(2011) 02 DEL CK 0486

In the Delhi High Court

Case No : Income Tax A. No. 1692 of 2010

Commissioner of Income Tax APPELLANT

Vs

Dynamic Vertical Software India P. Ltd. RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:
Income Tax Act, 1961 — Section 40

Citation : (2011) 332 ITR 222 : (2011) 201 TAXMAN 78

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

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

Judgement

I.T.A. No. 1692 of 2010

1. Although two issues are raised in this appeal, the only issue which is pressed is the disallowance of expenses incurred by the Assessee u/s 40(a)(i) of the income tax Act, 1961, on the ground that in the said expenses no tax at source was deducted. The Assessing Officer 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 Commissioner of income tax (Appeals) confirmed this order of the Assessing Officer, however the income tax Appellate Tribunal has deleted the addition. After going through the order of the authorities below, whereby the income tax Appellate 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, Section 40(a)(i) of the income tax Act has no application at all. We find that no question of law arises for consideration. The present appeal, is accordingly, dismissed.

