

Payments made by Delhi Race Club for live telecast of horse races weren't covered within the ambit of 'royalties'

Summary – The High Court of Delhi in a recent case of Delhi Race Club (1940) Ltd., (the Assessee) held that payment made by a race club for live telecast of horse races is not covered under section 9(1)(vi) and said amount, as such not being royalty, TDS was not required to be deducted.

Facts

- 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.
- The question arose as to whether the payment made for live telecast of horse races is not royalty and, hence, TDS was not required to be deducted.

Held

- 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 section 13 of the Copyright Act 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. 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.
- 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*'.
- The clause (v) to *Explanation 2* to clause (vi) or 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. 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.
- 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 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 clause (v) of section 9(1) 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.

- Therefore, live telecast of horse races is not covered under section 9(1)(vi) and said amount, as such not being royalty, TDS was not required to be deducted.