

## Subscription fee for a research product of a foreign company amounted to royalty

**Summary – The Mumbai ITAT in a recent case of Gartner Ireland Ltd., (the Assessee) held that subscription fee to subscribe to a research product sold by assessee, a foreign company, amounted to royalty.**

### Facts

- The assessee was a company incorporated in Ireland. It was engaged in the business of distributing research products in the form of subscription.
- The assessee sold subscription to its Indian customers/subscribers by providing them access to its products over the internet from its data server which was located outside India against the subscription/access fee. Said fee was claimed to be not taxable in India because of absence of any permanent establishment in India.
- The Assessing Officer held that the said amount was in the nature of 'Royalty' as per Article 12 of Double Taxation Avoidance Agreement between India and Ireland read with section 9(1)(vi).
- DRP also echoed the view taken by the Assessing Officer.
- On appeal, the department submitted that Wipro, a customer of the assessee made same payment without deduction of tax at source under section 195 to assessee for online use of database which was considered as royalty liable for deduction of tax at source under section 195 by the Karnataka High Court in *CIT (IT) v. Wipro Ltd.* [\[2011\] 203 Taxman 621/16 taxmann.com 275](#).

### Held

- The assessee countered the submissions advanced on behalf of the revenue by stating that the issue as to whether the payment should be considered as 'royalty' or 'business profits' is not free from doubt in view of the conflicting judgments rendered by the Karnataka High Court in the case of *Wipro Ltd. (supra)* and the Delhi High Court in the case of *DIT v. Ericsson A.B.* [\[2012\] 204 Taxman 192/\[2011\] 16 taxmann.com 371](#). It was submitted that the Mumbai Bench of the Tribunal in the case of *DIT(IT) v. Solid Works Corpn.* [\[2012\] 51 SOT 34/18 taxmann.com 189](#) considered both the judgments and thereafter took a view in favour of the assessee by holding that the amount was in the nature of 'business profits' and not 'royalty'.
- The submissions advanced on behalf of the assessee could not be accepted for the obvious reason that the Karnataka High Court considered a case in which Wipro made payment to the assessee and the same has been held to be in the nature of 'royalty', liable for deduction of tax at source under section 195.
- It could not be understood as to how the contrary view expressed by the Tribunal can be adopted, when the Karnataka High Court has rendered judgment on the very same transaction in the hands of

the payers. If the argument tendered by the assessee is accepted, it would amount to delivering an opinion contrary to that of the High Court, which is obviously out of question. Therefore, there was no substance in the argument put forth by assessee.