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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision:-15th January, 2026.*

\+ ITA 4/2026

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 .....Appellant

Through: Mr. Ruhir Bhatia, Mr. Anant Mann & Ms. Lopamudra Mahapatra, Advs.

versus

SRI LANKA CRICKET .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Saksham Singhal & Mr. Samkth Chaudhari, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE DINESH MEHTA**
**HON'BLE MR. JUSTICE VINOD KUMAR**

**J U D G M E N T**

**DINESH MEHTA, J. (*Oral*)**

1. Mr. Ajay Vohra, learned senior counsel for the respondent, at the outset submitted that the issue involved in the present case is squarely covered by the judgment of this Court in the case of **CIT (International Taxation) v. Fox Network Group Singapore Pte. Ltd.** reported in [2024] 158 taxmann.com 434 (Delhi), in which the earlier judgment of this Court rendered in the case of **CIT v. Delhi Race Club (1940) Ltd.** reported in (2014) 51 taxmann.com 550 (Delhi) involving an identical fact-situation has been dealt with and followed.

2. It will not be out of place to reproduce the relevant part of the judgment in the case of **Fox Network *(supra):***

> *"7. Before us, both Mr. Bhatia as well as Mr. Rai have assailed the view taken by the ITAT contending that the service from which income was generated would clearly fall within the ambit of Explanation 2 as placed in*

*Section 9(1)(vi) of the Act. 8. We, however note that Delhi Race Club has clearly ruled on the scope and ambit of the expression "the transfer of all or any rights (including the granting of a license), in respect of any copyright, literary, artistic or scientific work including films or video tube tapes...." as finding place in clause (v) of Explanation 2 to Section 9(1)(vi). 9. On a due consideration of the relevant provisions contained in the Copyright Act, 1957, the Court in Delhi Race Club observed as follows:-*

> *"16. 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 does not fall within the ambit of s. 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 ESPIV 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.*
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> *17. 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. v. Star India (P) Ltd. (supra) 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 & NBA Properties NIC v. Motorola Inc, 105 F.3d. 841 (1997) held that a sports event is a performance and not a work. It is not copyrightable.*

*18. Insofar as the submission of Mr. Sawhney that the live telecast of an event is the outcome of 'scientific work' and payment thereof would be covered under the definition of 'royalty' is concerned, the said submission is also liable to be rejected; first, it runs contrary to his earlier submission and also for the simple reason the cl. (v) of explanation 2 to clause (vi) of sub-section(1) of Section 9 would relate to work which includes films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting. It is to be seen whether consideration for transfer of all or any rights of 'scientific work' including films or video tapes would include a live telecast. The clause is an inclusive provision for films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting. We note such a case was not set up by the appellant-Revenue before the authorities below. It was held by the AO that when any person pays any amount for getting rights/licence to telecast any event (Which is a copyright of particular person i.e., no one can copy it for direct telecast or deferred telecast) then amount so paid is to be treated as 'royalty' and very much covered under s. 9(1)(vi). In other words, the" ground of the Revenue was limited to the aspect of copyright. <u>That apart, we find, no such ground has, been taken by the appellant/Revenue even in this appeal. The 'scientific work' has not been defined in the Act nor in the Copyright Act. It is not necessary that because the live telecast of an event is being done at a distant place, the same would be a 'scientific</u>*

> *work'. Even otherwise, even by stretching this meaning, it is difficult to include a live broadcast within 'scientific work'. Clause (v) expressly uses the words 'including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting'. These words become relevant to understand the scope of this part of the provision. Suffice to state, when reference is made to films or video tapes, then the intent of the provision is related to work of visual recording on any medium or video tape and can be seen on the television. Surely such a work does not include a live telecast. This submission is also need to be rejected. Insofar as the submission of Mr. Sawhney that analysis, commentary and use of technology to live feed make the broadcast a subject-matter of distant copyright is concerned, again neither such a case was set up before the authorities, nor in this appeal. In fact it is not known nor pleaded that the live telecast, in this case, was accompanied by commentary, analysis etc. It is an issue of fact, which cannot be gone into or raised at this stage. 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."*

*10. In light of the unequivocal conclusions as expressed by the Division Bench in Delhi Race Club and with which we concur, we find that once the Court came to the conclusion that a live telecast would not fall within the ambit of the expression „work", it would be wholly erroneous to hold that the income derived by the assessee in respect of „live feed" would fall within clause (v) of Explanation 2 to S.9(1)(vi) of the Act.*

*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;]"*

*15. In addition to the above, we note that the arguments addressed on the*

*anvil of Explanation 6 to Section 9(1)(vi) of the Act lose sight of the salient principles which were enunciated by our Court in Director of Income Tax vs. New Skies Satellite bv4 , and where the Court had recognized the primacy of provisions contained in the Double Taxation Avoidance Agreements as opposed to domestic statutes.*

*17. Accordingly, and for all the aforesaid reasons, we hold that the ITAT did not commit any error in passing the impugned orders dated 20 March 2020 and 21 February 2023 and that it was completely justified in arriving at the finding that the fees received by the respondents towards live transmission could not be classified as royalty income under Section 9(1)(vi) of the Act. Consequently, no substantial question of law arises in the instant appeals and the appeals stand dismissed on the aforesaid terms."*

3. Mr. Ajay Vohra, learned counsel for the respondent further submitted that the SLP filed against another judgment, wherein identical issue was involved has been withdrawn by the department from Hon'ble the Supreme Court on 13.01.2026 in SLP no.028186/2016.

4. We have perused the judgment of **CIT v. Fox Network Group Singapore Pte. Ltd.** and also considered the fact that even the SLP involving identical question filed by the department had been withdrawn.

5. That apart, Mr. Ruchir Bhatia, learned counsel for the appellant has not been able to point out any fact which shows that the rights of exhibition given by the respondent Sri Lanka Cricket exceeded beyond the 'live feed'.

6. Since the right to show cricket matches was confined to live telecast and the payment made was only for the match(es) held in the series (within 12 months) and not subsequent matches, such amount paid to the respondent cannot be considered as a royalty. 'Because, royalty presupposes enduring benefits'. In case the licensee has a right to record or preserve the feed and he continues to derive benefit of that recording and has right to re-telecast or show those matches in future, beyond the period or event(s) other than such

event, then only, the payment made to the licensee in appropriate case, can be treated as royalty. However, it is not the case in the present agreement or transaction, hence the amount in question cannot be considered as royalty.

7. The appeal filed by the appellant-department is, therefore, dismissed.

**DINESH MEHTA**
**(JUDGE)**

**VINOD KUMAR**
**(JUDGE)**

**JANUARY 15, 2026/***sr*