Amount received by a German company from software embedded in equipment supplied by it cannot be considered as 'royalty'

Summary – The Assessee, (M/s Siemens Aktiengesellschaft) a German company, was engaged in the business of sale of equipment - It was held that value of embedded software in equipment supplied by it was not to be treated as 'royalty' since the amount received by the assessee towards supply of software could not be segregated from supply of equipment.

Facts

• The assessee, a German company, was engaged in the business of sale of equipment.

• The Assessing Officer (AO) held that the value of the embedded software in the equipment supplied by it was to be treated as royalty paid to the assessee.

• The Commissioner (Appeals) held that the said amount could not be treated as royalty.

Held

• The Tribunal in the assessee's own case for assessment year 2001-02 had held that there is no dispute on the fact that the assessee had not separately sold software but it was part and parcel of the equipment supplied. The revenue on the other hand intends consider the same as falling under Article 13 of the DTAA between India & Germany i.e. being in the nature of royalty.

• Reliance was placed on the Special Bench ruling of the Tribunal in the case of *Motorola Inc.* v. *Dy. CIT* [2005] 147 Taxman 39 (Mag.)/95 ITD 269 (Delhi), wherein this aspect has been considered and it was held that the payment made to the assessee for use of software in the equipment did not amount to royalty either under the Income-tax Act or the DTAA. The amount received by the assessee towards supply of software cannot be segregated from the supply of equipment and, hence, that portion cannot be considered as 'royalty'.

• In view of the above, the Tribunal upheld the order passed by the first appellate authority.

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