

## Payment received on transfer of copyrighted software is not royalty: ITAT

**Summary – The Pune ITAT in a recent case of Sandvik Tooling Sverige AB., (the Assessee) held that payment received on transfer of copyrighted software is not royalty**

### Facts

- The assessee, a non-resident foreign company had provided software services and IT support services to Sandvik Asia and received 'IT support service fee' of Rs. 1.05 crores.
- The Assessing Officer during scrutiny proceedings found that in the case of assessment of Sandvik Asia, the payment made under IT support services was held in the nature of fees for technical services and thus the impugned receipt was taxable in India as per article 12 of DTAA between India and Sweden as well as under section 9(1)(vii) as 'royalty'. He, thus, brought the income from fees for technical services to tax.
- On appeal, the DRP directed the Assessing Officer to assess the license fees received by the assessee as 'royalty'; the fees for connected IT support services and fees for application development services as fees for technical services. The DRP further directed the Assessing Officer to tax other IT support services either as 'royalty' or 'fees for technical services'.
- The Assessing Officer upon the directions of the DRP, held the license fees to be IT support services which fell within ambit of 'fees of included services' as available in article 12(4) of DTAA. Further, the fees for providing GSS maintenance were held to belong to category of connected IT support services. The same was held to fall within ambit of 'fees for included services' and taxable as 'fees for technical services' in India.
- On the assessee's appeal before the Tribunal:

### Held

- The assessee is non-resident and was providing software services to Sandvik Asia and also was providing IT support services to the said concern. The question before the HC was whether the consideration received by the assessee from the payer *i.e.* Sandvik Asia amounts to 'royalty' or 'fees for included services' or 'fees for technical services' as per DTAA/IT Act. The Assessing Officer relied on the order of Sandvik Asia wherein the payment was considered as royalty. However, finally as per ITAT, it was held that the purchase of software being copyrighted article would not be covered by the term 'royalty' under section 9(1)(vi).
- Once the Tribunal has held the same as not royalty either under the Income-tax Act or under DTAA provisions in the hands of payer *i.e.* Sandvik Asia, consequently the said receipt by the assessee cannot be termed as 'royalty' under both the provisions of the Act *i.e.* section 9(1)(vi)/9(1)(vii) or under article 12 of the DTAA between India and Sweden. Accordingly, the consideration received by the assessee on providing software services is not taxable.