Mere Use of Software by the Distributor is Not Royalty: ITAT Bangalore

Deputy Commissioner of Income Tax vs. M/s. IBM Singapore Pvt. Ltd. (IT(IT)A Nos.177 & 178/Bang/2023)

Facts:

1. The AO treated the amounts received by the assessee from the sale of software to its Indian AE i.e. IBM India as royalty; both under the Act as well as the Double Taxation Avoidance Agreement.

2. The assessee maintained that only licenses to use the software and did not part with any of its right over the products within the meaning of Copy right Act.

3. The assessee placed reliance on the judgement of Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. Vs. CIT 432 ITR.

Bangalore ITAT held as below:

1. Given the definition of royalties contained in Article 12 of the DTAAs mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the Income-tax Act to deduct tax at source, as the distribution agreements in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright.

2. As per the decision rendered by Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. (supra), sale proceeds received by the assessee on sale of software licenses cannot be categorized as "Royalty" within the meaning of provisions of DTAA.

3. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete the addition made as "royalty" income.