

Payment made to foreign co. for outright purchase of copyrights & technical know-how couldn't be taxed as royalty

Summary – The Mumbai ITAT in a recent case of Pidilite Industries Ltd., (the Assessee) held that Payment made by assessee for outright purchase of copyrights and technical know-how along with title and interest did not constitute royalty within meaning of 'royalty' in section 9(1)(vii) and not liable for TDS u/s. 194J

Facts

- The assessee had made payment for purchase of copyrights and technical know-how to its AE along with title and interest on outright basis.
- The Assessing Officer had treated the said payment as royalty for acquiring copyrights and technical know-how within the meaning of section 9(1)(vii) and held the assessee liable for TDS under section 194J. According to the Assessing Officer, since the recipient had not paid tax on consideration received from the assessee and also claimed exemption being capital receipt, the payments were not coming within the ambit of exclusion provided under *Explanation 2* to section 9(1)(vii).
- The Commissioner (Appeals) confirmed said order:
- On appeal:

Held

- On perusal of deed of assignment of copyrights and technical know-how, it is clear that the assessee has purchased copyrights with exclusive right and interest. Payment made by the assessee for outright purchase of copyrights and technical know-how did not constitute royalty within the meaning of royalty as defined in section 9(1)(vii) and not liable for TDS under section 194J and the payments made by the assessee are coming within the exclusion provided under *Explanation 2* to section 9(1)(vii) for the reason that the recipient had claimed consideration received from the assessee as capital receipt not liable to tax. But the fact remains that once the receipt is coming within the meaning of capital receipt, whether it is liable for tax under the head 'capital gains' or not and such receipt is considered by the assessee in its return of income then certainly, the payments made for purchase of copyrights and know-how are coming within the ambit of exclusion provided under *Explanation 2* to section 9(1)(vii). The Assessing Officer as well as the Commissioner (Appeals) has given a narrow meaning to the word 'chargeable under the head capital gains' so as to mean that if the recipient has offered the income under the head 'capital gains' then the payments are coming within the ambit of exclusion without appreciating the facts that whether or not taxes have been paid on receipts even if such payment is in the nature of capital receipt which is not liable to tax under the provisions of the Act and the assessee has disclosed such a receipt in his books of

account, then the Assessing Officer is incorrect in treating the payments within the meaning of royalty as defined under section 9(1)(vii). Therefore, the payments made by the assessee, for outright purchase of copyright and technical know-how is not coming within the definition of 'royalty' as defined under section 9(1)(vii) and the assessee is not liable to deduct tax under section 194J and, hence, the Assessing Officer is directed to delete addition made on account of short deduction of tax at source and interest under section 201(1)/201(1A).