

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "डी", नई दिल्ली में
**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & SHRI PRASHANT MAHARISHI, AM

[THROUGH VIDEO CONFERENCING]

आयकर अपील सं. / ITA No.3966/Del/2017

निर्धारण वर्ष / Assessment Year 2014-15

Mentor Graphics Ireland Ltd.,
B-92, 9th Floor,
Himalaya House, 23,
Kasturba Gandhi Marg,
New Delhi-110001.
PAN-AAGCM6365H

.....अपीलार्थी / Appellant

vs

The ACIT,
Circle-2(2)(1),
International taxation,
New Delhi-110002.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Tarandeep Singh, Adv.

प्रत्यर्थी की ओर से / Respondent by : Sh. Satpal Gulati, CIT DR

सुनवाई की तारीख / Date of Hearing : 06.07.2020	घोषणा की तारीख / Date of Pronouncement: 09 .07.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The present appeal filed by assessee is against order of DCIT, Circle-2(2)(1), New Delhi dated 06.04.2017 relating to assessment year 2014-15 against the order passed under section 144C(3)/143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised following grounds of appeal:-

1. *“That on facts and in law, the orders passed by the Deputy Commissioner of Income Tax, Circle 2(2)(1), International Taxation, New Delhi [hereinafter referred as the "AO"] and the Dispute Resolution Panel -2 [hereinafter referred as the "DRP"] are bad in law and void ab-initio.*

2. *That on the facts and in law, AO / DRP have erred in holding / upholding that the consideration received by the Appellant from supply/distribution of its copyrighted software products is chargeable to tax in India as income from 'Royalty' as defined in Article 12 of Agreement for Avoidance of Double Taxation between India and Ireland ('AADT).*

3. *That on the facts and in the circumstances of the case and in law, AO/DRP have erred in holding/upholding that the consideration received by the Appellant for supply/distribution of its copyrighted software products is for grant of 'right to use' the copyright in the software and hence, qualifies as royalty.*

4. *That on facts and in law, the DRP erred in observing that the distributors of the appellant receive the software and then transmit the same onwards to the end customers.*

5. *On the facts and in law, lower authorities have erred in not following judicial precedents cited by the Appellant, including the decisions pronounced by the Jurisdictional High Court.*

6. *On the facts and in law, the AO has erred in levying interest under section 234A and 234B of the Act.*

7. *That on the facts and in law, AO has erred in not granting the credit of. Tax Deducted at Source (TDS) of Rs.58,05,595/-.*

8. *That on the facts and in circumstances of the case and in law, Assessing Officer has erred in initiating penalty proceedings under section 271(1)(c) of the Act against the Appellant.”*

3. The only issue raised in the present appeal is against order of the authorities below in holding that the consideration received by the assessee from supply/distribution of its copyrighted software products is chargeable to

tax in India as income from 'Royalty' as defined in Article 12 of Agreement for Avoidance of Double Taxation between India and Ireland ('AADT').

4. The assessee is also aggrieved by the order of the Assessing Officer in holding that the consideration received by the assessee for supply/distribution of its copyrighted software products is for grant of 'right to use' the copyright in the software and hence, qualifies as royalty.

5. The Ld.AR for the assessee after taking us through the draft assessment order elaborately and observations of the DRP, pointed out that the issue raised in the present appeal is similar in facts and issue as arising in Assessment Year 2013-14, in assessee's own case. Our attention was drawn to page 88 of the compilation wherein draft assessment order is placed and it is referred by the Assessing Officer that similar facts and issue had arisen in Assessment Year 2013-14. The Ld.AR for the assessee further pointed out that the Assessing Officer/DRP had relied on the ratio laid down by the Hon'ble Karnataka High Court in Samsung Electronics Company Ltd. 345 ITR 494 (Kar.) & Synopsis International Old Ltd. 212 Taxman 454 (Kar.). Reliance placed upon the decisions of Hon'ble Delhi High Court in DIT vs Infrasoftware Ltd. [2013] 220 Taxman 273 (Del.) and DIT vs Ericson A.B., New Delhi [2012] 343 ITR 470 (Del.) was distinguished by the Assessing Officer on the ground that SLP was pending before the Hon'ble Supreme Court. The Ld.AR for the assessee took us through the order of the Tribunal wherein reliance has been placed on the decision of Hon'ble Delhi High Court in DIT vs Ericson A.B., New

Delhi (supra) and DIT vs Infrasoftware Ltd. (supra) to come to a finding that use of copyrighted product is not 'Royalty'.

6. The Ld.CIT DR for the Revenue placed reliance on the orders of the authorities below. However, he fairly admitted that similar issue has been decided by the Tribunal in assessee's own case for Assessment Year 2013-14.

7. We have heard the rival contentions and perused the record. Briefly in the facts of the case the assessee is a company incorporated in Ireland and during the year under consideration it was in receipt of certain sum towards "Sale of Software" and "Provision for Support Services" from its Indian Distributors. It is undisputed that the amount received by the assessee from "Provision of Support Services" was been offered to tax on gross basis as per Article 12 of India-Ireland Double Taxation Avoidance Agreement (DTAA). It is also not in dispute that there is no Permanent Establishment (PE) of the assessee in terms of Article 5 of DTAA in India.

8. However, as far as the amount received on sale of software is concerned, the Assessing Officer was of the view that the same needs to be taxed as income from 'Royalty' as per the provisions of section 9(1)(vi) of the Act and Article 12 of the DTAA between India and Ireland. The evidences were submitted by the assessee to establish its case of sale of only copyrighted product and wherein copyright remained with the assessee and same was not transferred to its distributor or user. The Assessing Officer however, held otherwise and the DRP rejected the objections of the assessee and the

Assessing Officer passed final assessment order, against which the assessee is in appeal before us.

9. We find similar issue arose before the Tribunal in assessee's own case in ITA No.6693/Del/2016 relating to Assessment Year 2013-14 and vide order dated 26.11.2018, the issue was decided in favour of the assessee. The factual aspect was noted by the Tribunal vide para 2 onwards at page 2 of the order. The findings of the Assessing Officer which are similar as in the captioned Assessment Year are reproduced in para 2.1 onwards at page 4 to 7 of the Tribunal's order alongwith the findings of the DRP in para 2.2 at pages 8 to 9 of the order. The contentions of the assessee and the reliance placed on the decisions of Jurisdictional High Court as against the decision of Karnataka High Court (supra) and relied upon the order of Assessing Officer/DRP, Tribunal noted the contention of the assessee that the decision of Hon'ble Karnataka High Court has been disagreed by Jurisdictional High Court in Infrasoftware Ltd. (supra) in paras 98 & 99 of the judgement. Further, reference was also made to the decision of Hon'ble Delhi High Court in DIT vs Nokia Network OY 358 ITR 259 (Del.). The Tribunal vide para 5 at page 12 of the order dated 26.11.2018, relied on the decision of Hon'ble Jurisdictional High Court in Ericson A.B. (supra), and thereafter, referred to the findings of the Hon'ble High Court in Infrasoftware Ltd. (supra) and vide paras 5.2. and 5.3 at pages 18 & 19 held as under:-

5.2 "We find that treaty provisions between India and Ireland unambiguously require that the use of copyright is to be taxed in the source country. In the present case, the payment has been made by assessee for use of "copyrighted material" rather than for the use of

copyright. The facts of the present case are identical with the facts before the Hon'ble Jurisdictional High Court. None of the lower authorities have factually doubted the contention of the assessee that it has received consideration for the transfer of a copyrighted product and not for the transfer of copyrights in the computer software programme. The distinction between the transfer of a copyright and the transfer of a copyrighted product is prominent. The sole contention of the Assessing Officer and the Ld DRP is that the department is in appeal against the decisions of the Jurisdictional High Court before the Hon'ble Apex Court. The AO has relied upon the decision of the Hon'ble Karnataka High Court in case of Samsung Electronics (supra) and GracemacCorpn (supra). These decisions are not being considered as the issue is extensively dealt with by the Hon'ble Jurisdictional High Court in the cases of Ericsson A.B. and Infrasoft Ltd (supra) which are binding on this Tribunal. Once it is not in dispute that there is no transfer of any copyright in the computer software by the assessee to its customers, we observe that all the arguments put forth by the AO and the assessee are considered and answered by the Jurisdictional High Court in these decisions. Further, the Delhi High Court in Infrasoft (supra) has specifically expressed its disagreement with the view taken by the Hon'ble Karnataka High Court in the case of Samsung Electronics Co Ltd. (supra). Hence, the decisions relied by the Assessing Officer in the case of Samsung Electronics and GracemacCorpn. (supra) does not help the case of the Revenue, as we are under the Jurisdiction of the Hon'ble Delhi High Court.

5.3 Accordingly, respectfully following decision of the Hon'ble jurisdictional High Court in the case of Infrasoft Ltd. (supra) and on the basis of discussions above we hold that receipts derived by the assessee from "Sale of Software" is not in nature of "Royalty" as defined under Article 12 of India-Ireland DTAA. Since treaty provisions are more beneficial, an adjudication on nature of receipts vis a vis provisions of Section 9(1)(vi) is not required. Grounds Nos. 1 to 4 are accordingly allowed."

10. The issue arising in the present appeal is identical to the issue raised in assessee's own case in Assessment Year 2013-14 and applying the ratio laid down by the Jurisdictional High Court in Infrasoft Ltd. (supra), we hold that the receipt from sale of software by the assessee was not in the nature of 'Royalty' under Article 12 of DTAA between India and Ireland. Since the treaty provisions are more beneficial, there is no merit in adjudicating the issue vis-à-vis amended provisions of section 9(1)(vi) of the Act. The Ground of appeal Nos. 1 to 5 raised by the assessee are thus allowed.

11. The Ground of appeal No.6 raised by the assessee is against the levy of interest u/s 234A & 234B of the Act, is consequential and the same is dismissed.

12. The issue raised vide Ground of appeal No.7 by the assessee for non-granting of credit of TDS has not been argued before us; hence, the same is also dismissed.

13. The Ground of appeal No.8 raised by the assessee against the initiation of penalty proceedings u/s 271(1)(c) of the Act, is pre-mature; hence, the same is dismissed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09th July, 2020.

Sd/-

(PRASHANT MAHARISHI)
लेखा सदस्य / ACCOUNTANT MEMBER

दिल्ली / दिनांक Dated : 09th July, 2020

* Amit Kumar *

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल /Guard file.

Sd/-

(SUSHMA CHOWLA)
उपाध्यक्ष / VICE PRESIDENT

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi