

Payment for software license for internal use without any permit to alter it can't be held as royalty: ITAT

Summary – The Chennai ITAT in a recent case of Visteon Technical & Services Centre (P.) Ltd., (the Assessee) held that Payment made to acquire software license for internal use of business did not fit into definition of royalty and non-taxable as per section 9(1)(vi)

Facts

- The assessee-company made payment towards purchase of software license from Vector, a U S company.
- The Assessing Officer from the invoices raised by the Vector noticed that the assessee acquired the license to use the software for a particular tenure subject to certain terms and conditions and held that the said payment was in the nature of royalty and taxable under section 9(1)(vi). Accordingly, the Assessing Officer treated the assessee as the assessee-in-default and charged interest under section 201(1)/(1A) for non-deduction of tax at source.
- The Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On appeal:

Held

- The assessee had purchased the software license from the 'Vector' for internal use of the company. As per the agreement the assessee could not transfer/share externally or sub-license to the third party or commercially exploit. It was not permitted to make any alteration of the software and did not get any ownership right except rights of use in the company. The assessee referred the Indo-US treaty and the 'computer software' does not fall under the definition of Royalty.
- As per the clauses and License agreement, section 14 of the Copyright Act, the assessee is not authorized to do any of acts mentioned in the Copyrights Act. The Indo-US treaty also excluded the computer software from the definition of Royalty in the treaty. Thus, the company had merely been provided the access to the copyrighted software and not right to use the copyright embedded in the software. In other words, the Company is not permitted to make copies or make alternations to the software.
- From the above facts, it is clear that the assessee has purchased software for the purpose of internal use and the same cannot be held as payments towards royalty.
- As per the terms and conditions of the purchase agreement, payment made to acquire the software license did not fit into the definition of royalty and non-taxable as per section 9(1)(vi).