India; China (People's Rep.)

Payment for Supply of Standardized Automobile Software Not Royalty, Says Indian Court

7 March 2024

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The Delhi Income Tax Appellate Tribunal (ITAT) has ruled, in the case of *M/s. SAIC Motor Overseas Intelligent Mobility Technology Co. Ltd. v ACIT* (ITA No. 2194/Del/2023), that receipts of a Chinese company from India for supply of automobile-related software were not in the nature of royalties under article 12(3) of the China (People's Rep.)-India Income Tax Treaty (1994) (the Treaty).

(a) Facts. The taxpayer, a Chinese tax resident, received payment from an Indian company (MG India) for supplying automobile-related software. The tax authorities contested that the payment constituted royalty income taxable in India under the Treaty.

(b) Issue. The ITAT examined whether the receipts from India for supplying software should be treated as royalty under the Treaty or as business income not taxable due to the absence of a Permanent Establishment (PE) in India.

(c) Decision. The ITAT ruled in favour of the taxpayer with observations set out below.

As per the license agreement between the taxpayer and MG India, payments received by the taxpayer were for the supply of standardized/off-the-shelf software and not for the use of copyright or imparting information concerning industrial, commercial or scientific experience.

Further, as per the EULA (exhibit B to the license agreement) between the taxpayer and the end user, the end user had a limited right to use the application, akin to use of licensed software.

Accordingly, the receipts did not fall within the scope of article 12(3) of the Treaty on royalties. They would then be considered as business income; however, this would not be taxable in India due to the absence of taxpayer's PE in India.

The decision was pronounced by the ITAT on 23 February 2024 and is available here (as a PDF).