

आयकर अपीलीय अधिकरण, मुंबई "एल " खंडपीठ
Income-tax Appellate Tribunal "L" Bench Mumbai
सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य
Before S/Sh. Rajendra, Accountant Member & Ravish Sood, Judicial Member
आयकर अपील सं./I.T.A.s/5090/Mum/2008

DDIT Room No.120, 1 st Floor, Scindia House, Ballard Estate, N.M. Road (IT) Mumbai-400 038.	Vs.	M/s. Reliance Infocomm Limited (Now merged with M/s. Reliance Communications Limited), H Block 1 st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai-400 710. PAN:AACCR 7832 C
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: S/Shri Parag Vyas- DR

Assessee by: S/Shri J.D. Mistry/Deepak Jain

सुनवाई की तारीख / Date of Hearing: 10/01/2018

घोषणा की तारीख / Date of Pronouncement: 07/02/2018

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार/ PER RAJENDRA, AM-

Challenging the order dated 12/05/2008 of CIT(A)XXXI, Mumbai the Assessing Officer (AO) has filed the present appeal.The assessee had purchased telecommunication software from M/s. Atrica Ireland Ltd.It made an application to the AO to send the remittances to Ireland without deducting tax at source.Vide its order,dated 25/01/2007,passed u/s 195(2) of the Act, the AO held that the payment made by assessee for purchase of software would qualify as royalty as per DTAA and as per provisions of section 9(1)(vi) of the Act.He directed the assessee to deduct tax @ 10% on gross amount payable to Atrica Ireland Ltd.

2.Aggrieved by the order of the AO the assessee preferred an appeal before the First Appellate Authority(FAA) and made detailed submissions.After considering various clauses of the Agreement entered into between the assessee and the non-resident entity,he held that payment made by the assessee for purchase of software was not royalty, that the payment to M/s. Atrica Ireland Ltd.was to be assessed as business income of non-resident entity, that M/s. Atrica Ireland Ltd.did not have any Permanent Establishment (PE) in India, that as per Article-7 of DTAA the assessee was not liable to pay tax in India.

3. Before us, the Departmental Representative (DR) made the submissions that are part of the other group appeals (I.T.A.s/837/Mum/2007 & Ors. dated 2/2/2018-56 appeals). The Authorised Representative (AR) referred to the order of the Tribunal dated 08/01/2018 in the case of Intec Billing Ireland (ITA No.1535/Mum/2014 AY 2010-11) and advanced the same argument that are part of the arguments of 56 other appeals (supra). We are reproducing the relevant portion of the order of the Tribunal dated 8/1/2018, which reads as under :

3. Briefly stated the facts are that, Intec Ireland (the assessee) is a company incorporated in Ireland and is a tax resident of Ireland. During the AY 2010-11 Intec Ireland had inter-alia supplied billing software to Reliance Industries Limited (Reliance') for the purpose of billing their customers. A Copy of Software License Agreement dated 26 February 2002 is placed at Page Nos. 133 to 151 of the paper book. The Software License Agreement has been originally entered into between Reliance and Intec Billing, America a group company of the assessee, earlier known as ADC Software System, America. The said agreement has been subsequently assigned in entirety to Intec Ireland the assessee vide assignment letter dated 08 April 2005. A copy of the assignment letter is placed at Pages 152 and 153 of the paper book. The assessee has licensed the same software to Reliance under the same agreement which was subsequently assigned to the assessee.

4. According to the assessee the software licensed to Reliance under the software licence agreement is an 'off the shelf/Shrink Wrapped' software which assists telecom companies in billing in an efficient, profitable billing operation with strong focus on customers and Revenue management. The software licensed by assessee is standard products already developed and made available to other customers.

5. However, the Learned Assessing Officer (AO') held that the amounts receivable by Intec Ireland for supply of 'off the shelf' software to Reliance are for grant of 'copyright' and accordingly, the receipts are in the nature of 'Royalty' as per amended Section 9(1)(vi) of the Act and Article 12 of the India-Ireland Tax Treaty.

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57. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied upon by both parties. The assessee is a company incorporated in Ireland and is a tax resident of Ireland. During the Assessment Year 2010-11 assessee had inter-alia supplied billing software to Reliance Industries Limited for the purpose of billing their customers. The software license agreement has been originally entered into between Reliance and Intec Billing, America a group Company of the assessee which was earlier known as ADC Software System, America. The said assessment has been subsequently assigned to Intec Ireland the Assessee in entirety by assignment letter dated 08.04.2005.

58. The key features of the said software provided by the assessee are that the software provided by Intec Ireland is a comprehensive business solution addressing transaction management, billing and customer care issues related to telecom industry players. It provides solution for efficiently managing high volumes of transactions and keeping audit trails for all the transactions, thus preventing data loss and frauds. It is a highend integrated software comprising of number of functional modules/ packages targeted at specific business areas. These modules can be used independently or in conjunction with each other to address specific requirements of the user. These modules support invoice generation, product pricing, product rating accounts receivables and billing operations. Further, they also support localization of

language, currency, calendar and regulatory and taxation framework of the user. In simple terms, the said software could be equated to 'Microsoft Excel' - wherein the user feeds the data/information related to a particular customer or product in a blank worksheet. The data is processed by the modules in order to generate requisite output - an invoice, report, etc. The software's delivered to the users on physical electronic media, ex: compact disk, floppy, paragraph 6 'Deliver' clause of the Software Licence Agreement.

59. On perusal of the clauses of the above agreement, it is clear that Intec Ireland exclusively owns all the Intellectual Property Rights (IPR) in the software. Intec Ireland has merely granted a copyrighted article to Reliance and not the 'copyright in the article. Hence, Reliance does not use or have any right to use the copyright in the software products and Intec Ireland merely grants a right to use software for Reliance's own use in India.

60. The very same agreement and the Software supplied by the assessee to Reliance has been subject matter in dispute in the Assessment Year 2002-03 and Coordinate Bench of the Tribunal in ITA.No. 3196/Mum/2007 dated 05.02.2010 held that sale of Software by the assessee to the end customer does not involve any transfer of copyright either in part or in whole and therefore consideration paid by the distributor cannot be said to be a payment for right of use copyright or transfer of use of copyright. In holding so the Coordinate Bench observed as under: -

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61. Further, it is the finding of the DRP that in the present case the issue involved is that Shrink Wrapped/off the shelf software recently the Mumbai Tribunal in the case of Capgemini Business Services (India) Ltd (supra) after considering all the decision available on the issue including the one relied on by the Assessing Officer and the Ld.DR in the case of Samsung Electronics Company Ltd. & Others (supra), Verizon Communication Singapore (supra), Reliance Infocom Ltd. (supra) and Viacom 18 Media 39 ITA NO.1535/MUM/2014 (A.Y: 2010-11) Intec Billing Ireland Pvt. Ltd. (supra) held that where the payment is made for the copyrighted article the same cannot be considered as payment for the transfer of the copyright and cannot be taxed as royalty by observing as under:-

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67. As rightly submitted by the Ld. Counsel for the assessee that the definition of Royalty under the Indo-Ireland Tax Treaty is pari-materia as that under Indo-US Tax Treaty and the Coordinate Bench of the Tribunal had already decided the issue of taxability of supply of software under the same agreement in favour of the Intec- Ireland with reference to the IndoUS Tax treaty for the Assessment Year 2002-03, wherein it has been held 44 ITA NO.1535/MUM/2014 (A.Y: 2010-11) Intec Billing Ireland that receipts from supply of software are not taxable in the hands of IntecIreland as Royalty. Therefore, since both the treaties are pari-materia with each other, we hold that the receipts from supply of software are not taxable in the hands of Intec-Ireland as Royalty under new Ireland tax treaty. Intec-Ireland does not have PE in India and accordingly amounts received by Intec-Ireland towards supply of software are not liable to tax in India. Therefore, in view of the above discussion and respectfully following the said decisions, we hold that payment received by the assessee was not in the nature of Royalty and cannot be therefore brought to tax.”

On 2/2/2018,while deciding 56 appeals filed by the AO ,we have deliberated upon identical issue.

Considering the above,we are of the opinion that payments made by assessee for purchase of telecommunication software from M/s. Atrica Ireland Ltd., an Irish software supplier, was not

payment of royalty and that assessee was not obliged to deduct tax at source. Confirming the order of the FAA, we decide the effective Ground of appeal against the AO.

As a result, appeal filed by the AO, stands dismissed.
परिणामतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 7th February, 2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 07 फरवरी, 2018 को की गई।

Sd/-

Sd/-

(रविश सूद /Ravish Sood)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated :07.02.2018.

Jv.Sr.PS.

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

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,
- 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR "L" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.