

COMMISSIONER OF INCOME TAX vs. DYNAMIC VERTICAL SOFTWARE INDIA (P) LTD.

HIGH COURT OF DELHI

A.K. Sikri & M.L. Mehta, JJ.

IT Appeal No. 1692 of 2010

22nd February, 2011

(2011) 79 CCH 0172 DelHC

(2011) **332 ITR 0222**

Legislation Referred to

Section 40(a)(i)

Case pertains to

Asst. Year -

Decision in favour of:

Assessee

Business expenditure—Disallowance under s. 40(a)(i)—Non-deduction of TDS from payments for software—Assessee purchased software from M and sold it further in Indian market—Assessee in fact acted as a dealer of M—Payment to M cannot be termed as royalty and therefore, s. 40(a)(i) has no application at all

Conclusion :

Assessee having purchased software from M and sold it in Indian market merely a dealer, royalty disallowed under s.40(a)(i) and, therefore, same cannot be for non-deduction of TDS.

In favour of :

Assessee

Counsel appeared:

M.P. Sharma, for the Appellant : Piyush Kaushik, for the Respondent

BY THE COURT

JUDGMENT

Although two issues are raised in this appeal, the only issue which is pressed is the disallowance of expenses incurred by the assessee under s. 40(a)(i) of the IT Act, 1961, on the ground that in the said expenses no tax at source was deducted. The AO treated

the payment made by the assessee to Microsoft as royalty and, therefore, came to the conclusion that tax at source was to be deducted thereupon and on failure to do so, the respondent's expenses shall be disallowed.

2. The CIT(A) confirmed this order of the AO, however the Tribunal has deleted the addition. After going through the order of the authorities below, whereby the Tribunal dealt with the transaction between the assessee examined the true nature of it.

3. What is found, as a matter of fact, is that the assessee has been purchasing the software from Microsoft and sold it further in Indian market. By no stretch of imagination it would be termed as "royalty".

4. The assessee in fact acted as a dealer of Microsoft as is evident. Under these circumstances, s. 40(a)(i) of the IT Act has no application at all. We find that no question of law arises for consideration. The present appeal, is accordingly, dismissed.
