

## Amount received towards supply of software embedded in hardware did not amount to 'royalty' under section 9(1)(vi)

**Summary** – The High Court of Delhi in a recent case of *Alcatel Lucent Canada.*, (the Assessee) held that where assessee, a French company, supplied equipments and services for GSM Cellular Radio Telephone Systems to various entities in India, amount received towards supply of software along with hardware - rather software embedded in hardware did not amount to 'royalty' under section 9(1)(vi)

### Facts

- The assessee, a company incorporated in France used to manufacture, trade and supply equipments and services for GSM Cellular Radio Telephones Systems. The assessee had supplied hardware and software to various entities in India. Software licenced by assessee embodied process which was required to control and manage specific set of activities involved in business use of its customers.
- The Assessing Officer opined that the consideration of supply of software amounted to royalty under section 9(1)(vi).
- The Commissioner (Appeals) as well as the Tribunal held that the supply of embedded software which was part of the hardware supplied to the assessee's customers did not constitute royalty and, therefore, section 9(1)(vi) was not attracted and for the same reasons, article 13(3) of the DTAA was not involved.
- On revenue's appeal :

### Held

- At the outset, that the ITAT had relied upon the ruling of this Court in *DIT v. Ericsson A.B.* [\[2012\] 343 ITR 470/204 Taxman 192/\[2011\] 16 taxmann.com 371](#) wherein identical argument with respect to whether consideration paid towards supply of software along with hardware - rather software embedded in the hardware amounted to royalty.
- In the aforesaid case, it was held that when the assessee supplies the software which is incorporated on a CD, it has supplied tangible property and the payment made by the cellular operator for acquiring such property cannot be regarded as a payment by way of royalty.
- This Court also noticed that the ITAT had in addition relied upon other judgment of this Court i.e. *DIT v. Nokia Networks, OY* [\[2013\] 358 ITR 259/212 Taxman 68/\[2012\] 25 taxmann.com 225](#).
- In view of this settled position, it is held that no substantial question of law arises. The appeal is accordingly dismissed.