitions [which would be taxable as „royalties" in terms of Article 12(2) read with Article 12(3)(a) of DTAA]. We have also concluded that „live" Feed received by SET also contains recorded content in which copyright subsisted as the rights granted to SET included exclusive right to communicate the Recordings/Feed to public which amounted to grant of copyright. The consideration for the same would also be liable to tax as „royalties" in terms of Article 12(2) read with Article 12(3)(a) of DTAA. This would require further apportionment of amount of Licensee Fee allocated for Live Exhibitions.*
>
> *5.61. In this regard, by placing reliance on the decision of the Tribunal in the case of Fox Network Group Singapore Pte Ltd Vs. Assistant Commission of Income Tax (international Taxation), Circle 1(3)(1), New Delhi : [2020] 121 taxmann.com 330 (Delhi - Trib.) [20-03-2020] it was contended on behalf of GCC that only 5% of the*

consideration can be allocated to the non-live transmission/content. However, we note that in the case of Fox Network Group Singapore Pte Ltd (supra) the contract itself provided that 5% of the consideration was for the non-live transmission which as was offered to tax as royalty income. Whereas, in the present case the Heads Agreement does not provide any break-up of the consideration. We note that the CIT(A) had, while deciding the appeal for the Assessment Year 2003-04, attributed 75% of the consideration for use of copyright in the live feed and balance 25% for use of copyright in non-live feed/transmission such as highlights, telecast of recorded matches etc. Keeping in view the overall facts and circumstances of the case, we hold that 25% of Licensee Fee is fair estimation of the Licensee Fee attributable to the NonLive Exhibitions and recorded content in „Live" Feed. There is no material placed on record by both the sides to arrive at the more precise or better estimation/apportionment. Accordingly, in view of the above, we hold that 25% of the Licensee Fee paid by SET to GCC as fair estimate of income taxable in India as „royalties" in terms of Article 12(2) read with Article 12(3)(a) of the DTAA.

5.62. In view of the above, Ground No. 4 raised by the Revenue is partly allowed."

23. On the basis of general observation of the society, we note that in any sporting event 'live coverage' of the event is important because in each such coverage, the winner of the game or the champion of the tournament is decided and the fans of the game watch the said 'live coverage' with full passion and excitement, which is decided in each such respective game/tournament. In this regard, we are also mindful of the fact that when a match is held telecast live during the odd hours or when a live event is missed for some reasons, there is a conscious effort by the viewers who watch the recorded events to not to know the result of the said game before watching the recorded event to have some trace of excitement as watching the live telecast as the excitement and thrill of the live match is the key essence of watching any sporting activity. Therefore, it is undoubted that thrill and excitement of watching live coverage of a game is no match in

watching the said game in recorded telecast. However, there can be significance and uses for such recorded telecast for the sportspersons who watch the said games to understand the nuances and to enhance their skills and also for such persons are unable to watch the live telecast, it being at odd hours or for some other reasons. The recorded games are also seen by people who are not into very busy life depending upon the preference for such sports to spend their time. Thus, generally speaking and in view of the above observations, we are of the view that the percentage of sporting population watching live games would be approximately in the ratio as estimated by the assessee and its bifurcation of its receipts live coverage and recorded coverage in the ratio 5%:95% in a bundled rights is largely acceptable. Therefore, we agree with the assessee in principle that the proportion of the license fee towards the live coverage will overwhelmingly in its favour and so will be the sponsors for such broadcast of a live feed as compared to a recorded broadcast. As regards, the reliance by the Assessing Officer and the ld. CIT-DR on the decision of the Tribunal, apportioning 25% towards recorded event of 'live feed', we note that the same was in respect of game of cricket, which is highly popular in this country, whereas, in the present case, it is for a football tournament held in Germany (the German FA Cup) and for Badminton tournament being 2012, Thomas & Uber Cup, 2013 World Championship and 2013 Sudirman Cup,

which are undoubtedly not as popular as cricket in India. Moreover, in view of the above facts as discussed above attributing 25% of the license fees towards recorded feed will not be justified in the facts of the present case. However, the issue is regarding the correctness of the claim of the assessee with respect to apportionment of the receipts toward 'live coverage' and 'recorded coverage' in bundled rights, wherein, the assessee has taken a plea that 5% is only towards recorded coverage and the balance towards 'live coverage'. But as noted by the Assessing Officer that the other rights are available alongwith recorded coverage but ultimately all these mainly relates to recorded coverage only. However, since the assessee has taken the plea of 5% towards 'live coverage' by way of TV broadcast only in 'broadcast rights' but considering the fact that the broadcast of recorded event is also available on other medium and other rights as mentioned in the said two agreements and salient features of the same as highlighted in para no.3.5 and 3.6 of this order, we consider it appropriate to allocate 10% of the receipts towards recorded, events and 90% towards 'live coverage' as offered as against 5% towards recorded event and 95% towards 'live coverage' as offered by the assessee. Ground no.6 of the appeal is partly allowed.

24. Further, the assessee in ground no.6, the assessee has contested the action of the Assessing Officer in taxing the receipts

from non-resident payers @40% sur-charge instead of 15% (prescribed under treaty).

25. Further, in ground no.7, the assessee has contested the action of the Assessing Officer in taxing the receipts from resident payers @40% sur-charge @10% (prescribed under treaty).

26. In this regard, the assessee filed a written submission, which is reproduced as under:-

> *39. In the year under consideration, the Appellant received the total amount of INR 2,18,76,078/- (i.e. INR 21,70,085/- from resident payers and INR 1,97,05,993/- from nonresident payers) towards broadcasting rights granted for live, recorded and bundled contracts.*
>
> *40. The Ld.AO treated the entire consideration of IN 2,18,76,078/- as royalty income in the hands of the Appellant and taxed the entire consideration of IN 2,18,76,078/- @40% (plus surcharge and cess).*
>
> *41. In this regard, it is humbly submitted before Hon'ble Bench that amount of INR 21,70,085/-received from resident payers should be taxed @10% in accordance with the Section 115A of the Act and amount of INR 1,97,07,593/- received from non-resident payers should be taxed @15% as per the rate prescribed under India-USA tax treaty.*
>
> *42. For the better understanding, the correct income tax rates to be applied on the income from resident payers and non-resident payers have been tabularized as under:*

Payer of Income	***Amount of income***	***Income tax rate applied by the ld. Assessing Officer***	***Income tax rate to be applied***
Resident	*21,70,085/-*	*40*	*10%*
Non-resident	*1,97,05,993/-*		*15%*
Total	*2,18,76,078/-*		

27. However, on verification of the assessment order, as referred in para no.3.13 of this order, it is seen that the Assessing Officer has taxed the royalty income received both from resident payers and non-resident payers @15% as per Article-12 of the DTAA being more beneficial. The Assessing Officer is directed to verify the above claim of the assessee once again and apply the correct rate of taxation as per law.

27.1. In the result, the grounds no.6 and 7 are allowed for statistical purpose.

28. In ground no.8, the assessee submits that the Assessing Officer erred in not allowing credit of tax deducted at source ('TDS') amounting to Rs.1,77,696/- and self assessment tax credit of Rs.31,22,870/- while computing the tax demand of the assessee. The Assessing Officer is directed to verity and allow the credit of tax after verification.

29. Ground no.9 of the appeal regarding initiation of penalty u/s 274 r.w.s. 271F and section 271(1)(c) of the Act is not pressed being premature and hence dismissed.

30. In the result, the appeal of the assessee is partly allowed

ITA No.1961/Del/2024

31. Grounds raised in ITA No.1961/Del/2024 are similar to grounds raised in ITA No.1960/Del/2024 decided by us in earlier part of this order. Therefore, our above decision would apply *mutatis-mutandis* to this appeal also. Accordingly, this appeal of the assessee is partly allowed.

ITA No.2146/Del/2024

32. Ground no.5 to 11 of the appeal are similar to the grounds of appeal for AY 2013-14 except for the numberings of the said grounds. However, the assessee in ground no.2, 3 ad 4 of the appeal has challenged the validity of notice issued u/s 148 on June, 28, 2021 for the present assessment year being barred by time limitation as the Assessing Officer did not consider the time limit specified under first provision to section 149(1) of the Act. The said ground of appeal no.2, 3 and 4 are reproduced as under:-

> *"2. That in the facts and circumstances of the case & in law, notice issued under section 148 on June 28, 2021, of the Act for impugned Assessment Year 2015-16 is barred by time limitation as the Ld. AO while issuing the notice has not considered the time limit specified under first proviso to Section 149(1) of the Act. The benefit and relaxations conferred under The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('TOLA') will not extend the limitation provided under the first proviso to section 149(1) of the Act.*
>
> *3. That in the facts and circumstances of the case & in law, the Ld. AO has erred in issuing notice under section 148 as the same cannot be issued as per the provisions of section 149(1)(b) in the absence of any income escaped assessment represented in the form of 'asset'.*

4. That in the facts and circumstances of the case & in law, the draft reassessment order passed by the Ld. AO under section 144C(1) of the Act, dated May 31, 2023, is invalid as the order was signed after the period of limitation expired i.e., June 01, 2023, therefore, being bad in law and is liable to be quashed."

33. The ld. CIT-DR supported the orders of the authorities below.

34. We have considered the rival submissions and perused the materials available on record. In this case, notice u/s 148 of the Act was issued on June, 28, 2021 and the time limit for issuing of notice u/s 148 of the Act for AY 2015-16 under the old provisions was March, 31, 2022, which is admittedly barred by limitation under the new provisions of section 149(1) of the Act when the notice u/s 148 of the Act was issued on June 28, 2021, and is not covered under TOLA. On similar facts as referred above, the Mumbai Bench of the Tribunal in the case of Pushpak Realities Pvt. Ltd. [TS-830-ITAT-2024 (Mum)] had quashed the notice u/s 148 of the Act for AY 2015-16. The relevant finding of the Tribunal is reproduced once again:-

"16. Now here in this case as noted above for A.Y.2013-14 after 148A (b), notice u/s.148 was issued on 29/07/2022; for A.Y. 2014-15 it was issued on 31/07/2022; and for A.Y.2015-16 it was issued 28/07/2022. Thus, in all these years as noted above the original time limit for six years for A.Y.2013-14 was upto 31/03/2020; for 2014-15 it was 31/03/2021; and for A.Y. 2015-16 it was 31/03/2022. Even under the TOLA, the time limit for issuance of notice u/s 148 had expired on 30/06/2021 both for A.Y. 2013-14 & A.Y. 2014-15. For the A.Y.2015-16, the Revenue itself has contended before the Hon'ble Supreme Court as noted above, all the notices issued on or after 01/04/2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA. Here notice u/s. 148 for the A.Y. 2015-16 has been issued on 28/07/2022 which is admittedly barred by limitation under the new provision of Section 149(1) and it is not

covered under TOLA. Accordingly, all the notices are quashed being barred by limitation on the reasons given above and we are not going on the reasons given by the Id. CIT (A) for quashing the notice."

35. Following the above order of the Tribunal, we quash the assessment order date 05.03.2022 passed u/s 147 r.w.s. 144(13) of the Act. Ground no.2 of the appeal is allowed being barred by limitation.

36. Since, we have quashed the assessment order, the other grounds of appeal become academic and are not adjudicated in this appeal.

37. In the result, the appeal of the assessee is allowed.

38. Finally, ITA No.960/Del/2024 and 961/Del/2024 are partly allowed and ITA No.2146/Del/2024 is allowed.

Order pronounced in the open court on 18th June, 2025

Sd/-	**Sd/-**
[VIKAS AWASTHY]	**[BRAJESH KUMAR SINGH]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated 18.06.2025.
Shekhar

Copy forwarded to:
1. Assessee
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi