

Payment by "Reliance" for outright purchase of billing software was not "royalty": Mumbai ITAT

Summary – The Mumbai ITAT in a recent case of Raj Jain., (the Assessee) held that where assessee, a non-resident company, supplied billing software to 'Reliance' for purpose of billing their customers, in view of fact that assessee exclusively owned all Intellectual Property Right (IPR) in software and it had merely granted a copyrighted article to Reliance and not 'copyright' in article, payment received by assessee was not liable to tax in India as royalty

Facts

- The assessee company was a tax resident of Ireland. During relevant year assessee had *inter alia* supplied billing software to 'Reliance' for the purpose of billing their customers.
- According to the assessee, the software licensed to Reliance under the software licence agreement was an 'off the shelf'/'shrink wrapped' software which assisted telecom companies in an efficient, profitable billing operation with strong focus on customers and revenue management. The software licensed by assessee was standard product already developed and made available to other customers.
- The Assessing Officer held that the amounts received by assessee for supply of 'off the shelf' software to Reliance were grant of 'copyright' and accordingly, the receipts were in the nature of 'Royalty' as per section 9(1)(vi) and article 12 of the India-Ireland Tax Treaty.
- The DRP accepted the view of the Assessing Officer and held that the amount received by the assessee from Reliance was for the 'use of or right to use of copyright' and hence, in the nature of royalty as defined under article 12 of the India Ireland Tax Treaty.
- On appeal:

Held

- The key features of the software provided by the assessee are that said software is a comprehensive business solution addressing transaction management, billing and customer care issues related to telecom industry players. It provides solution for efficiently managing high volumes of transactions and keeping audit trails for all the transactions, thus preventing data loss and frauds. It is a high-end integrated software comprising of number of functional modules/packages targeted at specific business areas. These modules can be used independently or in conjunction with each other to address specific requirements of the user. These modules support invoice generation, product pricing, product rating accounts receivables and billing operations. Further, they also support localization of language, currency, calendar and regulatory and taxation framework of the user. In simple terms, the said software could be equated to 'Microsoft Excel' - wherein the user feeds the data/ information related to a particular customer or product in a blank worksheet. The data is processed by the modules in order to generate requisite output - an invoice, report, etc. The

software's delivered to the users on physical electronic media, ex: compact disk, floppy, paragraph 6 'Deliver' clause of the Software Licence Agreement.

- On perusal of the clauses of the agreement, it is clear that assessee exclusively owned all the Intellectual Property Rights (IPR) in the software and it had merely granted a copyrighted article to Reliance and not the 'copyright' in the article. Hence, Reliance does not use or have any right to use the copyright in the software products and assessee merely grants a right to use software for Reliance's own use in India.
- The very same agreement and the software supplied by the assessee to Reliance has been subject matter in dispute in the assessment year 2002-03 and Coordinate Bench of the Tribunal in ITA. No. 3196/Mum/2007 dated 05-02-2010 held that sale of Software by the assessee to the end customer does not involve any transfer of copyright either in part or in whole and therefore consideration paid by the distributor cannot be said to be a payment for right of use copyright or transfer of use of copyright.
- As rightly submitted by the assessee that the definition of royalty under the Indo-Ireland Tax Treaty is *pari materia* as that under Indo-US Tax Treaty and the Coordinate Bench of the Tribunal had already decided the issue of taxability of supply of software under the same agreement in favour of the assessee with reference to the Indo-US Tax treaty for the assessment year 2002-03, wherein it has been held that receipts from supply of software are not taxable in the hands of as royalty. Therefore, since both the treaties are *pari materia* with each other, it is held that the receipts from supply of software are not taxable in the hands of assessee as royalty under new Ireland tax treaty. The assessee does not have PE in India and accordingly amounts received by assessee towards supply of software are not liable to tax in India. Therefore, in view of the above discussion, it is held that payment received by the assessee was not in the nature of royalty and cannot be therefore brought to tax.