IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

IT(IT)A No. 1388/Bang/2013
Assessment year : 2010-11

M/s. Intertec Software Pvt. Ltd., S. K. Vista, No. 21, Rustum Bagh, Behind Manipal Hospital, Old Airport Road, Bangalore – 560 017. **PAN: AABCI1051R**	Vs.	The ITO (Intl. Taxn.), Ward – 1 (2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri B. S. Sudheendra, CA
Revenue by	:	Shri N. Sukumar, Addl. CIT (DR)

Date of hearing	:	11.09.2017
Date of Pronouncement	:	13.10.2017

O R D E R

Per Shri A.K. Garodia, Accountant Member

This is an assessee's appeal directed against the order of ld. CIT (A)-IV, Bangalore dated 26.08.2013 for Assessment Year 2010-11.

2. The grounds raised by the assessee are as under.

"*1. The learned Assessing Officer has erred in passing the order in manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The orders passed without jurisdiction being becomes bad in law and are liable to be quashed.*

2.1 In any case and without prejudice, the learned Assessing Officer had erred in treating the appellant as assessee in default on the ground that the payments made by the appellant for purchase of Software

Licenses constituted royalty payments in terms of sec. 9(1)(iv) and the appellant had defaulted in not deducting tax at source on the said payment by the authorities below. The learned CIT(A) has also erred in confirming the same. The conclusions drawn are against the facts of the case, evidence and the law applicable. The above conclusions being wholly erroneous and not tenable in law are liable to be disregarded.

2.2 The learned Assessing Officer has erred in calculating tax @ 10% on the aforesaid payments and also erred in levying interest of Rs. 11,23,032/- U/s. 201(1)(A) of the Act, and the learned CIT(A) has erred in confirming the same. On the facts and circumstances of the case, there being no liability to deduct tax at source on the payments made by the appellant, the levy of tax and interest being bad in law and are liable to be deleted.

2.3 In any case and without further prejudice, the levy of tax and interest is erroneous and also excessive.

3. In any case, the authorities below have erred in not considering the provisions of Double Taxation Avoidance Agreements in proper perspective. On proper consideration of Double Taxation Avoidance Agreements, the payments made by the appellant would not warrant any tax deduction at source.

4.The various case laws and judicial relied upon by the authorities below are not applicable to the facts of the case. The conclusions drawn based on inapplicable / inappropriate pronouncements are to be totally disregarded and order passed is to be quashed.

5. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the order passed be quashed or atleast the appellant be held not to be an assessee in default and consequently the demand of tax and interest as levied be deleted."

3. It was submitted by the ld. AR of the assessee that learned CIT (A) has followed the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Samsung Electronics Co. Ltd. as reported in 245 CTR 481. He submitted that by a later judgment of Hon'ble Karnataka High Court rendered in the case of WIPRO Ltd. vs. DCIT as reported in 382 ITR 179, similar issue was decided in favour of the assessee by following the earlier judgment of the same High Court rendered in the case of the same assessee in ITA 507 of 2002

on 25.08.2010 and it was held that no disallowance can be made u/s 40 (a) (i) of I. T. Act in respect of software imported which is in the nature of Royalty u/s 9 (1) (vi) of I. T. Act. He submitted a copy of both these judgments of Hon'ble Karnataka High Court. At this juncture, a query was raised by the bench as to whether the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Samsung Electronics Co. Ltd. (Supra) was brought to the notice of Hon'ble Karnataka High Court in the later case decided on 25.03.2015 because the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Samsung Electronics Co. Ltd. (Supra) is dated 15.10.2011. In reply, learned AR of the assessee submitted that the earlier judgment in the case of Wipro Ltd. (Supra) dated 25.08.2010 was also not brought to the notice of Hon'ble Karnataka High Court in the case of CIT vs. Samsung Electronics Co. Ltd. (Supra) decided on 15.10.2011 and therefore, the first judgment dated 25.08.2010 should be followed and this judgment is in favour of the assessee. In reply, learned DR of the revenue supported the order of CIT (A) and submitted that both the judgments in the case of Wipro Ltd. (Supra) are in the context of section 40 (a) (i) whereas the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Samsung Electronics Co. Ltd. (Supra) is in context of section 195 and in the present case also, the dispute is in context of section 195 and therefore, this judgment

rendered in the case of CIT vs. Samsung Electronics Co. Ltd. (Supra) should be followed.

4. We have considered the rival submissions. First, we examine the applicability of the first judgment of Hon'ble Karnataka High Court rendered in the case of WIPRO Ltd. vs. DCIT (Supra) rendered on 25.08.2010. In this case, the substantial question of law raised as per Para 37 was as under:-

> ***"Whether the Tribunal is correct in allowing expenditure on imported software when the expenditure per se is capital in nature and is not allowable?"***

5. From this substantial question of law, it comes out that in that case, this was not a dispute before Hon'ble Karnataka High Court as to whether the import of software is Royalty or not? The dispute in that case was this that the import of software is capital expense in that case and therefore, how the same can be allowed as deduction. In that case also, the A.O. held that the payment for software is Royalty and since TDS was not deducted, it is to be disallowed u/s 40 (a) (i) but when the assessee carried the matter in appeal before CIT (A), he held that it is not Royalty and therefore, cannot be disallowed u/s 40 (a) (i). The revenue filed appeal before the tribunal but the dispute raised was not this that it is Royalty or not? The dispute raised was this that it is capital expenditure and therefore, cannot be allowed. The tribunal held that the tribunal cannot go into this question as this is not what was urged before the lower authorities. The revenue filed appeal before Hon'ble Karnataka High

Court and the tribunal order was confirmed. Hence, this is seen that as per this judgment of Hon'ble Karnataka High Court, the decision is not on this aspect that it is Royalty or not and therefore, this judgment is not relevant in the present case.

6. Now, we examine the applicability of the second judgment of Hon'ble Karnataka High Court rendered in the case of WIPRO Ltd. vs. DCIT (Supra) rendered on 25.03.2015. As per this judgment, in Para 171, it was held that in earlier judgment dated 25.08.2010, similar question was decided in favour of the assessee and against the revenue and therefore, in those appeals also, the issue was decided in favour of the assessee. We have already seen that the decision dated 25.08.2010 is not on this aspect that it is Royalty or not and therefore, this judgment is not relevant in the present case. Accordingly, this later judgment dated 25.03.2015 is also not relevant.

7. There is no dispute that the present issue is covered against the assessee by the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Samsung Electronics Co. Ltd. (Supra) and learned AR of the assessee has merely cited these two judgments rendered in the case of WIPRO Ltd. (Supra) and no other argument was made to the effect that this issue is not covered against the assessee by this judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Samsung Electronics Co. Ltd. (Supra). Since, these two judgments cited by him are not applicable as per above discussion;

we respectfully follow the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Samsung Electronics Co. Ltd. (Supra) and decline to interfere in the order of CIT (A).

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(LALIET KUMAR)	(A.K. GARODIA)
Judicial Member	Accountant Member

Bangalore,
Dated, the 13th October, 2017.
/ MS/

Copy to:

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.