Micro Focus Ltd ITA 1388/2018, 1389/2018 Delhi High Court In favour of Assessee

Issues discussed and addressed:

Section 9 – Royalty – As per definition of Royalty in Article 13 of India UK DTAA, payment made by the reseller for the purchase of software for sale in Indian market could not be considered as royalty.

Facts of the Case:

Assessee company was incorporated in UK and was engaged in the business of development and distribution of software products. It sold software products in India, either through its distributors or directly to the customers on principal-to-principal basis and sale of software licenses was concluded outside India (offshore supplies). The Customers had deducted TDS on the same hence for AY 2010-11 and AY 2013-14, the AO completed the assessment under Section 144C(3) read with Section 147 wherein he held that the receipt of income from the sale of software products in India is taxable under the head 'Royalty' as per the provisions of Section 9(1)(vi) of the Act read with Article 13 of the India-UK Double Taxation Avoidance Agreement (hereinafter referred to as 'the DTAA'). Consequently, the AO determined the income by holding the receipts of the Assessee as its royalty income and taxed the same at 10%.

Held by the Authorities:

Relying on the definition of Royalty given in Article 13 of India UK DTAA it was held that where an Assessee acquires the right to use a software, the payment so made would amount to royalty. However in cases where the payments are made for purchase of software as a product, the consideration paid cannot be considered to be for use or the right to use the software. It is well settled that where software is sold as a product it would amount to sale of goods.

Judgments Relied upon by the Authorities:

a. Principal CIT Vs. M. Tech India Pvt. Ltd., (2016) 287 CTR (Del)
b. Director of Income Tax v. Infrasoft Ltd., (2014) 264 CTR (Del) 329

Neel Builders Pvt. Ltd ITA No. 6336/Del./2019 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Section 147 – Reopening - the reassessment proceedings which were based on the report of the investigation wing and without independent application of mind by the Assessing Officer have been held to be illegal.

Facts of the case:

On the basis of the receipt of information from Director of Income Tax (Investigation-II) as regards obtaining accommodation entries by assessee in all amounting to 25 Lakhs from three parties, the AO had initiated the reassessment proceedings and after considering the explanation of the assessee had concluded assessment by making addition of Rs. 25 lakhs u/s 68 of the Act and further made addition of Rs. 45,000/- on account of unexplained investment.

Held by the Authorities:

Reopening was made on the basis of the report of the investigation wing and there is no independent application of mind by the Assessing Officer for such reopening. The Hon'ble Delhi High Court in a number of cases has held that the reopening on the basis of report of investigation wing without independent application of mind by the Assessing Officer is not valid. Accordingly the reassessment proceedings which were based on the report of the investigation wing and without independent application of mind by the Assessing Officer have been held to be illegal.

Sabir Mazhar Ali ITA No. 5840/Mum/2018 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Section 54 – It nowhere restricts the claim of the assessee that he should have sold only one property and claimed exemption u/s.54 for one property.

Facts of the case:

The Case of the AO was that the assessee was not eligible for exemption u/s.54 as he had sold two properties and re-invested in one residential house.

Held by the Authorities:

Exemption u/s.54 is granted to the assessee for re-investment made in residential house. The Section nowhere restricts the claim of the assessee that he should have sold only one property and claimed exemption u/s.54 for one property. In fact prior to the amendment made in Section 54 which came into effect from Finance (No.2) Act, 2014 w.e.f. A.Y.2015-16, the very same Section provided for exemption even if assessee had re-invested in more than one residential house. It nowhere prohibited the assessee to sell more than one residential house. In the instant case, the assessee has sold two residential properties and re-invested in one residential property. Hence, entire conditions of Section 54 both prior to amendment as well as subsequent to amendment, had been duly satisfied,hence the grounds raised by revenue were dismissed.