VERENDRA KALRA & CO
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Sale of Copyrighted Software Not Treated as Royalty; Follows SC Ruling

Facts

The Assessee is a foreign company engaged in marketing and servicing data processing equipment. The Assessing Officer held that the assessee transferred copyrighted software, making the income taxable as royalty under Section 9(1)(vi) of the Income-tax Act, 1961. The AO held that Payments made by end-users for software subscriptions were considered royalty and taxable in India. The learned CIT(A) confirmed the AO view and place reliance on the Supreme Court's decision in Samsung Electronics. Aggrieved, the appellant has filed the appeal before ITAT and the bench hold that the income was not taxable as royalty, based on its earlier decisions and the Supreme Court's ruling in Engineering Analysis Centre of Excellence Pvt. Ltd. The revenue filed the present appeal.

Rulings

In the present case, The Hon'ble Court held that the sale of copyrighted software does not constitute royalty under Section 9(1)(vi) of the Income-tax Act. The Revenue had argued that the payment received by IBM Singapore should be treated as 'royalty', making it taxable in India under Section 9(1)(vii) of the Income-tax Act and Article 12 of the India-

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Singapore tax treaty (DTAA). They also claimed that IBM India should have deducted tax at source under Section 195. However, the High Court disagreed and placed reliance on the Supreme Court's landmark judgment in Engineering Analysis Centre of Excellence Pvt. Ltd., which clarified that payments for copyrighted software do not amount to royalty if the copyright itself is not transferred. The court also noted that IBM Singapore did not transfer copyright and only sold a copyrighted product. The End User License Agreement showed that the software was sold without giving users rights to exploit the copyright. Therefore, the income from the sale cannot be taxed as royalty in India, and no tax deduction at source is required. Accordingly, the Court upheld the ITAT order and dismissed the Revenue's appeal.

Source: HC, Karnataka in the case of PCT/JCIT. Vs M/S IBM SINGAPORE PTE LTD vide [TS-1173-HC-2025(KAR)] on September 06, 2025

FTC Cannot Be Denied for Procedural Lapses if Supporting Documents Are Provided

Facts

The assessee, an individual, initially filed their income tax return on 31st August 2018, declaring Rs. 3,12,400 as income. Later, they discovered that foreign income from bank interest Rs. 10,23,166 and dividends Rs. 1,54,460 had been omitted. A revised return was filed on 30th January 2019, including the foreign income and claiming foreign tax credit (FTC) of Rs. 1,85,150 for taxes paid in the USA. Form 67 was submitted on 24th January 2019 before filing the revised return. However, the FTC claim was disallowed during processing under Section 143(1), and a rectification request under Section 154 was also rejected. The assessee appealed to CIT(A), arguing procedural violations and compliance with FTC requirements. CIT(A) upheld the disallowance, citing missing documents under Rule 128(8)(ii). Aggrieved, the appellant has filed the present appeal.

Rulings

The Hon'ble bench carefully examined the submissions made by both parties and reviewed the documents presented. The court noted that the assessee had revised their return to include foreign income and claimed Foreign Tax Credit (FTC) of ₹1,85,150 for taxes paid in the USA. Importantly, Form 67 was filed before the revised return, and supporting documents such as the Federal Tax Payment Voucher and the US Tax Return were submitted, confirming that the taxes were indeed paid abroad. The Hon'ble Court found that the assessee had complied with the requirements under Rule 128(8)(ii) of the Income-tax Rules, 1962. It emphasized that substantive benefits like FTC, which are guaranteed under Section 90/91 of the Income-tax Act and relevant Double Taxation Avoidance Agreements (DTAAs), should not be denied merely due to technical or procedural lapses. The Court also referred to various judicial precedents which held that the requirement to file Form 67 within the due date under Section 139(1) (prior to the amendment applicable from AY 2022–23) is directory and not mandatory. Therefore, a delay in filing Form 67 should not result in denial of FTC if the assessee has otherwise complied with all substantive conditions. The Court held that the assessee is entitled to claim FTC and directed the Assessing Officer to verify the submitted documents and allow the credit of Rs.1,85,150 in accordance with the law. The appeal was allowed, subject to this direction.

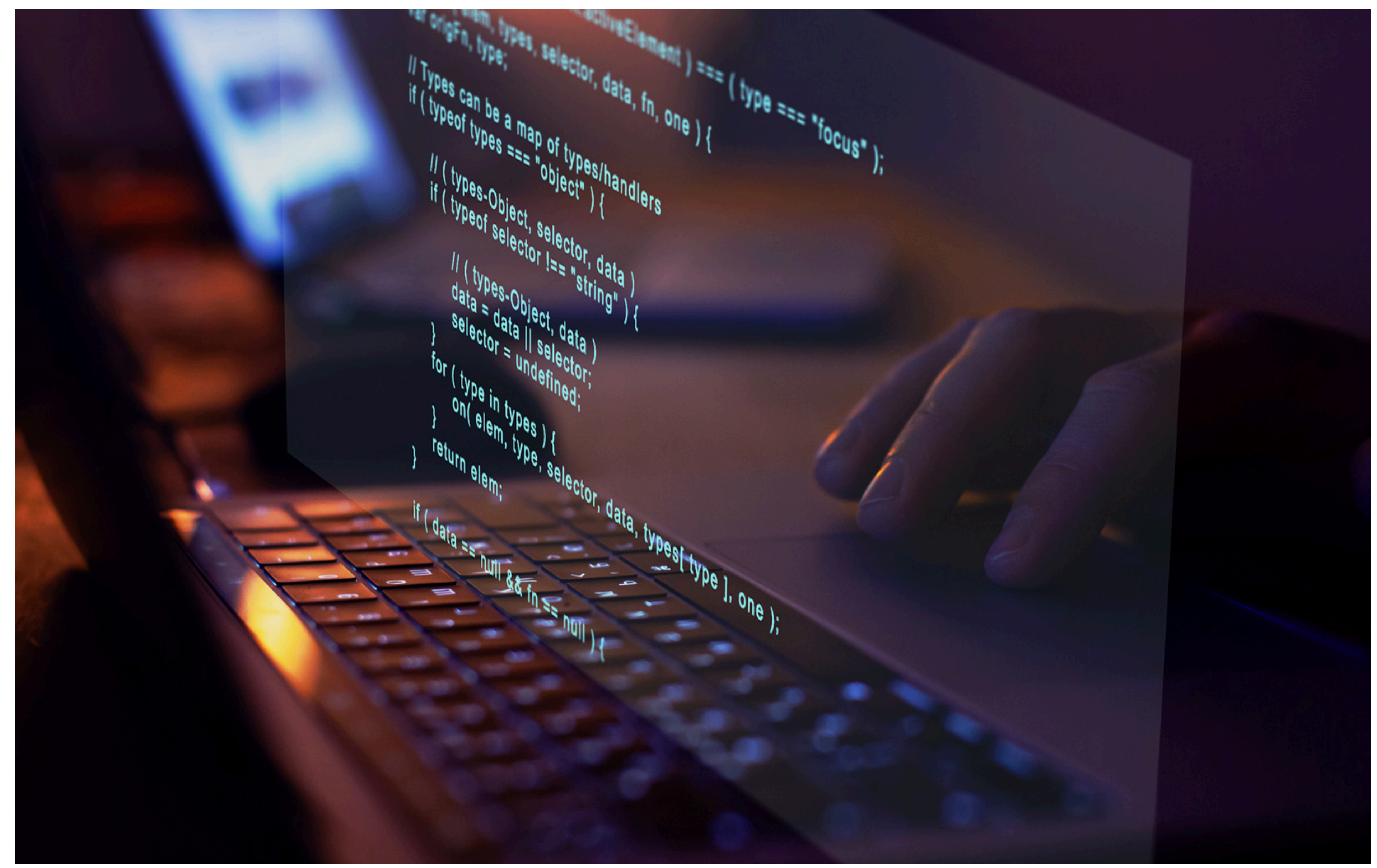
Source: ITAT, Bangalore in the case of Krishna Dalal vs ITO vide [TS-1204-ITAT-2025(Bang)] on August 26, 2025

ITAT Rules Software License Fee Not Taxable as Royalty Under India–Ireland DTAA

Facts

The assessee is a company headquartered and tax resident in Ireland, with all business operations conducted outside India. During the relevant assessment year 2021–22, it provided software and related implementation services to PNB MetLife India Insurance Co. Ltd. for a total consideration of INR 3.56 crore. Tax of INR 92.93 lakh was deducted at source by the Indian customer. The assessee filed a return declaring nil income and claimed a refund of the TDS, asserting that the income was not taxable in India. The Assessing Officer (AO), however, treated the receipts as royalty under Section 9(1)(vi) of the Income-tax Act and Article 12 of the India-Ireland DTAA. The assessee argued that it had licensed standard software—not customized—and retained all intellectual property rights. It had entered into a Master Procurement Agreement with PNB MetLife, which included licensing and implementation services. The software was delivered via electronic file transfer, and no rights in the copyright were transferred. The assessee relied on the Supreme Court's ruling in Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT, asserting that the payments do not qualify as royalty.

The AO's interpretation of the agreement was challenged as incorrect and selective. Additionally, the assessee claimed credit for equalization levy paid at 2% and disputed the AO's assumption of a refund of INR 3.25 lakh, which was never received. The Revenue defended the assessment, arguing that the services went beyond mere licensing and involved access rights, making the payments taxable as royalty.



Rulings

In the present case, the ITAT after examining the Master Procurement Agreement (MPA), Statements of Work (SOW-01 and SOW-02), and the nature of the transaction between the assessee and PNB MetLife, found that it is evident that the assessee licensed standard software and provided related services, without transferring any copyright or intellectual property rights. The software was not tailor-made, and no deliverables were commissioned specifically for the Indian customer.

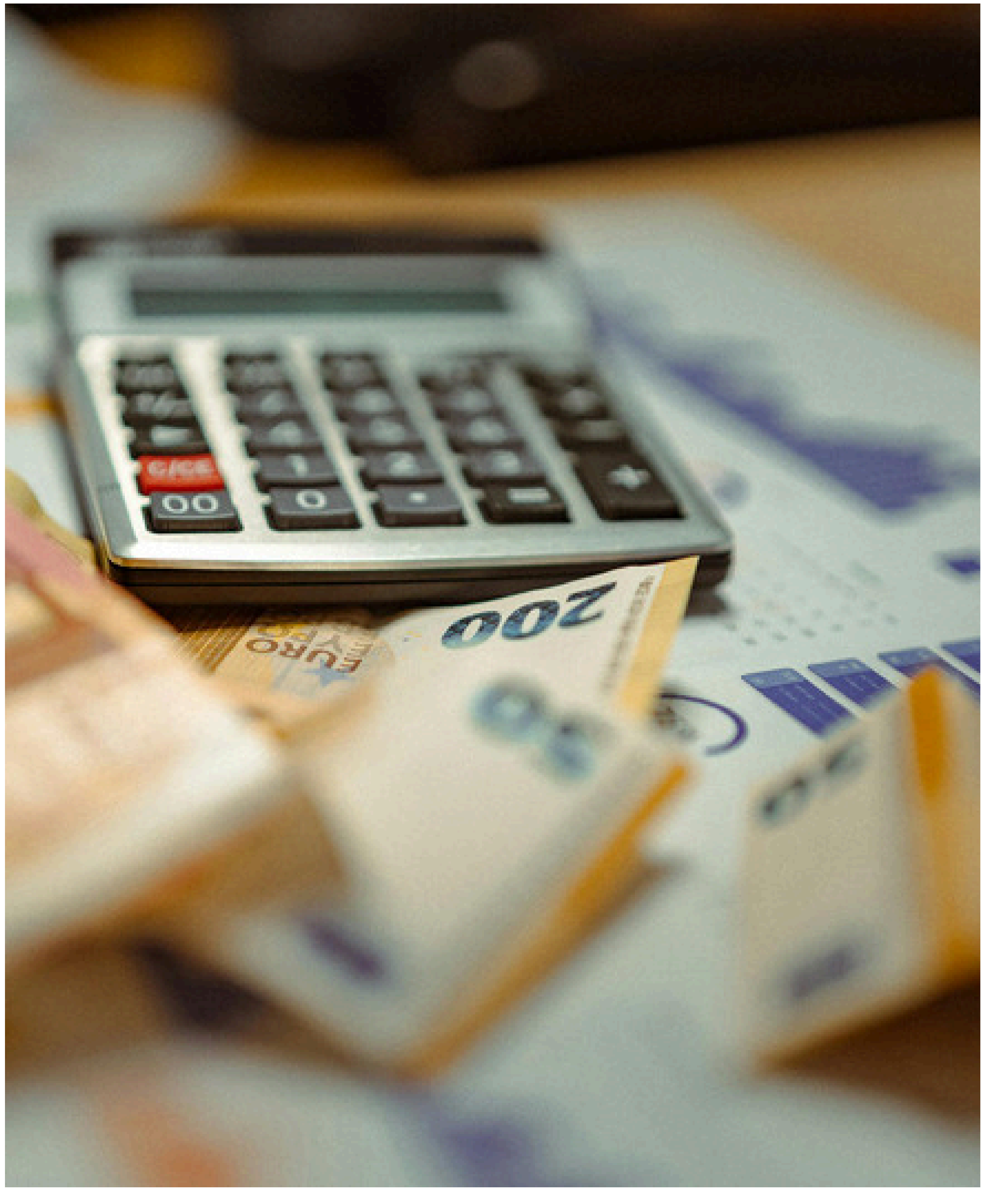
The bench placed reliance on the Supreme Court's decision in Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT, which held that payments made by Indian end-users to foreign suppliers for standard software do not constitute royalty under Section 9(1)(vi) of the Income-tax Act or Article 12(3) of the India-Ireland DTAA. Accordingly, such payments are not taxable in India, and no TDS is required under Section 195. Therefore, the addition made by the Assessing Officer treating the consideration as royalty is unsustainable and is directed to be deleted. Further, since the assessee succeeds on the primary ground, the alternate plea for credit of equalization levy becomes academic and is not adjudicated. Regarding the refund of INR 3,25,976, the AO is directed to verify the claim and recompute the tax liability if no refund has been issued. The ground related to penalty proceedings under Section 270A is held to be premature at this stage.

Source: ITAT, Delhi in the case of Munich RE Automation Solutions Ltd vs ACIT, vide [TS-1199-ITAT-2025(DEL)] on September 04, 2025

Carry Forward of Post-2017 Share Sale Loss Allowed Under Section 74; DTAA Interpretation Clarified

Facts

The brief facts are that the assessee, a Foreign Portfolio Investor and tax resident of Mauritius, filed its return of income for the relevant assessment year on 20.10.2022, declaring a total income of Rs. 5,08,66,850/- and claiming a carry forward of long-term capital loss amounting to Rs. 17,96,11,996/-. The return was processed under section 143(1) of the Income Tax Act through an intimation dated 03.11.2022, wherein the claimed carry forward of long-term capital loss was disallowed. Additionally, the AO-CPC adjusted the declared dividend income of Rs. 5,08,66,853/- under the head “Income from Other Sources” against the long-term capital loss. The assessee contended that the AO-CPC was not authorized to make such disallowance, arguing that the long-term capital gains were exempt under the India-Mauritius DTAA, while the long-term capital loss was claimed under the provisions of the Act. However, the learned CIT(A) rejected this contention, holding that the adjustment was valid under section 143(1) due to an arithmetical error and incorrect claim. On merits, the CIT(A) further held that the choice between the Act and the Treaty must be consistent across the same stream of income, and since both the gains and losses arose from long-term capital transactions, the carry forward of the loss was not permissible. Aggrieved by this decision, the assessee has filed an appeal before ITAT.



Rulings

The Hon'ble Tribunal held that the assessee's position is well-supported by the facts and legal principles applicable to the case. In the present case, the gains from the sale of shares acquired prior to 01.04.2017 were claimed as exempt under Article 13(4) of the DTAA, which applies the residence-based rule of taxation, thereby making such gains taxable only in Mauritius. Conversely, the long-term capital loss arose from the sale of shares acquired after 01.04.2017, which, under Article 13(3A) of the DTAA, are taxable in India based on the source rule of taxation. Given that these transactions pertain to different periods and are governed by distinct provisions of the DTAA, they constitute separate sources of income. Therefore, the assessee's claim for carry forward of long-term capital loss under section 74 of the Income Tax Act is valid. The reliance placed by the learned CIT(A) on the decision in Indium IV Mauritius Holdings Ltd. is misplaced, as it does not apply to the facts of the present case. Furthermore, it is a well-established principle in international tax jurisprudence that a treaty does not impose tax but merely provides relief from taxation under domestic law. Since the long-term capital loss pertains to a transaction taxable under the Act, the assessee is entitled to the benefit of carry forward under section 74. It is also clarified that such long-term capital loss can only be set off against long-term capital gains and not against income from other sources, such as dividend income.

Accordingly, the AO is directed to allow the carry forward of long-term capital loss of Rs. 17,96,11,994/- to subsequent years in accordance with the provisions of section 74 of the Act. Accordingly, the appeal of the assesse was partly allowed.

Source: ITAT, Mumbai in the case of Atyant Capital India Fund vs ADIT vide [TS-1136-ITAT-2025(Mum)] on August 28, 2025

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