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No royalty from sale of software, HC ignores amended Sec. 9 as DTAA more beneficial - Samsung's case distinguished

Summary – The High Court of Delhi in a recent case of Infrasoft Ltd., (the Assessee) held that amount received by the assessee under the license agreement for allowing the use of the software would not be royalty under the DTAA.

The Delhi HC after an exhaustively examining the issue on "copyrighted right" v/s "copyrighted article" held that what was transferred was neither the copyright in the software nor the use of the copyright in the software, but what was transferred was the right to use the copyrighted material or article which was distinguishable from the rights in a copyright.

It further held that the right that was transferred was not a right to use the copyright but was only limited to the right to use the copyrighted material and the same would not give rise to any royalty income and would be business income.

The HC expressed its disagreement with the decision of CIT v. Samsung Electronics Co. Ltd. [2011] 203 Taxman 477 (Kar.) on the issue that right to make a copy of the software and storing the same in the hard disk of the designated computer and taking backup would amount to copyright work.

<u>Comments</u>

This is a welcome judgement and would be beneficial to many assessees. It has examined the issue on "copyrighted right" v/s "copyrighted article" in great detail and can be referred to by assessees while defending their arguments on the matter.

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