

SC Ruling Not An Income/ No Tds on Computer Software Purchase

On 2nd March 2021, three-member Bench of the Honourable Supreme Court of India (consisting of Justice Rohinton Fali Nariman, Justice Hemant Gupta and Justice B R Gaval) finally settled the controversy regarding taxation in India of payments made to non-resident for purchase of Software either by the End Use or by the Distributors. The Hon'ble Court held that in view of the facts discussed and given the definition of royalties contained in Article 12 of the concerned Double Taxation Avoidance Agreements, there is no obligation of the persons mentioned in section 195 of the Income-tax Act, 1961 (the Act) to deduct tax at source, as the distributor agreement/end user agreement do not create any interest or right in such distributors/and-users, which would amount to the use of or right to use any copyright. The Hon'ble Court further held that the provisions contained in section 9(1) (vi) of the Act, which deal with royalty, not being more beneficial to the assessee, have no application in the facts of the cases discussed.

The Hon'ble Court further held that the amounts paid by the resident Indian and-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software to any user license agreements or distribution agreements, it is not payment of royalty for the use of copyright in the computer software. Consequently, the same does not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Act were not liable to deduct any TDS under section 195 of the Act.

The Hon'ble Supreme Court has analysed in detail various aspects of the Income Tax Act 1961 (Herein after referred to as ITA) read with relevant Double Taxation Avoidance Agreement (Herein after referred to as DTAAs) and Copyright Act 1957 (Herein after referred to as Copyright Act). Additionally, the Hon'ble Court has also referred to the meaning of Royalty assigned in the Tax commentary published by Organisation for Economic Co-operation and Development (herein after referred to as OECD TC).