

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: BANGALORE**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
and  
SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER**

**IT(TP)A No.1528/Bang/2010  
(Assessment year: 2006-07)**

M/s.Intel Services, LLC  
(formerly known as Intel Services Inc),  
C/o Intel Technology India Pvt. Ltd.  
SRR2, #23-56P Devarabeesanahalli,  
Outer Ring Road, Varthur Hobli,  
Bangalore South Block,  
Bangalore-560103. ... Appellant  
*PAN: AABCI0690L*

Vs.

Deputy Director of Income-tax,  
International Taxation,  
Circle 1(1),  
Bangalore. ... Respondent

Appellant by: Mr. Kaushik Mukherjee, CA.  
Respondent by: Mr. Farhat Hussain Quereshi, CIT(DR)

Date of hearing : 11-03-2015.  
Date of pronouncement: 20-03-2015.

**ORDER**

**Per ABRAHAM P GEORGE, AM:**

In this appeal filed by the assessee directed against an order of assessment under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') pursuant to the direction of Dispute

Resolution Panel ('DRP' for short) under section 144C, it has raised the following grounds:

- "1(a) *That on the facts and in the circumstances of the case, the learned Deputy Director of Income-tax, International Taxation, Circle 1(1), Bangalore ('Assessing Officer' or 'AO') and the learned Dispute Resolution Panel ('Panel') erred in treating the amount of Rs.26,80,32,271 received from Intel Technology India Private Limited ('IT IPL') on account of software expenses as 'Royalty' under section 9(1)(vi) of the Act read with Article 12 of the Double Taxation Avoidance Agreement entered into with India and the USA ('the Treaty').*
- (b) *That on the facts and in the circumstances of the case, the learned AO and the learned Panel erred in not appreciating that the aforesaid receipt of Rs.26,80,32,271 represents merely reimbursement of expenses incurred by the Appellant on behalf of IT IPL.*
- 2(a) *That on the facts and in the circumstances of the case, the learned AO and the Panel has erred in treating the amount of Rs.1,59,68,374 received from IT IPL on account of cross charge of IT programmes as 'Royalty' under section 9(1)(vi) of the Act read with Article 12 of the Treaty.*
- (b) *That the learned AO and the learned Panel erred in not treating the aforesaid receipt of Rs.1,59,68,374 as mere reimbursement of expenses not liable to tax.*
- 3(a) *That on the facts and in the circumstances of the case, the learned AO and the Panel erred in considering the reimbursement of relocation of expenses of Rs.7,31,91,290 as part of Fee for Technical Services ('FTS')/Fees for Included Services ('FIS').*
- b) *That on the facts and in the circumstances of the case, the learned AO and the Panel has erred in not appreciating the fact that the amount of Rs.7,31,91,290 received from IT IPL represents mere reimbursement of relocation and related costs of expatriates incurred in connection with business of IT IPL.*

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4. *That even assuming but not admitting that the reimbursement of relocation expenses of Rs.7,31,91,290 is in connection with the rendering of services in India, the learned AO and the learned Panel erred in their judgment that the same qualifies as FIS under Article 12 of the Treaty.*
5. *That the Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this appeal. "*

2. Learned counsel for the assessee at the outset submitted that issues raised by it through grounds 1(a), 2(b) and 2(a) & (b) have to be decided against the assessee in view of the judgment of the Hon'ble jurisdictional High Court in the case of *Samsung Electronics Co. Ltd., vs. CIT* (345 ITR 494) and the decision of this Tribunal in assessee's own case for assessment year 2005-06 (ITA No.201/Bang/2012 dated 13/06/2014).

3. Issues raised by the assessee in the above mentioned grounds are on treatment of Rs.26,80,32,271/- and Rs.1,59,68,374/- received by it from M/s.Intel Technology India Pvt. Ltd. ('ITIPL' for short) against software expenditure and cross charges of IT programmes, treated by the lower authorities as Royalty under sec.9(1)(vi) of the Act read along with Article 12 of the DTAA between India and USA. We find that similar issue had come before this Tribunal in assessee's own appeal for assessment year 2006-07 in ITA No.201/Bang/2012. In paras. 4 to 7 of its order dated 13/06/2014, it was held as under by the Tribunal:

"4. During the assessment proceedings u/s 143(3) of the Act, the AO observed that the assessee had entered into international transactions with its associated enterprises ('AE'), the quantum of which exceeded Rs.5 crores. Therefore, the issue of determination of arms length price of the international transactions was referred to the Transfer Pricing Officer (TPO) u/s 92CA of the Act. However, the TPO did not recommend any adjustment to the international transactions. Thereafter the AO observed that the assessee has received a sum of Rs.6,85,17,312/- towards reimbursement from M/s.Intel Technology India Pvt. Ltd.,(ITIPL) on account of software expenses and Rs.4,98,46,620/- on account of relocation and related expenses. He observed that these sums have not been included in the taxable income of the assessee. Therefore, the AO asked the assessee to furnish details regarding these transactions. The authorized representative of the assessee appeared and contended that during the financial year 2006-07, the assessee-company has received an amount of Rs.6,85,17,312/- towards reimbursement of software expenses. It was submitted that the assessee procured software license in respect of certain computer aided design software from third parties and the same is used by various Intel entities globally and the cost of such software license is cross charged to the respective entities based on the usage of each entity. He submitted that the assessee raised invoices on respective entities based on number of users in each entity and in support of his contention, copies of invoices raised by the assessee as regards the amount cross charged to ITIPL was also enclosed. It was thus submitted that the receipts represent mere reimbursement of expenses and hence cannot be brought to charge. Without prejudice to these contentions, the learned AR of the assessee also made an alternative claim stating that the receipt towards software expenses cannot be termed as 'royalty' in terms of the Treaty as well as the Income-tax Act. The AO, was however, not convinced with the contentions of the assessee and held that the assessee has failed to furnish copies of the agreements with the Indian company on account of which software expenses are reimbursed. He observed that the assessee could submit only one agreement which was entered into with M/s.Sigrity Inc., USA and the assessee could not explain the basis on which software was charged to the Indian company. He, therefore, held that the receipt could not be treated as reimbursement of expenses on account of software. Thereafter, he proceeded to consider the nature of the transaction and after considering the various aspects of the issue as well as the judicial precedents relied upon by the learned counsel for the assessee, he held that the software supplied to the assessee is not 'shrink wrapped software' but is a software which is used for further

'software development'. Therefore, he held it to be in the nature of royalty u/s 9(1)(vi) of the IT Act as well as DTAA and brought it to tax accordingly. Aggrieved, the assessee is in appeal before us.

5. Shri Kaushik Mukherjee, learned counsel for the assessee, while reiterating the assessee's submissions made before the authorities below, submitted that the assessee-company is a foreign company and had purchased software license from a third party and supplied them to its group companies globally and as per use of the license, such expenses are cross charged to the group companies and in accordance with such agreement with it, the Indian company has reimbursed the assessee-company which in turn has been paid to the third party. Therefore, according to him, it is reimbursement of software expenses and hence cannot be brought to tax. As regards the alternative contention that the nature of receipt is not payment towards royalty, the learned counsel for the assessee fairly conceded that the issue is covered against the assessee by the decision of the Hon'ble Karnataka High Court in the case of Samsung Electronics Co.Ltd., reported in 345 ITR 494. He, however, submitted that the issue is covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in the case of DIT vs. Ericsson A.B.(2011)343 ITR 470(Del). He submitted that these decisions have been considered by the Mumbai Bench of the Tribunal in the case of Dy.Director of Income-tax (Intl. Taxation) vs Solid Works Corporation reported in (2012) 152 TTJ 570 (Mum) wherein it has been held that the payment for mere right to use of shrink wrapped software cannot be held as royalty. He, therefore, prayed that the decision of the Mumbai Bench of the Tribunal be followed.

6. Ms.Priscilla Singsit, learned Departmental Representative, however, supported the orders of the authorities below and submitted that the CIT(A) has taken note of the decision of the Hon'ble Karnataka High Court in the case of Samsung Electronics Co. Ltd. (cited supra) and followed the same and therefore there is no illegality in the order of the CIT(A).

7. Having heard both the parties and having considered the rival contentions as well as the material on record, we find that to substantiate the claim of the assessee that the expenses received from Indian counterpart of the assessee-company are reimbursement of expenses; the assessee has not filed copies of any of the agreements. In the absence of any evidence to the effect that the assessee has supplied software license to the Indian company and the Indian company was obliged under the agreement to reimburse the expenses of such

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*software license, we are not inclined to accept the contention of the assessee that it is only reimbursement of expenses and not chargeable to tax in India. As regards the alternative contention that the said receipt is not chargeable to tax as royalty, we find that the issue is squarely covered against the assessee by the decision of the Hon'ble Karnataka High Court in the case of Samsung Electronics Co. Ltd.(supra). The Mumbai Bench of the Tribunal has followed the decision of the Hon'ble Delhi High Court in the case of Ericsson A.B.(cited supra). This Bench, being at Bangalore, is bound by the decision of the jurisdictional High Court and therefore, we are inclined to follow the decision of the Hon'ble Karnataka High Court and the assessee's ground of appeal is rejected. "*

Since the receipts for the impugned assessment year were also from the very same company and of similar nature, we have no hesitation to dismiss grounds 1(a) and (b) and 2(a) and 2(b) raised by the assessee.

4. Vis-à-vis ground 3(a), (b) and 4, learned counsel for the assessee submitted that for similar re-imburements of relocation expenses, this Tribunal had in its order for assessment year 2005-06 mentioned supra, remitted the issue back to the AO for consideration afresh for verification as to whether these were only re-imburements. As per the learned counsel for the assessee, if given an opportunity, it can file evidence to prove that what were received were only re-imburements for relocation on cost- to-cost basis. Per contra, learned Departmental Representative supported the orders of the authorities below.

5. We have perused the orders and heard the rival contentions. On the claim of the assessee that what were

received were only re-imbusement of expenditure and on production of evidence to substantiate its claim, this Tribunal had held as under in paras.8 to 13 of its order dated 13/06/2014 for assessment year 2005-06, in assessee's own case mentioned supra.

8. *As regards grounds No.2 to 4 are concerned, we find that they relate to the claim of the assessee as relocation expenses of Rs.4,43,85,551/-. During the assessment proceedings u/s 143(3), the assessee had claimed that the employees of the assessee-company have been deputed to the Indian company i.e. M/s.ITIPL to render certain services as per the Agreement dated 1-4-2002 and in terms of this Agreement, these employees have to be relocated by the assessee-company and the assessee-company has incurred certain expenses for their travel and conveyance and hotel etc. It was submitted that these expenses have been reimbursed by the Indian company only on cost to cost basis and therefore it does not amount to any income in the hands of the assessee-company. The assessee also filed a detailed note before the authorities below citing the decisions on which it placed reliance upon. The AO was, however, not convinced with the contentions of the assessee. The AO asked the assessee to furnish details of employees towards whom these costs were incurred and also to furnish working and break-up of this cost along with appropriate supporting documents. Since the assessee failed to produce evidence before the AO, the AO held that the assessee could not prove that these receipts are mere reimbursement of expenses from ITIPL. Thereafter he considered that as per clause 3.4 of the Agreement, the Indian company has to bear all the costs of expat employees and fees for technical services and therefore the amounts charged by the assessee towards the cost of expats like salaries and other related expenses should be reimbursed with a mark up. He observed that the cost incurred for relocations etc., also form part of expat costs which is charged to the ITIPL as fees for technical services. He, therefore, held that the receipt of Rs.4 crore and odd is also integral part of fees for technical services and the same is chargeable to tax in India.*

9. *Aggrieved, the assessee preferred an appeal before the CIT(A) who confirmed the order of the AO since the assessee failed to produce any evidence before the CIT(A) to substantiate its claim. Aggrieved, the assessee is in second appeal before us.*

10. The learned counsel for the assessee reiterated the submissions made by the assessee before the authorities below but failed to file any evidence even before the Tribunal till 18-2-2014. On the said date, the assessee sought time to collect and file details before this Tribunal in support of its claim of receiving only cost to cost reimbursement of relocation expenses. By letter dated 16-4-2014, the assessee has filed additional evidence in the form of paper book which contains the copies of invoices and supporting documents as well as break-up of relocation expenses for the months of April and May 2004 as well as month-wise break-up of relocation and related expenses for the months of January 2004 and March 2005 and submitted that all other and relevant supporting documents are also available with the assessee. He submitted that since the details are voluminous, the assessee has filed the details pertaining to only two months as a sample before this Tribunal and that the assessee is ready to furnish other details if so required. He also submitted that the assessee has substantial evidence in its possession relating to the claim of relocation expenses.

11. The learned Departmental Representative, however, submitted that the additional evidence filed before the Tribunal needs reconsideration and would have to be sent back to the AO for verification. She submitted that the assessee in spite of several opportunities given by the AO and the CIT(A) has failed to file the relevant evidence due to which the AO was constrained to make the disallowance.

12. Having heard both the parties and having considered the rival contentions as well as the material on record, we find that the assessee has filed sample evidence relating to April and May 2004 in support of its claim of relocation and related expenses. From these details, it is clear that the Indian company has incurred expenses on account of employees who are deputed to Indian company. Whether these reimbursements are cost to cost basis and whether these also form part of the fees for technical services needs to be examined by the AO in the light of the evidence produced by the assessee. As the additional evidence filed before us goes to the root of the matter, we are inclined to admit the same and remand the same to the file of the assessing authority with a direction to reconsider the issue de novo. The assessee may file all the required details before the assessing authority.

13. The learned counsel for the assessee has also drawn our attention to the decision of Bangalore 'A' Bench of this Tribunal in the case of M/s.Global E-Business

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*Operations Pvt. Ltd. Vs. Dy.DCIT in ITA Nos.643 & 644/Bang/2010 dated 4-7-2012 wherein the Tribunal had considered the difficulties felt by the assessee-company therein to file evidence relating to the entire expenses and has accepted the sample invoices filed before it as evidence for the claim of reimbursement. The learned counsel for the assessee submitted that though the assessee is in possession of the relevant material he may be directed or allowed to file sample invoices in support of its claim in view of voluminous evidence with the assessee. We are, however, not inclined to give such direction to the AO and we leave it to the wisdom of the AO whether to call for entire details or go through sample invoices in possession of the assessee. The AO shall give the assessee a fair opportunity of hearing and shall also decide the nature of receipt and whether it is fees for technical services as per the Agreement between the assessee and the Indian company. These grounds of appeal are accordingly allowed for statistical purposes.*

Similar directions are given for the impugned assessment year.

Grounds 3(a), 3(b) and 4 are treated as allowed for statistical purposes.

6. Ground No.5 is general needing no adjudication.

7. In the result, appeal of the assessee is partly allowed for statistical purposes.

*Pronounced in the open court on 20<sup>th</sup> March, 2015.*

sd/-

**(Rajpal Yadav)**  
**JUDICIAL MEMBER**  
*eksrinivasulu*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

sd/-

**(Abraham P.George)**  
**ACCOUNTANT MEMBER**

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore