

## **Consideration towards supply of embedded software treated as consideration for supply of goods and not royalty**

**Summary – The Delhi ITAT in a recent case of Alcatel Lucent Enterprises., (the Assessee) held that Consideration towards supply of embedded software treated as consideration for supply of goods and not royalty**

### **Facts**

- The assessee, a french company, was leading telecommunication group and infrastructure suppliers. It supplied embedded software to its Associated enterprises (AEs)
- The Assessing Officer held that software supplies were taxable as 'Royalty' on the gross basis as per Section 9(1)(vi), read with Article 13, of India-France DTAA stating that equipment supplied by the assessee included both hardware and software and the basis of attribution could only be applied to hardware supplies and not to the software supplies.
- On appeal, the Commissioner (Appeals) held that this issue has been adjudicated the issue in favour of the assessee by the Commissioner (Appeals) in the earlier years which has been confirmed by the High Court, wherein it was held that consideration received by the assessee for the supply of embedded software was to be treated as consideration received for supply of goods and not as royalty.
- On the revenue's appeal before the Tribunal:

### **Held**

- It is to be found that this issue stands decided by the Delhi High Court. Accordingly, consistent with the view taken in the earlier years by the High Court in the case of the assessee itself, this issue is to be decided in favour of the assessee.