

Payment received by EY located in UK for providing access to Computer Software to Indian Member firms doesn't amount to Royalty, liable to be Taxed: Delhi HC quashes AAR's Ruling

Fact of the Case

- In the present case the assessee, EY Global Services Ltd. is a limited liability company engaged in providing technology and other support services and software licences to member firms of the EY network in various countries all over the world.
- All member firms, including EYGSL (UK), use the brand Ernst & Young (EY). The Petitioner – EYGSL (UK) has entered into contracts with various third-party vendors for the procurement of various software. It has also entered into a contract with EY member firms to provide support services and/or deliverables.
- The EYGBS (India) Private Limited [hereinafter referred to as the „EYGBS (India)“] is an Indian company engaged in providing back-office support and data processing services.
- In the present case, the EYGBS (India), in terms of the Service Agreement and the MOU, merely receives the right to use the software procured by the EYGSL (UK) from third-party vendors. The consideration paid for the use of the same therefore, cannot be termed as royalty as held by the Supreme Court in the Engineering Analysis Centre.
- As the same does not create any right to transfer the copyright in the software, the same would not fall within the ambit of the term “royalty” as held by the Supreme Court in the Engineering Analysis Centre.

Decision of the Case

The division bench of Justice Navin Chawla and Justice Manmohan held that the payment received by EYGSL (UK) for providing access to computer software to its member firms of EY Network located in India, that is, EYGBS (India), does not amount to royalty liable to be taxed in India under the provisions of the Income Tax Act, 1961 and the India-UK DTAA.