

## Sum paid for obtaining permanent right to use design engineering services won't fall within the purview of royalty

**Summary –** The Pune ITAT in a recent case of Finoram Sheets Ltd., (the Assessee) held that where assessee was granted a permanent right to use and exploit design engineering, payment for obtaining plant know-how, i.e., designing, characterization of plant and machinery, etc., cannot be considered as payment falling within purview of 'Royalty'.

### Facts

- The assessee entered into a Technology License agreement with a foreign company.
- The agreement envisaged payment for providing design engineering services and technical know-how for erection of plant, providing of commercial services, and, providing of technical and process know-how to enable assessee to manufacture the products to the said company.
- Accordingly, the assessee made an application to the Income Tax Officer, for issuance of a certificate that no tax was liable to be deducted at source in respect of such remittance under section 195(2).
- The Assessing Officer held that the said amount were in the nature of fees for technical services and therefore, subjected to tax in India and in this context, he had referred to section 9(1)(vii).
- The Commissioner (Appeals) held that the services towards design engineering were not only in the nature of 'fees for technical services' but also fell within the definition of the word 'Royalty', as provided in the Act. The Commissioner (Appeals) concluded that the Assessing Officer made no error in holding that the impugned payments to the foreign company are subject to the tax deduction at source at the rate of 30 per cent.
- On appeal:

### Held

- As per the assessee, with respect to the fee paid towards design engineering *vis-a-vis* plant know-how, no part of the income of the foreign company arises in India. It is submitted that since the payment relates to acquisition of plant know-how in the form of technical and engineering data, designs, etc., the same cannot also be treated as 'Royalty' also. The assessee has attempted to distinguish between two type of services *viz.* Plant know how and Product know-how. As per the assessee, what it has acquired in terms of the payment is the Plant Know-how, which is covered in the definition of 'Plant'.
- In the present case, as per clause 2(a) of the Agreement, assessee was granted a permanent right to use and exploit the design engineering, which is qua the services provided as per the agreement. To the extent agreement in question envisaged payment for obtaining plant know-how, *i.e.*, designing,

characterization of plant and machinery, etc. the same cannot be considered as payments falling within the purview of 'Royalty'.

- So the technical and process know-how services provided under the agreement were clearly covered by the definition of 'Royalty' under the Act and therefore, the Commissioner (Appeals) made no mistake on this count.
- In view of the aforesaid, the order of the Commissioner (Appeals) was set aside and the matter was remitted back to the file of the Assessing Officer.