



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No.
182

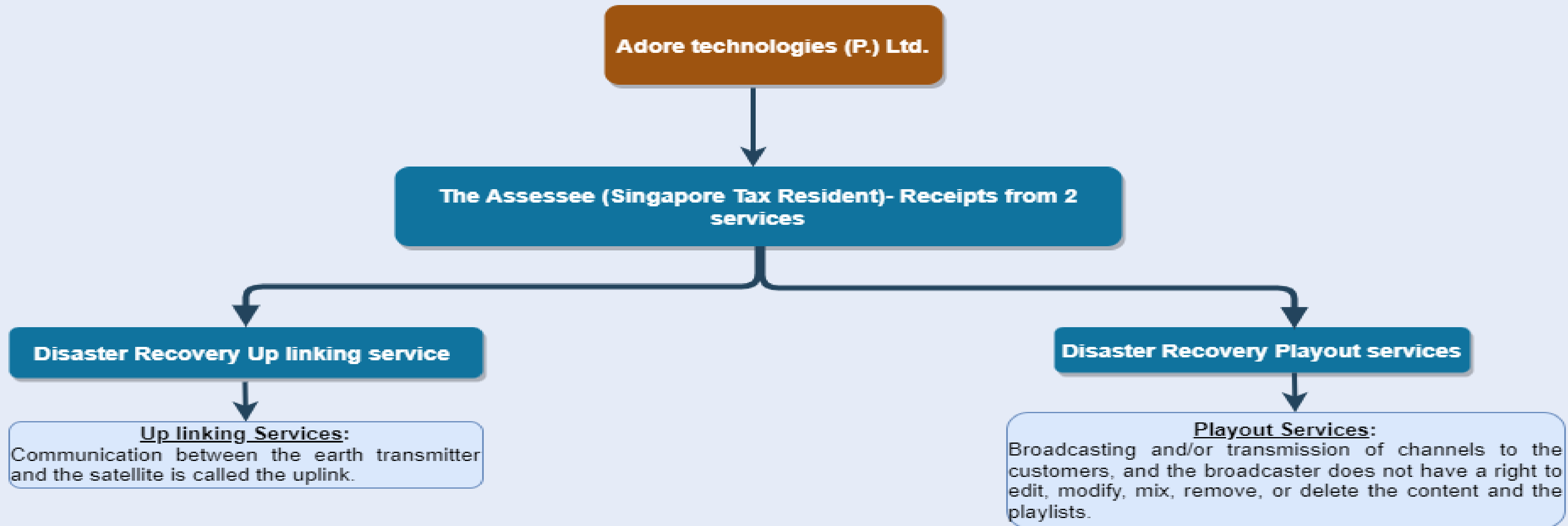
Adore Technologies (P.) Ltd.

v.

ACIT

All processes are not covered under Royalty. Process which carries know-how or intellectual property are covered under Royalty.

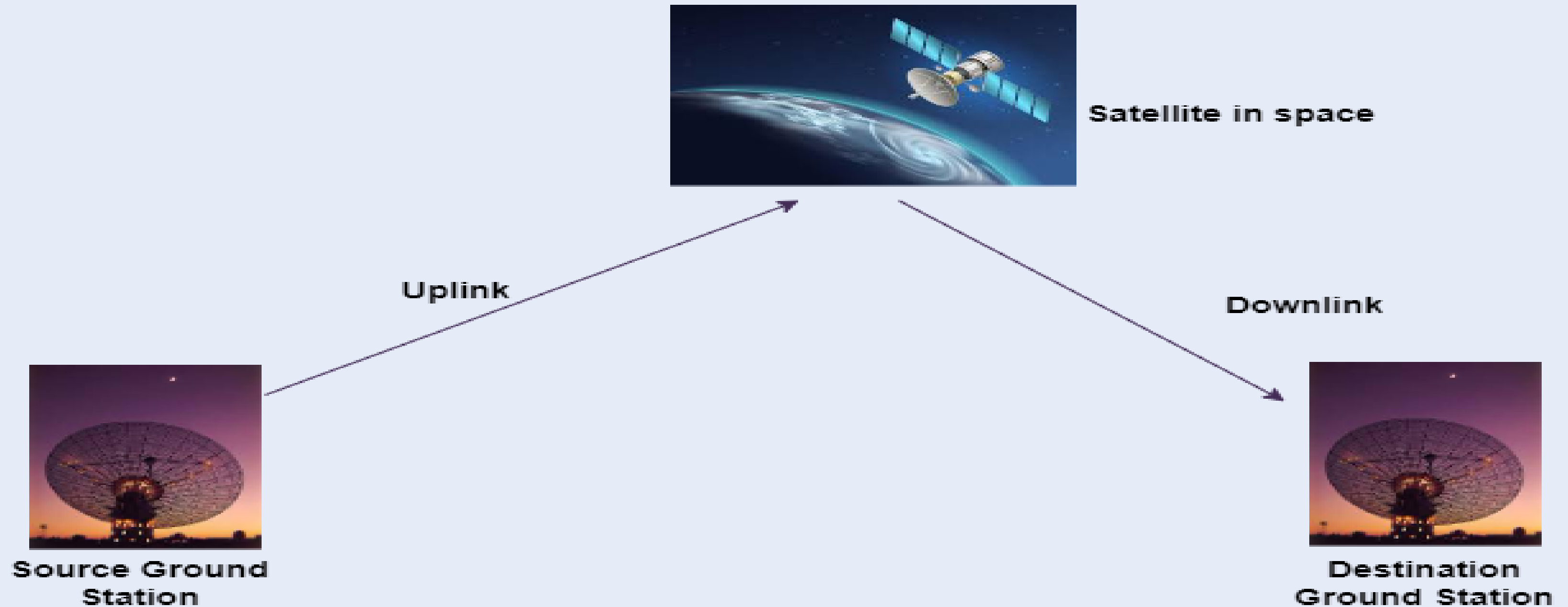
Facts of the Case



- It provides satellite based telecommunication services to media and entertainment businesses, where the above-mentioned services in the diagram is the subset of such telecommunication services.
- The assessee holds TRC issued by government of Singapore.
- The assessee did not have a PE in India.

Facts of the Case

To gain better understanding of 'uplink services', the below-mentioned diagram shall be supportive-



Service- 1 (Up linking Services)

Assessee's contention

- **Equipment used in the services:** Referring the provision of Article 12(3) of DTAA, the customers of the assessee were neither in possession of any equipment, nor had any control over the equipment used for providing the underlying services. Also, the assessee was a sole bearer of risks associated to equipment.
- **Whether qualified as Royalty:** Payment made cannot be said to have made for use or right to use with regards to
 - i. Industrial, Scientific or commercial equipment, or
 - ii. Secret formula or process,as it does not impart any technical know-how to the customers.
- **Business Income:** Since the assessee does not have PE in India, though it constitutes business income, such income would not be taxable in India. **[Article 7 of DTAA)**

Revenue's contention

- **Part of 'Process':** The expression 'process' includes and deemed to have been included transmission by satellite as well as up linking, amplification, conversion for down-linking whether or not such 'process' is secret or not.
- Hence, provision of such services is a 'process', where signals were taken from equipment and sent to satellite for broadcasting.
- **Rendering of services as 'Royalty':** The Ld. A.O. believed that the assessee has received considerations from India related to up linking services. Hence, as per Exp. 2 to Section 9(1)(vi), it shall fall under the ambit of 'royalty'.
- **Addition to the total income:** The income of Rs. 626,29,403 was received under the head 'Disaster Recovery Up linking Services', and hence shall constitute royalty. **[Exp. 2(iii) of Sec. 9(1)(vi)]**

Service- 2 (Playout Services)

Assessee's contention

- **Nature of service offered:** It involves provision of equipment, manpower and infrastructure to manage continuous supply of content on minute-to-minute basis. It is installed at teleport facility at Singapore and kept pre-configured and ready.
- Such services are not ancillary or subsidiary to up linking services. The assessee never had the right to edit, mix, modify, remove, or delete the content, but it can just broadcast or transmit the channel content. Therefore, such **receipt shall not be regarded as income from royalty.**
- **Services cannot be termed as 'FTS':** Services did not make available any technical knowledge, know-how, skill, experience, process, or developing or transferring any technical plan or design, hence receipts earned from rendering playout services should not be termed as FTS.

Revenue's contention

- **Inseparable services:** Such services were inextricably (inseparable) linked to up linking services and there is a provision of manpower and equipment infrastructure to maintain the continuous flow of content.
- **Managerial and technical services:** The Ld. A.O. believes that such services are technical and managerial in nature, and hence it falls within the ambit of FTS. [**Exp. 2 of Sec. 9(1)(vi), Article 12(4)(a) of DTAA**]
- **Addition to total income:** Ld. A.O. treated the receipts of Rs. 13,03,58,744 as FTS and shall be taxed @10% accordingly

Ruling

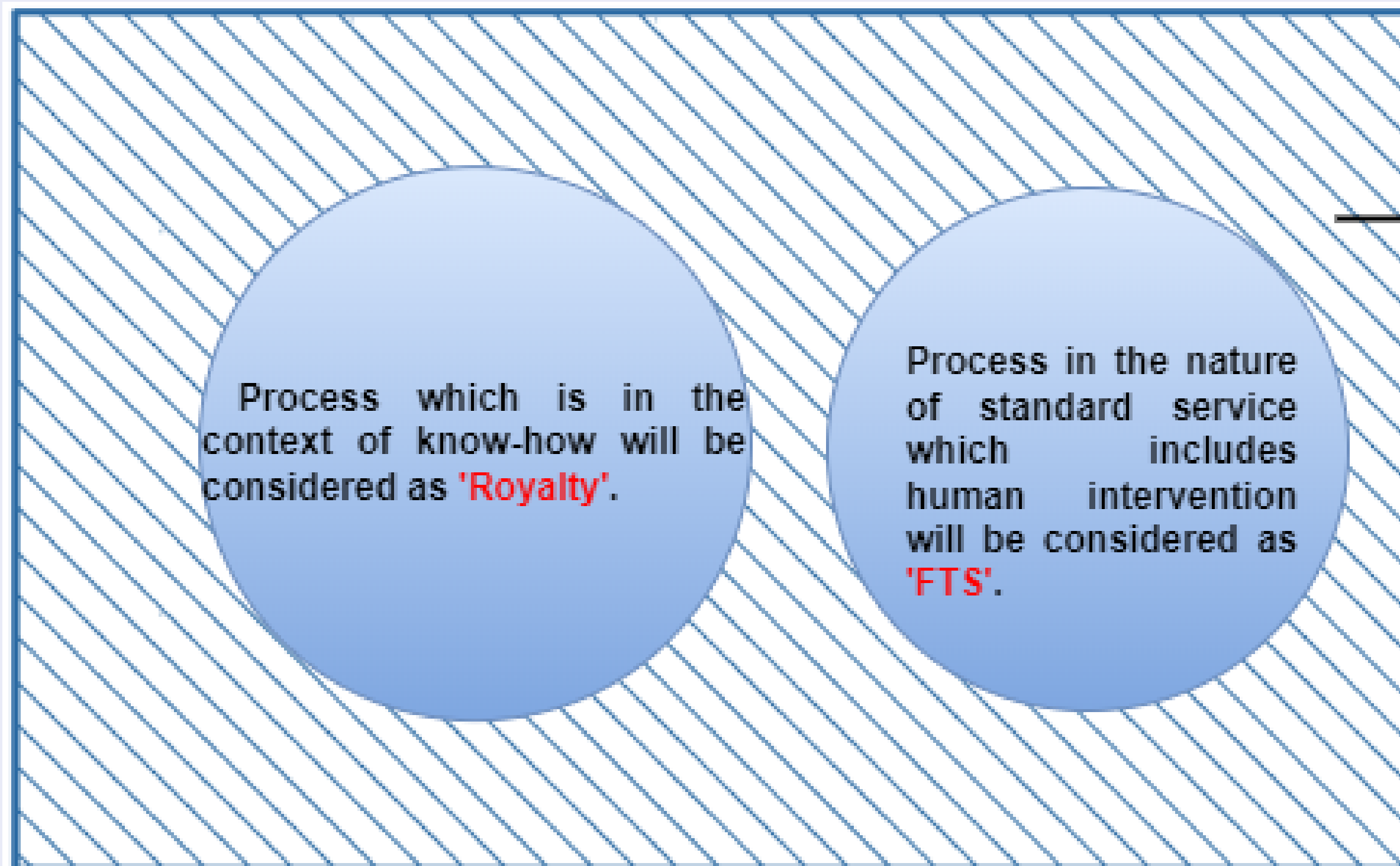
1.Up linking Services

- The term 'process' is a sequence of interdependent and linked procedures where the inputs are converted into outputs, for which tangible equipment and resources may be employed in executing such process, however 'process' in its literal sense shall be intangible, like formula or design.
- Customers of the assessee were not in the possession of equipment, nor were they granted right to use any process, on the contrary, customers were merely availing a service from the assessee and not bearing any risk related to the equipment during the service availed.
- Such services provided to the customers are standard services, and there is no technical know-how or intellectual property involved in the service. Hence the receipts earned by the assessee as consideration for provision of service cannot be termed as royalty.

2.Playout Services

- Services which involve application of technical knowledge, or skill can be termed as technical service, however in the present case playout service is nothing but broadcasting of channel content with no right to edit, mix, or remove the content whatsoever. Such service are not ancillary or subsidiary to up linking service.
- It merely involves provision of uninterrupted availability of the playout service at a predetermined level. Therefore, receipts from such services are not in the nature of FTS as per Article 12(4)(a) of DTAA.

Breakdown of 'Process' under various heads for tax purpose



The remaining part of 'Process' which does not constitute Royalty, or Services, may be regarded as 'Business Income' or 'Other Income'.

Our Comments

- One of the condition that is required to satisfy for a particular transaction to be a FTS transaction is, such transaction should be **ancillary and subsidiary** to the application or enjoyment of right for which payment is received.
- Services shall be treated as ancillary or subsidiary only if the **twin conditions** are cumulatively satisfied which is as follows-
 - i. It should be related to application or enjoyment of right, property, or information for which payment received should be in the nature of royalty, and
 - ii. Pre-dominant purpose of such arrangement must be application or enjoyment of right, property, or information, for which royalty is received.
- This judgement could be an important judgement to clarify that each processes are not covered under the definition of Royalty as till now various judicial bodies were of the opinion that only the word **process** has been used in the definition of Royalty and accordingly any process which is developed by a business would be considered as Royalty.
- In the **telecom industry** itself there are various processes which are **standard processes** and used by everyone in the industry but they were being considered as covered under Royalty. Now after this judgement it could be said that such process which are standard across the industry could not be considered as Royalty.

Section/Article	Section 9(1)
DTAA/Country	Article 12 of India- Singapore DTAA
Court	Delhi Tribunal
Date of decision	19.12.2022



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