



Global Business Tax Alert Sharp Insights

The Madras High Court, in the case of CIT v. Vinzas Solutions India Private Ltd. (77 taxmann.com 279), held that income from purchase and sale of software is not in the nature of royalty under section 9(1)(vi) of the Income-tax Act, 1961 ("ITA") as it amounts to a transaction for sale of 'copyrighted article' and not of 'copyright' itself.

Issue no: GBTA/13/2017

In this issue:

[Background](#)
[Ruling of the Madras High Court](#)
[Do you know about Dbriefs?](#)
[Contacts](#)

Background

- The taxpayer was a dealer engaged in buying and selling software in the open market. During the assessment year 2011-12, the taxpayer purchased computer software from various Indian companies and paid the sums without deduction of tax at source.
- The Assessing Officer ("AO") disallowed the sums paid under section 40(a)(ia) of the ITA on the ground that the consideration was in the nature of royalty as envisaged in Explanation 4 and 5 to section 9(1)(vi) of the ITA and accordingly tax was deductible under section 194J of the ITA.
- The Commissioner of Income-tax (Appeals) upheld the order of the AO. The Income-tax Appellate Tribunal ("Tribunal") decided the issue in favour of the taxpayer.

Ruling of the Madras High Court

- The High Court observed that the transaction in question is a one of purchase and sale of a product and nothing more. Provisions of section 9(1)(vi) of the ITA dealing with and defining 'royalty' cannot be made applicable to a situation of outright purchase and sale of a product.
- The High Court noted the definition of 'royalty' as per the Corpus Juris Secundum per which 'royalty' means a share of the product or profit reserved by the owner for permitting another to use the property. It also noted its own decision in the case of CIT v. Neyveli Lignite Corporation Ltd. (243 ITR 458) wherein it was held that passing of information concerning the design of a machine which is a tailor-made to meet the requirement of a buyer does not amount to transfer of any right of exclusive user, so as to render the payment made therefor being regarded as 'royalty'.
- Further, the High Court also noted the difference between a transaction of sale of a 'copyrighted article' and one of 'copyright' itself, citing a number of case laws viz. Tata Consultancy Services (271 ITR 401) (Supreme Court), Sundwiger EMFG (266 ITR 110) (Andhra Pradesh High Court), Dassault Systems K.K., In Re (229 CTR 125) (AAR), ISRO Satellite Centre [ISAC], In Re (307 ITR 59) (AAR) and Asia Satellite Telecommunications Co. (332 ITR 340) (Delhi High Court).

Conclusion

The High Court held that the provisions of section 9(1)(vi) of the ITA would get attracted to transaction of sale of 'copyright' which is not the present case and hence no withholding tax is applicable. The High Court approved the Tribunal's reliance on the decision of the Delhi High Court in the case of PCIT v. M. Tech India Pvt. Ltd. despite SLP against the same is pending before the Supreme Court.

Do you know about Dbriefs?

Dbriefs are live webcasts that give valuable insights on important developments affecting your business. To register, visit the [Dbriefs](#) page



Download the report



Contacts

Ahmedabad

19th Floor, Shapath - V
SG Highway,
Ahmedabad – 380 015.
Tel: + 91 (079) 6682 7300
Fax: + 91 (079) 6682 7400

Coimbatore

Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Kolkata

Bengal Intelligent Park Building
Alpha, 1st floor, Block EP and GP
Sector V, Salt Lake Electronics
Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Bangalore

Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Delhi/Gurgaon

Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Mumbai

Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone
(W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Chennai

No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Hyderabad

1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax: +91 (040) 6603 2714

Pune

106, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605



Deloitte makes an impact that matters

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites). DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2017 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited