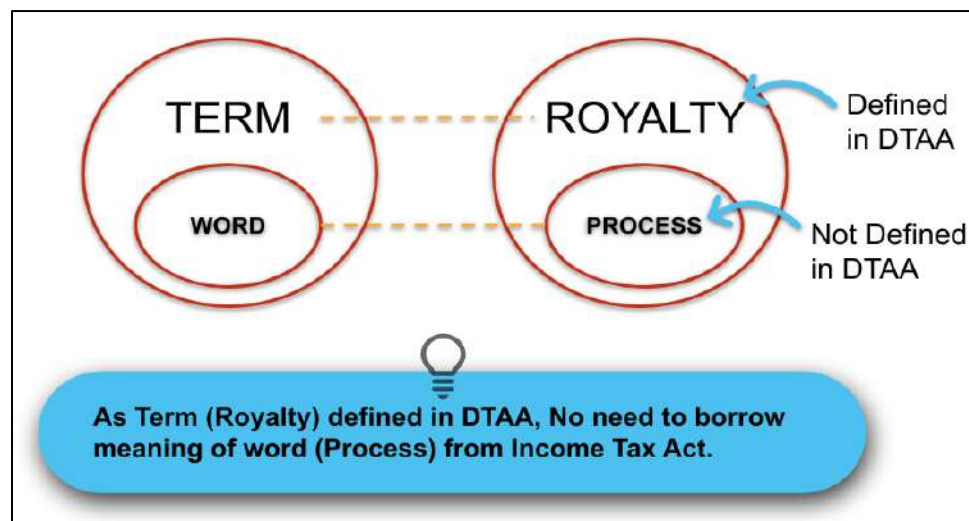


SATURDAY INTERNATIONAL TAX GYAN !!! #taxmadeeasy

ACIT (IT) -4(1)(1), Mumbai vs. Reliance Jio Infocomm Ltd¹

Word is a subset of Term, and when a term is defined under DTAA, there is no need to borrow the meaning of a particular word from Act. India-Singapore Treaty needs to be read with Static Approach.



Facts:

- The assessee, an Indian company, has, under a bandwidth services agreement with a Singapore based entity Reliance Jio -Singapore (RJ-S) which includes transmission of data through undersea cable.
- The assessee initially deducted the tax at source at the rate of 10 per cent, under the provisions of Article 12 of Indo-Singapore tax treaty, but subsequently, filed an appeal under section 248² praying for a declaration to the effect that the assessee was not legally liable to withhold the tax from this payment as the payment was covered under Article 7 of India-Singapore Treaty and hence not liable to tax.
- Amendment was made in definition of “process” in royalty definition under provision of section 9(1)(vi) of the Income Tax Act, 2012, however no simultaneous amendment was made to India Singapore DTAA for the definition of royalty.

¹ [2019] 111 taxmann.com 371 (Mum-Trib)

² Section 248 deals with a situation where a resident can file an appeal before CIT(A) who is paying to an NRI any amount other than interest and TDS is paid and borne on same by payer and later on he realises that TDS was not required to be deducted.

Assessee's contention:

- The royalty definition includes "secret formula and process". As the transmission through cable is not a secret process, it cannot be considered as Royalty.
- Therefore, services provided were purely in the nature of its business income and in absence of PE of Singapore Company in India, such an income cannot be taxed in India.

Revenue's contention:

- In **absence of a definition of the terms 'use of or right to use' and 'process'** in Article 12 of the India-Singapore DTAA in relation to royalty, Article 3(2) of the said DTAA allows for taking recourse to the meaning contained in the domestic law of the State applying the Treaty (that is, India).
- As per Explanation 6 of Section 9(1)(vi) process includes and shall be deemed to have always included transmission by cable, **whether or not such process is secret**. Hence, it does not matter whether the process is secret or not and the services provided should be in the nature of royalty.

Ruling:

- The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use: (a) any copyright of a literary, artistic or scientific work,for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right, property or information."
- It's important to note that the provisions of Article 3(2) come into play for domestic law where the meaning of "any term not defined" in the tax treaty.
- The expression "term" is defined as "a word or phrase used to describe a thing or to express a concept, especially in a particular kind of language or branch of study".
- The word process has no relevance of it's own, it is just used to define the term royalty. The expression "process" is used in the treaty in that limited context and it does not have an independent existence.
- The expression "process" is defined in the domestic law but this definition is in the limited context of explaining the term "royalty" under the domestic law, it cannot be borrowed in the treaty for understanding connotations of "royalty" under the treaty.
- Thus, The payments made by the Appellant to RJ-S for provision of Bandwidth Services would be in the nature of business profits and could not be classified as Royalty either under the Act or the said DTAA.
- Static approach of treaty interpretation will be applied for said DTAA as the words used are "under the laws of that state" and not under the "laws **in force** of that state".

Our comments:

- A threadbare analysis of the meaning of “word” and “term” has been done by the Tribunal. **A term is thus, in addition to being a word, some kind of a point of reference, whereas a word is only a constituent of language.**
- One needs to borrow only the meaning of a “term” and not a “word” from the domestic law if the same is not available in treaty and the context requires it to do so.
- **Until unless provided in the treaty itself, A unilateral change in Income Tax act of one country cannot override the treaty entered by two sovereign states.** The treaty needs to be interpreted in good faith.

Section	Section 9(1)(vi), Article 3(2), 12
DTAA/Country	India-Singapore
Court	Mumbai Tribunal
Date of decision	15.11.2019

Note: Case law name in **Red**- in favour of the Revenue, **Green**- In favour of the Assessee, **Orange** = Partial.

Refer our previous case laws editions:

1. **Union of India vs. U.A.E. Exchange Centre**- <https://rb.gy/k8mkao>,
2. **Majestic Auto Ltd. v. CIT1**- <https://rb.gy/hpozez>,
3. **Regen Powertech (P.) Ltd. v. DCIT, (International Taxation)-2(1)**- <https://rb.gy/ymdnhc>,
4. **Tiger Global International II, III and IV Holdings, Mauritius**- <https://rb.gy/2cw0ow>,
5. **Volkswagen Finance Pvt Ltd v. Income Tax Officer**- <https://rb.gy/tei4s9>

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Thank you