

## **Payment made for purchase of copyrighted software couldn't be deemed as royalty**

**Summary – The Mumbai ITAT in a recent case of Sonic Biochem Extractions (P.) Ltd., (the Assessee) held that mere purchase of software, a copyrighted article, for utilization of computer could not be considered as purchase of copyright and royalty.**

### **Facts**

- The assessee purchased software for its utilization and capitalized the same to the computers account as the software came along with the hardware of computers and claimed depreciation.
- On the reason that purchase of software was essentially purchase of copyright which attracted TDS provisions under section 194J, the Assessing Officer invoked provisions of section 40(a)(ia) and disallowed the depreciation claimed.
- The Commissioner (Appeals) confirmed the said action of the Assessing Officer on the reason that the purchase of software amounted to acquisition of intangible assets.
- On second appeal.

### **Held**

- The ITAT held that mere purchase of software, a copyrighted article, for utilization of computers cannot be considered as purchase of copyright and royalty. The assessee has purchased a sort of asset and capitalized it to the computers account and claimed depreciation. The assessee has not purchased any copyright or royalty nor claimed any depreciation on royalty as intangible asset. The assessee does not acquire any rights for making copies, selling or acquiring which are generally meant to be considered within the definition of 'royalty'. The *Explanation 2* of section 9(1)(vi) cannot be applied to purchase of a copyrighted software, which does not involve any commercial exploitation of the same. It is simply the product available on hard disk, etc., for utilization in the day-to-day operations of the assessee. It is a copyrighted one but not one involving acquisition of copyrights.
- In this case the assessee simply purchased software delivered along with computer hardware for utilization in the day-to-day business. There is no intangible asset involved in this and the assessee's claim of depreciation cannot be disallowed under section 40(a)(ia). As per section 40(a)(ia) if at all applicable, disallowance is only with reference to the claim made in the profit and loss account towards revenue expenditure. The purchase of asset and consequent claim of depreciation cannot be considered under that section. There is no hesitation in disapproving the action of the Assessing Officer and the Commissioner (Appeals). The Assessing Officer is directed to allow the depreciation as claimed.