



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

% Judgment Reserved on: 22.11.2025  
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+ **W.P.(C) 15181/2004**

M/S LG ELECTRONICS INDIA P.LTD & ANR ....Petitioners

versus

DIRECTOR OF INCOME TAX(INTERNATIONAL  
TAXATION) & ANR .....Respondents

**Advocates who appeared in this case**

For the Petitioner : Mr. Deepak Chopra, Mr. Ankul Goyal and  
Mr. Adwiteya Grover, Advocates.

For the Respondents : Mr. Indruj Singh Rai, SSC Mr. Sanjeev  
Menon, Mr. Rahul Singh, JSCs and Mr.  
Gaurav Kumar, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE VINOD KUMAR**

**JUDGMENT**

**V. KAMESWAR RAO, J.**

1. This writ petition has been filed by the petitioner No.1/LG Electronics India Pvt. Ltd. through its managing director/petitioner no.2 with the following prayers:-

*“a. to issue a writ of certiorari quashing the impugned order dated 27.04.2004 u/s 264 of the Act passed by the respondent no.1 being perverse and bad in law;  
b. to issue a writ of mandamus directing the respondents to grant permission to the petitioner no.1*



*u/s 195 of the Act to make remittances without deduction of tax;”*

2. In effect, the petitioner is challenging the order dated 27.04.2004 passed by the respondents under Section 264 of the Income Tax Act, 1961 (“Act”) wherein they have decided the payment made by the petitioner to Global Cricket Corporation Pvt. Ltd. (GCC) as the elements for the booking of space and for the right of use of trademark of the International Cricket Council (ICC). Resultantly, the respondents have apportioned 2/3<sup>rd</sup> of the total payment made by the petitioner to GCC towards advertisement by way of booking of space and the balance 1/3<sup>rd</sup> towards the right to use the trademark of ICC transferred by GCC to the petitioner and as such, treated the payment as royalty within the meaning of Section 9(1)(vi) Explanation 2(i) of the Act, in conformity with the Singapore-India Double Taxation Avoidance Agreement (DTAA). The Assessing Officer (AO) was accordingly directed to modify the order under Section 195 of the Act taking 1/3<sup>rd</sup> of the payment made to GCC by the petitioner towards royalty of which 15% shall be taken as tax.

3. Mr. Deepak Chopra, learned counsel for the petitioner has stated that GCC is a company incorporated in Singapore, which entered into an agreement with ICC Development (International) Ltd. on 20.07.2000 to obtain commercial rights connected with the cricket match events owned by ICC. Under this agreement, GCC obtained the right to appoint third parties sponsors, suppliers, broadcasters and other licensees.

4. In exercise of the rights granted in the aforesaid agreement, the GCC signed an agreement dated 28.06.2002 with three LG group entities being



LG Electronics Inc., Korea (LGEK), LG Electronics India Private Limited (petitioner) and LG AD Inc., appointing LG as a Global Partner for the event specified in the agreement. As a Global Partner, LG acquired the advertising and promotional rights before and at the event, which inter alia included rights to display the Global Partner Marks (LG Mark) on certain advertising sites like ground level pen meter boards; outfield mats; 3<sup>rd</sup> umpire traffic lights; sight screens; advertisement on electronic screens at stadium; on tickets; official website for the event; welcome board on the main entrance to the venue; flag at any designated flag court at the venue and at other places which can be subsequently agreed between parties.

5. According to Mr. Chopra, for the aforesaid advertisement and promotional rights, LG group agreed to pay an amount of USD 27,500,000 to GCC, of which an amount of USD 11,000,000 was borne by the petitioner and the balance USD 16,500,000 was borne by LGEK.

6. The petitioner moved an application dated 21.08.2002 under Section 195 of the Act requesting the Deputy Director of Income Tax, to issue a certificate allowing the petitioner to remit the aforesaid amount without deduction of tax. The said application was rejected by the respondent no.2 vide order dated 12.11.2002, holding the following:-

- (i) The amount paid by the petitioner was in the nature of royalty for acquisition of rights to exploit the commercial potential of the events.
- (ii) Global Partner was empowered to use ICC Marks and derive the benefits of strength, popularity and goodwill and the clout of ICC/GCC.



- (iii) The said rights are granted for a fee.
- (iv) Such rights are acquired to benefit from enhanced visibility to customers deriving the benefits of association on account of reputation, goodwill and standing of ICC/GCC.
- (v) The aforesaid payments fairly falls under the definition of royalty and TDS @ 10% shall be deducted on the same.

7. Mr. Chopra would submit that being aggrieved by the order dated 12.11.2002, the petitioner filed an application under Section 264 of the Act before the Director of Income Tax (“DIT”). According to him, the DIT granted a partial relief to the petitioner, observing the following:-

- (i) At the request of DIT, the petitioner filed a submission stating that there was an element of use of trademark by the petitioner but the same was merely incidental and add-on rights. On the basis of a letter given by GCC, the said incidental use of trademark was valued at USD 1,000.
- (ii) It relies at paragraph 5.3.1 and 6.4 and Schedule 3 to conclude that the petitioner acquired the right to use ICC logo.
- (iii) The petitioner booked space in the stadium for extensive and exclusive visibility of its brand ‘LG’.
- (iv) The space was booked in a stadium located at South Africa to display various products of LG India.
- (v) The right to use the trademark of ICC was bought by GCC.
- (vi) The petitioner conceded that the use of ICC trademark was acquired by the petitioner.
- (vii) By taking note of popularity of cricket in India to come to a



finding that it was natural for the petitioner to seize the opportunity of booking premium space from GCC which had exclusive right to use the ICC trademark.

(viii) Substantive coverage received by the petitioner was owing to the fact that million of people were watching the Cricket World Cup and thus there was no necessity of use of ICC logo as the entire event itself represents the trademark of ICC.

(ix) Payment was made for advertisement of LG products by booking premium space.

(x) The consideration was paid both for the physical space as well as the right to use the trademark.

(xi) Maximum payment was made to acquire visible space in the field thus 2/3rd of the total payment needs to be attributed towards the advertisement and 1/3rd of the total payment towards right to use trademark.

(xii) Only the aforesaid 1/3rd of the total consideration is chargeable to tax as royalty and TDS @ 15% shall be deducted on such payments.

8. He submitted that the issue which arises for consideration is whether a part of payment made by LG to GCC for acquiring advertising/sponsorship rights in a sporting event can be re-characterized as a royalty for the incidental use of ICC trademark.

9. In support of the submissions, Mr. Chopra has drawn our attention to various provisions of the Global Partnership agreement executed between the petitioner with the GCC on 28.06.2002 for the purpose of displaying its



mark 'LG' in the cricket tournament as per Schedule 4 of the agreement.

10. He submitted that in terms of the agreement, the GCC has given the rights to the petitioner to display its name 'LG' in various cricket matches and events and as per Schedule-I of the agreement, all the matches are likely to be held outside India.

11. According to him, the recital of the agreement shows that Global Partner 'LG' wishes to acquire Global Partnership rights for use in connection with brand centre. Article 2 specifies that agreement shall continue until 90 days following the completion of the last match of final event. Article 3 deals with grant of rights. Paragraph 3 of the Schedule 3 further states that the Event Marks and the ICC Marks can only be used in or on advertising material. Advertising material has been defined in Article 1 of the agreement as meaning all advertising, communications, packaging, labelling, containers and promotional material of whatever nature and in whatever media used or to be used by or on behalf of the Global Partner in relation to the Global Partnership Rights.

12. He submitted that, paragraph 4 of the Schedule 3 further restricts the rights in footage and photographs as LG did not acquire any rights in any such footage. Reference in this regard is made to the judgment of this Court in *Formula One World Championship Ltd. v. Commissioner of Income-tax, (International Taxation)-3, Delhi, 2017 390 ITR 199*, upheld by the Supreme Court in *(2017) 394 ITR 80(SC)*. He further stated that, if LG intends to use the footage to show an endorsement of its products then separate consent and/or approval will be required to use such footage. Paragraph 4.3 of the Schedule 3 states that, LG cannot use any footage or



photographic material to imply an endorsement of LG products. Paragraph 5.1.2 of the agreement further states that LG cannot develop or undertake promotional, sponsorship or marketing activity in relation to the event which has not been contemplated in the agreement. Paragraph 5.2 of the agreement imposes obligation on LG not to use any advertising material without prior consent of GCC.

13. He stated Global Partner also grants ICC the royalty free right to use LG Mark. The Global Partner cannot use the official status in any way except as expressly permitted in the agreement. He stated clauses 6.8 and 6.9 contemplate that the Global Partner shall not use the ICC Mark in any trading or corporate name. He referred to clause 6.14 to contend that goodwill or right, title, interest in ICC Mark if is vested in global partner, same has to be assigned to GCC immediately. Further, paragraph 9.2.2 states that the Global Partner shall cease to use the Global Partnership Rights and shall not thereafter use or exploit its previous connection with GCC directly or indirectly. It is his submission that in view of the fact that the entire agreement talks about the rights of a sponsor to display its mark during the course of the stipulated event, it becomes clear that what has been granted to the petitioner is a bundle of rights to facilitate its right to display LG Mark along with the ICC Mark to show its association with the event. Also it can be seen that in no way has LG acquired any right to use ICC Marks on its products.

14. It is also his submission that from a reading of the terms and conditions, it is clear that the right to use ICC trademark is merely an incidental right for which no separate consideration has been charged by



GCC. Thus, the amount paid by LG to GCC to acquire advertising rights cannot in any manner be characterized as royalty for the use of trademark.

15. He has relied upon the judgment in the case of ***Formula One World Championship Ltd. (supra)*** to contend that the issue is no more *res integra* as this Court has held in the said judgment that the use of Formula One World Championship (FOWC) trademark by Grand Prix (GP) was merely incidental to the main purpose of the contract, which was to designate GP as the event promoter and thus, the payment of the aforesaid rights was in the nature of business income and not royalty. He stated that the said order of this Court has been affirmed by the Supreme Court in **(2017) 394 ITR 80**. It is clear that the observation made by this Court qua the issue of royalty has been accepted by the Income Tax Department and thus, the issue is settled in terms of the judgment thereof.

16. He stated that as per the Indian Trademark law, the use of trademark even for advertising is to be made by prior consent.

17. Mr. Chopra has relied upon the judgment of this Court in the case of ***Director of Income Tax v. Sheraton International Inc, (2009) 313 ITR 267***. According to him, the issue which fell for consideration in that case was whether the income earned by Sheraton International Inc. was part of its agreement with ITC Limited for provision of publicity, advertisement and sales services ought to be taxed as royalty since the payment received included a fee component received by Sheraton International for allowing ITC to use its trademark / trade name. He submitted that this Court has held that the payment received by Sheraton International arose primarily out of provision of advertisement services. Furthermore, receipts for use of



trademark / trade name etc being incidental to receipts for the provision of the main service i.e. advertising, cannot take the character of royalty.

18. He had stated that as per the details of the assessment proceedings as encapsulated in the decision of the ITAT (Mumbai) in the case titled as ***ADIT (International Taxation) v. Global Cricket Corporation (P) Limited, (2022) 145 taxmann.com 570 (Mum.,)*** the amounts received by GCC from the petitioner and Hero Honda Motors for grant of sponsorship rights were sought to be taxed as royalty under the Act. According to him, ITAT (Mumbai) decided the said issue in favour of GCC by holding that firstly based on the decision of this Court in ***Sheraton International (supra)***, payment on account of advertisement rights is not taxable as royalty. Secondly display of the company logos on display boards / electronic score boards etc. i.e. places where the logo is to be displayed, does not constitute “*equipment*” for the purposes of Section 9(1)(vi) of the Act; thus, the ITAT (Mumbai) has held that, payments for display of company logos constitute sponsorship fees and is not royalty.

19. On the other hand, Mr. Indruj Singh Rai, learned SSC for the Revenue would submit that the petitioner challenges the order of the respondent no.1 passed in exercise of the revisionary jurisdiction under Section 264 of the Act, in so far as, affirming the order passed by the respondent no.2 under Section 195 of the Act treating part of the payment made to GCC, a Singapore based entity, to be in the nature of the royalty under Section 9 (1) (vi) of the Act and therefore, withholding tax @ 15% of the 1/3<sup>rd</sup> of the gross receipts of USD 11 million was mandated.

20. He highlighted the following facts:-



a. ICC is responsible for organizing cricketing tournaments, including Cricket World Cups, throughout the world. The ICC had assigned the commercial rights pertaining to cricketing tournaments to its commercial arm, namely ICC (Development) International Ltd.(IDI), a UAE based entity.

b. Subsequently, IDI further transferred commercial rights pertaining to cricketing tournaments to GCC for various cricketing events.

c. Consequent to the above, GCC and the petitioner, along with group companies of the petitioner, i.e. LG Electronics Inc. and LG Ad Inc, entered into a global partnership agreement dated 28.06.2002 for the purpose of granting global partnership rights to the petitioner. He submitted that the agreement grants various rights to the petitioner pertinent of which, *inter alia*, are: -

i. the right to advertise and display the logo of the petitioner in the advertising space allotted to it at the venue; and

ii. the right to use the ICC Mark/Event Mark, Logo, etc throughout the licensed territory in or on advertising material.

21. He stated that the “licensed territory” was defined as the world and the “advertising material” was defined as all advertising, communications, packaging, labeling containers, and promotional materials of whatever nature and in whatever media used or to be used on behalf of the global partner in relation to the global partnership rights. He also stated that the ICC Mark was defined as “*ICC logo to be notified to the Global Partner in accordance with Clause 6.3*” and the Event Mark was defined as “*the official event titles, words, logos, and mascots provided by GCC to the*



*Global Partner in accordance with Clause 6.3”.*

22. Mr Rai stated that the petitioner had the right to use the trademark belonging to ICC i.e. ICC Mark, Event Mark, Logo, Global Partner Status etc. on any kind of advertising in any form of media and included packaging and labeling of products etc. of any kind throughout the world i.e. much beyond the venue at which the relevant matches are being played.

23. It is his submission that that the petitioner was specifically permitted to use Event Marks and ICC Marks on its general website where it sells its products, in accordance with Clause 5.1.3 of the agreement. Therefore, the petitioner had acquired substantial rights as per the agreement dated 28.06.2002 to use the ICC Mark and the Event Mark throughout the world on any medium and on any product or packaging or material including displaying them on its website. It is in terms of the aforesaid, that the payment of USD 11 million was to be made by the petitioner to GCC, pursuant to which an application dated 21.08.2002 under Section 195 of the Act was moved before the respondent no.2 for obtaining a *Nil Withholding Tax Certificate*. He stated that the Deputy Director of Income Tax had rejected the application of the petitioner vide order dated 12.11.2002 primarily observing the following:-

- i) Global Partnership Rights acquired as set out in Schedule 3 of the Agreement, clearly indicated that the petitioner acquired the rights to exploit the commercial potential available with the payee;
- ii) The acquisition of rights to use the ICC Mark/Event Mark from GCC/IDI resulted in enhancement of visibility to customers of the petitioner and helped in deriving the benefit of goodwill and



standing of ICC and such transaction was taxable under section 9(1)(vi) and Section 5(2) of the Income-tax Act, 1961 read with Article 12 of the DTAA;

iii) Further, the entitlement of the right to use the ICC Mark stemmed from the petitioner being a global partner, by virtue of the Global Partnership Agreement, and such right was granted for a fee, therefore, payment was in the nature of royalty and tax @ 10% was directed to be withheld on the gross amount.

24. He highlighted the fact the application for revision dated 26.11.2002 under Section 264 of the Act was moved before the respondent no.1, but such an application was rejected *vide* order dated 27.04.2004 by stating as under:-

i) the petitioner had conceded, *vide* letter dated 19.03.2004, that use of trademark of ICC involved an element of royalty;

ii) The agreement had two elements to it, one being the booking of space for advertising and promotion and the other being the right to use trademark of ICC;

iii) Right to use the trademark of ICC was not incidental and could not have been valued at a meager amount of USD 1000 as submitted by the petitioner for the following reasons:

a. While the petitioner had acquired the advertising space at the venue to advertise its own mark, it did not need to display any ICC Logo since the in-stadium advertisement itself was at an ICC event;



b. the benefit gained by the petitioner in a country like India which has such a large cricket fan base, on account of associating with the ICC Mark;

iv) It was held that consideration for the agreement included payment for advertisement site at the venue and payment for right to use the ICC Mark and the Event Mark and accordingly  $\frac{2}{3}$ <sup>rd</sup> of the consideration was considered as attributed towards in-stadium advertisement and hence exempted from tax and  $\frac{1}{3}$ <sup>rd</sup> payment was to be regarded as royalty towards acquisition of right to use the ICC Marks and the Event Marks on which tax @ 15 % was directed to be withheld.

25. According to Mr Rai, ICC Marks, Event Marks and Global Partner Status amount to intellectual property in the nature of “trademark”. Trademarks are specifically covered within the meaning of “Royalty” as set out under Explanation 2 to Section 9(1)(vi) of the Act and Article 12(a) of the DTAA. Furthermore, as per Article 12(2) of the DTAA, India will have the right to tax such royalty @ 15% even though it is earned by a resident of Singapore.

26. It is his case that the petitioner categorically conceded by way of its letter dated 19.03.2004 as part of the proceedings under Section 264 of the Act that the agreement confers the right to use the trademark of ICC to the petitioner.

27. According to Mr Rai, the right to use the ICC Mark/Event Marks is not just incidental to the in-stadium advertising agreement but rather a



substantial right acquired by the petitioner to use the said trademarks throughout the world on any kind of medium and product, packaging etc. i.e. beyond the stadium/venue. He has also highlighted the definitions given in the agreement in support of his submissions. That apart, it is his submission that proceedings undertaken at the stage of Section 195 of the Act are to determine whether there is any tax to be withheld at the preliminary stage for making the payments. It is not the final proceedings where tax liability is ascertained by way of any assessment. He has also highlighted the status of assessment of GCC contained for the relevant AY. The addition was made by the concerned AO at the hands of the GCC to the tune of Rs.18,81,09,112/- as the receipt was not eligible for the DTAA benefit and the same was added to the income of GCC, though, an appeal is pending before the Bombay High Court.

28. It is further submitted that for the AY 2002-03, no appeal was filed due to low tax effect in the case of receipt of payment received by the GCC from the petitioner herein.

29. In the end, it is his submission that the order passed by the respondents is a reasoned order, which warrants no interference by this Court, more particularly in exercise of powers under Article 226 of the Constitution of India. He also distinguished the judgments relied upon by Mr Chopra in the case of ***Formula One World Championship Limited (supra)*** to contend that the factual situation in the said case is inverse whereby Jaypee was responsible for promoting and advertising the event and hence needed access to the Formula One trademark to be able to advertise the event. It was such a grant of royalty free license to use the



Formula One trademark that was treated as incidental to the main purpose of advertisement and hence not subject to taxation as royalty income separately. According to him, in the present case it is GCC who is responsible for the advertisement and hence, is being allowed to access LG trademark royalty free. It is not Revenue's case that such granting of license by LG to GCC results in royalty income in the hands of LG, as it is accepted that such rights are merely incidental to the main purpose of on-ground advertisement to be carried out by GCC. However, in the present case, LG is not responsible for advertising ICC Marks and hence it cannot be said that the right granted to LG to use ICC Marks and Event Marks on any of its products across the world or on its website is incidental to the main purpose of the agreement, as it has no connection to the on-ground advertisement. Therefore, reliance placed on the judgment of *Formula One World Championship Limited (supra)* is misplaced. Similarly, Mr Rai also distinguished the judgment in the case of *Sheraton International Inc. (supra)*. He relied upon the decision of this Court in the case of *J K Synthetics Limited v. CIT, [2004] 139 Taxman 264 (Delhi)* in support of his submission as this petition is under Article 226 of the Constitution of India, this Court is not sitting as an appellate authority over the decisions taken by the two authorities below except looking as to whether the process undertaken to take the decision is in accordance with the principle of natural justice and nothing more. He seeks dismissal of this writ petition.

30. Having heard the learned counsel for the parties, the short issue which arises for consideration of this Court in this petition is whether the respondents are justified in considering 1/3<sup>rd</sup> of the USD 11 million paid by



the petitioner to GCC towards royalty payment on which 15% shall be taken as tax.

31. At the outset, we may reproduce the relevant conclusion drawn by the AO vide order dated 12.11.2002 passed under Section 195 of the Act as under:-

*In view of the fore going discussions I hold that the payment as per the application is fully covered with in the definition of royalty & shall be subjected to tax withholding rate accordingly. A tax withholding @ 10% on gross payments is, therefore, ordered for the entire contract. This order shall be valid for Financial Year 2002- 03.*

*Proof of payments of income tax to the credit to the Central Government has to be produced before the concerned bank authorities at the time of the remittance of the said sum to the nonresident. A copy of the proof of payment of income tax must be submitted to the undersigned along with Form No.27. read with rule 37A of the of the Income Tax Rules, 1962.*

*The authorization shall remain in force for the aforesaid payments only unless it is modified or cancelled for financial year 2002-03. The facts of cancellation or modification will be intimated to you.”*

32. Similarly, the Director of Income Tax in exercise of its powers under Section 264 of the Act has varied the order of the AO by passing the following order:--

*“The applicant has conceded that the use of the trademark of ICC is definitely involved but the role of this use of trademark of ICC has been empirically valued which is a negligible amount. It is a well known fact that countries playing cricket consider the World cup organization in cricket held every four years, in*



*any part of the world to be the most important sporting event. The interest it generates in participating countries is unparalleled and can be compared only to such events organized in the World Cup football.*

*In India cricket is the most important game and the World Cup provide tremendous opportunities to people of every segment of the watch the game. It is, therefore, natural for LGEIPL to seize the opportunity to get the right of premium space from GCC who was vested with the exclusive right to use the trademark of ICC Apart from the visible logo of ICC which the LGEIPL was bound to use and display in accordance with the paragraphs quoted above, as mentioned in the millions of viewers were watching the World Cup Cricket far away in South Africa only because the ICC could organize the event there. There is no necessity of the visible display of "ICC logo in such event as the entire organization itself represents the trade mark of ICC The display of LG in this event like World Cup had a great multiplier effect Obviously the GCC based in Singapore does not have that effect of association with cricket as ICC has for which the exclusively right of use of trademark of ICC was transferred to GCC for a price. Therefore, even though LG has dealt only with GCC, it is the use of trademark of ICC which is relevant. The extent of coverage and visibility which the LG got during this period of time could not have been possible but for the event of World Cup and has only considered the booking of premium space in the brand of World Cup which ICC represents.*

*This is the case of the company LGEIPL where the payment was made for advertisement of its product with the brand LG by booking premium space. The payment in consideration thereof was made taking into consideration both the physical space as well as the right to use the trademark of ICC which is the*



*exclusive organizer of all such events in cricket. The right to use trademark has been conceded in its entirety between GCC and ICC. The GCC in turn has transferred the right to various companies, LGEIPL being one of the beneficiaries in consideration of the price paid.*

*The payment of LGEIPL to GCC, therefore, has both the elements, one for the booking of space and the other for the right to use the trademark of ICC. Taking into consideration all the aspects of representation, the facts available on record and the importance the World Cup Cricket gets in India, a right proportion of the payment has to be made between the two elements.*

*It is a fact that LGEIPL could get the maximum and the best visible space in the field and also where for which the maximum payment were made. I consider that 2/3 of the total payment of USD 11 million should be attributable towards the advertisement by way of booking of space. The balance 1/3 should go towards the right to use the trademark of ICC transferred by GCC to LGEIPL. This amount therefore, is treated as payment made towards Royalty within the meaning of section 9(1)(vi) explanation 2-(i) of the Income Tax Act which is in conformity with the DTAA between India and Singapore as mentioned in Article 12, para 3 (a)."*

33. Some of the relevant provisions of the schedules incorporated in the agreement dated 28.06.2002, as noted by the AO in the order reads as under:-

**"Schedule 3- The Global Partnership Rights**

1. Right to use Official Status: - The Global Partner has the right to use the Official Status in conjunction only with the Global Partner Marks and in accordance with the provisions of this Agreement being the following



designations:

Official Global Partner of ICC

Official Global Partner of the Event.

2. Advertising and Promotional rights before and at the event

2.1 Subjects always to paragraph 6 below, the Global Partner shall have the right, subject to applicable laws, regulations and codes of practice (the "Codes of Practice") to display the Global Partner Mark on certain Advertising Sites, and elsewhere, immediately before, during and after each Match at the Venue as described below-

- (a) the right to 12,5% of all ground level perimeter advertising comprising no less than six ground level perimeter boards (size 20 feet x 3 feet and to be no smaller than those provide to other Global Partners) at all Venues, the exact position of which shall be based on a equitable distribution with other Global Partners in accordance with a formula to be developed by GCC and communicated to the Global Partner in advance which is intended to ensure the all Global Partners receive an equal share of prime sites for television exposure;

(b) four (4) ground level perimeter boards at all warm-up Matches in the ICC Cricket World Cup 2003 and 2007, the exact size and position of which shall be based on an equitable distribution with other Global Partners;

(c) subject to availability and on an equal basis amongst Global Partners, an option to buy further Advertising Sites in the Stadium at cost;

(d) two (2) outfield mats (from a total of eight (8), at all Stadia, on which the Global Partner may display the Global Partner Marks which display shall be equal in prominence with the logo three(3) other "Global Partner" on similar mats and the layout of which shall be communicated to the Global Partner in advance. Such mats shall be of the maximum allowed by the ICC from time to time.

(e) The Global Partner Marks shall appear exclusively on the 3<sup>rd</sup> umpire "traffic lights" at each venue:

(f) the Global Partner Marks shall appear, in rotation (min. 5% in total) with the logo of each, of the other Global Partners on the sight screens at each Stadium.



(g) *The Global Partner Marks shall appear in advertisement on the electronic screens at each Stadium which has such facility in rotation with advertisement for the other Global Partner and Official Sponsors. Details of such advertisements shall be mutually agreed subsequently by the parties:*

(h) *The Global Partner Marks shall appear, together with the logo of such of the other Global Partners and Official Sponsors, on the reverse side of all tickets to Matches and on all official Event materials;*

(i) *The Global Partner Marks shall appear in rotation with other Global Partners and Official Sponsors on any official website for the Event and shall contain a hyperlink to the website of the Global Partner;*

(j) *The Global Partner Marks shall be displayed, together with the logo of each of the other Global Partners and Official Sponsors, on a "Welcome Board" located prominently by the main entrance of each Stadium, on a media backdrop at all press conferences and on the winner's podium;*

(k) *The Global Partner Marks shall be displayed on at least one flag in any designated flag court" at each venue( where available), together with flags bearing the logo of each of the other Global Partners and Official Sponsors, exact details of which shall be mutually determined in good faith by the parties and provided that each Global Partner (including the Global Partner) shall be entitled to the same number of flags;*

(l) *the Global Partner Marks shall be displayed, together with the logo of each of the other Global Partners and Official Sponsors on such venue and host city dressings as are agreed between the parties;*

(m) *the non-exclusive right at its own cost to conduct contests and promotions using the Event Marks and the ICC Mark during the Term provided that all aspects of all such promotions shall be subject to the prior written approval of GCC such approval not to be unreasonably withheld or delayed: and*

(n) *the non-exclusive right, at its own cost and risk and only where space and regulations permit to locate a reasonable number of displays and product sampling stands at the*



*Stadium during the Event.*

*2.2 The Global Partner shall have the right to :*

*(a) one (1) full page of colour advertising space in the official Match programme for each Event, (b) Have the Global Partner Marks featured in all official publications relating to Each Event.*

*PROVIDED THAT the Global Partner suppliers at its own expense camera-ready work for Advertising Materials previously approved by GCC (or such third party as GCC may nominate) at least three (3) weeks in advance of publication deadlines.*

*3. Rights regarding the Marks: - Subject always to the terms of this Agreement, the Global Partners shall have the no-exclusive right during the Term to use, reproduce and publish or to authorize the use, reproduction and publication and publication of the Event Marks and the ICC Marks throughout the License Territory in or on Advertising Materials in accordance with the provisions of this Agreement.*

*4. Rights regarding Footage and Photographs:*

*4.1 The Global Partner shall have the non-exclusive right to access such footage relating to the Event and/or to ICC events or matches which IDI and/or GCC owns or controls, strictly for advertising and promotional purpose only (which may include television commercials for the Global Partner products) and only for use during the term and in accordance with the terms of this Agreement provided that;*

*(a) the Global Partner shall not acquire any rights in any such footage other than the limits license hereunder;*

*(b) the Global Partner shall not distort, add to, delete from or interfere with any such footage any part thereof without the prior written consent of GCC;*

*(c) the Global Partner shall not make such footage available for reception via the Internet or any other online form of delivery; and*

*(d) any single use of such footage shall be no longer than 30 seconds in duration if the footage is used or to be used*



*by the Global Partner in a manner which suggests an endorsement of the Global Partner and/or its products by any third party or any other association with the Global Partner by the same, then the Global Partner shall be solely responsible for acquiring from any necessary source (including, without limitation, Teams and members of Teams) consents and/or approvals required for the use of such footage prior to such use provided, however, that the Global Partner shall not be required to seek copyright approval where footage is owned by GCC and/or IDI/ICC. Out of pocket expenses including tape costs, transfer costs and shipping costs shall be for the account of the Global Partner.*

*4.2 GCC acknowledges that the Global Partner shall be entitled during the Term to incorporate still photographs of the Event in or on Advertising Material or use in accordance with this Agreement provided that the Global Partner shall acquire from any necessary source all copyright in such photographs and further PROVIDED THAT if the photographs are used or to be used by the Global Partner in a manner which suggests an endorsement of the Global partner and/or its products by and third party or any other association with the Global Partner by the same, then the Global Partner shall acquire from any necessary source (including, without limitation, Teams and members of Teams) consents and/or approvals required for the use of such photographs prior to publication or other distribution or exploitation thereof.*

*4.3 The Global Partner acknowledges that any footage and/or photographic material referred to in this paragraph 4 shall not be used by the Global Partner in any way which may express or imply any endorsement of the Global Partner's products (or any product or service) whether by any Team or Team member or otherwise.*

### ***5. Tickets and Corporate Hospitality***

*The Global Partner shall have the right to :*

*(a) one hundred (100) best category tickets free of charge per Match;*

*(b) an option to buy one hundred (100) of the best category tickets at face value for each Match which may be used for*



*promotional purposes which option must be exercised at least three months before the start of the Event in question provided that GCC shall use its best efforts to increase this number should LG have additional demand for certain Matches;*

*(c) an option to buy two hundred (200) tickets of any category subject to availability at the time of face value provided that the Global Partner notifies GCC in Writing not less than six months prior to each World Cup and three months prior to each other Event of its intention to exercise this option (and the Global partner shall be committed to purchasing the same if such option is exercised);*

*(d) ten (10) corporate hospitality places at each Match at each Event free of cost (all alcohol, beverages, food and other incidental expenses shall be at the Global Partner's expense) be provided in an exclusive box (where available) or other VVIP area;*

*(e) the option to host an official function during the Event in the territory of the Event, at the cost of the Global Partner and upon terms to be agreed with GCC.*

*Provided that (save as set out in © above) the Global Partner notified GCC in writing not less than three months prior to each Event of its ticket and hospitality requirements for such Event. The Global Partner shall also receive four (4) access passes at each Stadium to enable its personnel to monitor the agreed implementation of the Sponsorship Rights.*

## **6. Use of Rights**

*It is acknowledged that agreed that all details of the above entitlements shall be mutually determined by the parties in good faith, as soon as is reasonably practicable having regard to particular reasonable requirements of the Global Partner notified to Gee in writing which Gee is reasonably able to accommodate. In particular, it is acknowledged and agreed by the Global Partner that, in relation to certain Matches, the Global Partner may not utilize all of the Global Partnership rights and that such agreed non-use shall not constitute any breach of this Agreement by GCC*



*and/or World Sport Nimbus.”*

(emphasis supplied)

34. Additionally, we may highlight the provision of Section 5 of the Act, which reads as under:-

*“Section 5*

*(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which-*

*(a) is received or is deemed to be received in India in such year by or on behalf of such person; or*

*(b) accrues or arises or is deemed to accrue or arise to him in India during such year.*

*Explanation 1 - Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact it is taken into account in a balance sheet prepared in India.*

*Explanation 2 - For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India."*

35. We may also note the Section 9(1)(vi) of the Act as under:-

*1) The following incomes shall be deemed to accrue or arise in India-*

*vi) income by way of royalty payable by -*

*a) the Government; or*

*b) a person who is resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes*



*of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or*  
*c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or service utilized for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India:*

*Provided that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, if such income is approved by the Central Government:*

*Provided further that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum payment made by a person, who is resident, for the transfer of all or any rights (including the granting of a license) in respect of computer software supplied by a non-resident manufacturer along with a computer or computer - based equipment under any scheme approved under the policy on computer software Export, Software Development and Training, 1986 of the Government of India.*

*Explanation I- For the purposes of the first proviso, an agreement made on or after the 1st day of April, 1976 shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date; so, however, that, where the recipient of the income by*



*way of royalty is a foreign company, the agreement shall not be deemed to have been made before that date unless, before the expiry of the time allowed under sub-section( 1) or sub-section(2) of section 139 (whether fixed originally or on extension) for furnishing the return of income for the assessment year commencing on the 1<sup>st</sup> day of April,1977, or the assessment year in respect of which such income first becomes chargeable to tax under this Act, whichever assessment year is later, the company exercise an option by furnishing a declaration in writing to the Assessing Officer (such option being final for that assessment year and for every subsequent assessment year) that the agreement may be regarded as an agreement made before the 1<sup>st</sup> day of April, 1976.*

*Explanation2.- For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") form the transfer of all or any rights(including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;*

- ii) the imparting of any information concerning the working of: or the use of a patent, invention , model, design, secret formula or process or trade mark or similar property;*
- iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;*
- iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;*
- (via) or the use or right to use, any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;*
- v) the transfer of all or any rights (including the*



*granting of a licence) in respect of copyright, literary, allistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films; or*

*vi) the rendering of any service in connection with the activities referred to in sub- clauses (i) to (iv),(iva) and (v);*

*Explanation 3.- For the purposes of this clause. "Computer software" means any computer programme recorded on any disc. type, perforated media or other information storage device and includes any such programme or any customized electronic data;”*

36. It may be stated here that the payments made by the petitioner are for acquiring the rights as per the agreement between the petitioner and GCC in India to pursue the commercial interest of the petitioner to boost its branding image in India. In that sense, such transactions are taxable in India in view of the aforesaid sections.

37. A reference to Article 12 and 7 of the DTAA also require a mention, which read as below:-

***“Article 12 of Indo-Singapore DTAA reads as under:***

*3. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*

*2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services the tax so charged shall not exceed:*

*a) in the case of royalties referred to in paragraph 3(a) and fees tor technical services as defined in this Article*



*[other than services described in sub-paragraph (b) of this paragraph], 15, per cent of the gross amount of the royalties and fees;*

*b) in the case of royalties referred to in paragraph 3(b) and fees for technical services as detailed in this Article are ancillary and subsidiary to the enjoyment of property for which royalties under paragraph 3(b) are received, 10 per cent of the gross amount of the royalties and fees;*

*3. 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, including cinematograph mm or films or tape used for 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, property or information;*

*(b) any industrial commercial or scientific equipment, other than payments derived by an enterprise from activities described in paragraph 4(b) or 4(c) of Article 8.*

*4. The term "fees for technical service" as used in this Article means payments of any kind to any person in consideration for services of a managerial technical or consultancy' nature (including the provision of such services through technical or other personnel) if such services:*

*(a)are ancillary, and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received;*  
*or*

*(b)make available technical knowledge. experience skill, know- how or process, which enable the person*



*acquiring the services to apply the technology contained therein; or*

*(c) consist of the development and transfer of a technical plan or technical design, but excludes any service that does not enable the person acquiring the service to apply the technology contained therein.*

*For the purposes of (b) and (c) above. the person acquiring the service shall be deemed to include an agent, nominee, or transferee of such person.*

*5. Notwithstanding paragraph 4, "fees for technical services" does not include payments:*

*(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property' other than a sale described in paragraph 3(a);*

*(b) for service that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft 10 international traffic;*

*c) for teaching in or by educational institutions;*

*d) for services for the personal use of the individual or individuals making the payment;*

*e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14;*

*f) for services rendered in connection with an installation or structure used for the exploration or exploitation of natural resources referred to in paragraph 20) of Article 5;*

*g) for services referred to in paragraphs 4 and 5 of Article 5.*

***Article 7 of Indo-Singapore DTAA reads as under:***

*1) The profit of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise*



*carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other state but only so much of them as it directly or indirectly attributable to that permanent establishment.*

*2) Subject to the provision of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment. In any case where the correct amount of profit attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.*

*3) In the determination of the profits of a permanent establishment there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. In accordance with the provisions of and subject to the taxation laws of that State.*

*(4) Insofar as it has been customary in the Contracting State to determine the profits to be attributes to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the*



*profits to be taxed by such an appointment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principals contained in this Article.*

*5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of good or merchandise for the enterprise.*

*6) for the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reasons to the contrary.*

*7) where' profits include items of income which are dealt with separately in order Articles of this agreement, then the provisions of those Articles shall not be affected but the provisions of this article.*

*8) For the purpose of paragraph I, the term "directly or indirectly attributable to the permanent establishment" includes profits arising from transactions in which the permanent establishment has been involved and such profits shall be regarded as attributed to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions, even if those transactions are made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment."*

38. The plea of Mr Chopra is that the usage of the ICC Mark was incidental to the advertisement agreement. Mr Rai has relied upon Black's Law Dictionary wherein the word 'incidental' has been defined. According to him, Schedules 3(1), 3(2)(m) and 3.3 of the agreement, which we have reproduced above, contemplate the right of the petitioner to use the official



status of a Global Partner in accordance with the provisions of the agreement.

39. We may at this stage, refer to the definition of the ICC Mark, which means “*the ICC logo to be notified to the Global Partner in accordance with clause 6.3*”. The Global Partner has been defined to mean – “*the parties appointed by GCC from time to time as Global Partners of ICC/the Event in accordance with clause 7.4.*”

40. Having noted the aforesaid provisions including those set out in Article 12 of the DTAA and Section 9(1)(vi) of the Act, it is clear that the definition of royalty includes the consideration of the right to use the mark. It is also important to note the letter dated 19.03.2004 wherein the chartered accountant of the petitioner in its communication to the respondent no.1 has stated as under:

*3. There is an element of use trademark by LGEIL of the ICC as defined in Schedule 3(1), Schedule 3(2) (m) and Schedule 3(3) of the agreement between the two parties. However, these rights are incidental and only "add on" rights. The value of these rights as confirmed by GCC itself vide their letter dated 12.5.03 is USD 1000.*

*A nominal value of these rights is in itself justified when we attempt to put an empirical value of the advertising space purchased from Gee. This has been confirmed by an independent study carried out by a Lintas Group Company which has put the total benefit to LGEIL at a value of Rs.95.2 Crores, which tantamount to USD 20 Million. This amount is far in excess of USD 11 Million which is the total cost of purchasing these advertising space over a period of 5 years in between (and including) 2 world cup cricket matches. The payment is actually being made for*



*LGEIL to use its own logo on the space, which it has booked through GCC and not for LGEIL to be able to use the ICC logo, which has therefore been correctly valued at) nominal value of USD 1000.”*

41. The representation on behalf of the petitioner makes it clear that there is an element of use of the ICC Mark by the petitioner as defined in Schedule 3.1, 3(2)(m) and 3(3) of the agreement between the two parties. When the petitioner itself conceded the use of the ICC Mark, the attempt to downplay such use as incidental is not convincing. In fact, the reliance placed by the petitioner on the letter of the GCC addressed to the petitioner, dated 12.05.2003, justifying the attribution of USD 1000 to use the ICC Mark out of the total consideration of USD 11 million shows the usage of the Mark as a trademark. The use of the ICC Mark as a trademark as per the agreement must be read in conjunction with the other definitions, more specifically Clause 3.1, which states that the GCC grants global partnership to the petitioner to use the Mark in the licensed territory during the term in the light of the agreement. Clause 7.2 of the agreement clearly demonstrate that all the advertisement sites were under GCC control and it was the responsibility of the GCC to put out physical advertisement boards, signage etc., clearly demonstrating that there was no need for LG to get the license to use the ICC Mark. Also Clause 3 of Schedule 3, as noted above, grants license to use and reproduce the ICC Mark and Event Mark to LG through the licensed territory in or any of the advertising material. Further, the licensed territory has been defined to mean the ‘world’ and the ‘advertising material’ has been defined as stated by Mr. Rai, in a wide manner to include every material in any medium with no nexus of its usage to any venue or



geographical location. Further, the consideration in the agreement as set out in Clause 4.1 includes total consideration for both on-ground advertising and license to use ICC Mark and Events Mark as set out in Schedule 3. As such, a substantive right to use the marks was created by virtue of the agreement.

42. The AO has held that the payment as per the application is fully covered within the meaning of royalty and accordingly subjected it to withholding rate @10% of the gross payment. The revisional authority has varied that order to hold that  $2/3^{\text{rd}}$  of the total payment of USD 11 million is attributed to advertisement and  $1/3^{\text{rd}}$  towards the right to use the trademark of ICC and directed that  $1/3^{\text{rd}}$  payment be apportioned towards royalty and 15% be taken as tax. No substantial challenge has been made to the apportionment of the total payment into  $1/3^{\text{rd}}$  and  $2/3^{\text{rd}}$ . It is also not the case of the petitioner that the apportionment of the amount into royalty has to be at a lower rate. In any case, in view of our conclusion above, the said order cannot be faulted with.

43. The judgment relied upon by Mr. Chopra are clearly distinguishable. In the case ***Formula One World Championship Limited (supra)***, as clearly justified by Mr. Rai, the royalty through license to use the Formula One trademark was clearly held to be incidental to the purpose of advertising access from paragraph no.73, which we reproduce as under:-

*“73..... There is no doubt that the main object of the RPC and the relevant provisions of the ALA was not the permission to use the trademarks, but granting and designating Jaypee as the promoter of the event and laying out the rights of the parties, particularly FOWC as regards the event, the spaces to be made available to it exclusively, the sole and exclusive rights over all event related activities, the right to exploit them*



*commercially, etc. The use of the mark on the tickets sold by Jaypee was only incidental. The AAR's findings that the use of the mark and intellectual property rights benefited Jaypee, which paid for them, is entirely erroneous. Jaypee's permitted use, as it were, was for a limited duration and of an extremely restricted manner; this is contained in the definition of "permitted use" in the ALA:*

*"Permitted use means incidental use of the Licensed Marks solely as part of the Artwork and the Licensed Materials in accordance with the Design Guidelines and strictly as approved by FOWC, for the purpose of hosting, staging and promoting the Event but, for the avoidance of doubt, not to include use for any merchandising or other products or service whatsoever, whether distributed free of charge or for sale."*

*As event promoter and host Jaypee had to publicize the F1 Grand Prix Championship. Therefore, it was bound to use the F1 marks, logos and devices; however, it was not authorized to use the marks on any merchandise or service offered by it. This condition, in the opinion of the court, places the matter beyond the pale of controversy; the use of the trademarks were purely incidental. The conclusion of the AAR is therefore, incorrect. The answer to the question is that the amounts paid to FOWC by Jaypee were not "royalty" within the meaning of Article 13 of the DTAA, as they were business income and could not be brought to tax under the head of "royalty".*

44. Similarly, the judgment in ***Sheraton International*** (*supra*) is clearly distinguishable on facts as it was dealing with a situation where 3% of the room sales had a bearing on the interpretation of the agreement. The ITAT



had also held that the usage of the trademark Sheraton was incidental to the purpose of promoting the mutual business as it enabled the assessee Sheraton to earn more profits. So, it follows that the fact finding by the ITAT was in the peculiar set of facts of revenue sharing and it is for this reason, this Court did not find any substantial question of law arising in the said appeal.

45. In view of above discussion, we are of the view that the present petition is without any merit. The petition is dismissed.

**V. KAMESWAR RAO, J**

**VINOD KUMAR, J**

**DECEMBER 24, 2025**

*SR/M*