

## **Sub-licensing of right to use patented technology without its extinguishment was assessable as business income**

**Summary – The Bangalore ITAT in a recent case of Bosch Ltd., (the Assessee) held that where assessee was vested with right to use patented technology under license agreement from its parent company and subsequent sub-licensing was only sharing of said right without extinguishing its right to use said technology, amount received on sub-licensing had rightly been assessed as business income**

### **Facts**

- The assessee had entered into technical collaboration agreement in October, 1999 with 'B' with respect to manufacture and sale of various automobile equipment products and spares whereby 'B' had granted to the assessee non-exclusive, non-transferable rights to use patent and patent application owned and controlled by 'B' for manufacture and sale of contract products. 'B' authorized the assessee to grant sub-licenses to 'M' manufacturing company, Iran whereby the license and technology was transferred to 'M' on the same conditions of limited use for manufacturing of contract components in Iran. The assessee received lump sum fees and royalty, which was claimed to be capital gain.
- The Assessing Officer rejected the claim of LTCG and assessed the said income as business income of the assessee.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On appeal to the Tribunal:

### **Held**

- There is no dispute that the assessee was granted license by parent company 'B' under the collaboration agreement for manufacturing of contract products. As per the terms of the agreement the license was granted for use of patented technology which is a non-transferable right as it was specified that the grant of license was non-exclusive and non-transferable right to use and patented applications. The assessee after taking permissions from 'B' has sub-licensed the right to use of patented technology which has not resulted extinguishing right vested with the assessee. The transfer of capital asset necessarily ceases the ownership or right in the property in the hand of the transferor and it gets vested in the hand of transferee. Therefore, in the case of transfer the right or ownership of transferor is completely extinguished and it is vested with the transferee. In the case on hand, the assessee is vested with the right to use the patented technical know-how / technology under the license agreement and the subsequent sub-licensing to 'M' is only the sharing of the said right with the other party and not transferring of the right of the assessee to the said party. The assessee by virtue of this sub-license has not extinguished its right to use the said technology but it

has only shared the technology with 'M'. Accordingly, at the first place it is not a case of transfer of any capital asset giving rise to capital gain. Accordingly, in view of the above facts and circumstances of the case, there is no error or illegality in the orders of the authorities below.