

Consideration for Sale of Software cannot be treated as Royalty, no TDS to be deducted: Madras High Court

Fact of the Case

1. The assessee, M/s. Financial Software and Systems Private Limited have filed the appeal which pertains to a challenge to the validity of reopening of the assessment for the relevant Assessment Year under Section 147 of the Act
2. The question of law which is involved is with regard to whether the assessee was liable to deduct Tax at Source in respect of the Computer Software which was dealt with by them, procured from a Non-Resident and sold in the Indian Market.

Decision of the Case

1. The division bench of Justice T.S.Sivagnanam and Justice Sathi Kumar Sukumara Kurup took into consideration the decision of the Supreme Court in the case of Engineering Analysis Centre of Excellence Private Limited v. Commissioner of Income Tax and another
2. it was held that the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Income Tax Act were not liable to deduct any TDS under section 195 of the Income Tax Act.
3. The court said, "since the Tribunal has upheld the validity of the reopening proceedings, we have to necessarily decide this case against the Revenue and in favour of the assessee,