

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND  
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1040/Bang/2016
Assessment Year :2011-12

M/s. Wuerth Elektronik India Pvt. Ltd., 5 <sup>th</sup> Floor, North Block, Tax Exchange Towers, No. 51, J.C. Road, Bangalore – 560 027. <b>PAN: AABCN2857N</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 12 (5), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Naveen Kumar .M, Advocate
Respondent by	:	Shri B.R. Ramesh, JCIT (DR)

Date of hearing	:	27.03.2018
Date of Pronouncement	:	06.04.2018

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee which is directed against the order of Id. CIT(A)-7, Bangalore dated 11.03.2016 for Assessment Year 2011-12.

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

*“The order of the Hon'ble Commissioner of Income Tax (Appeals)-7 is opposed to law and facts of the case.*

*2. The Hon'ble Commissioner of Income Tax (Appeals) ought to have held that no part of Rs.60,11,633/- being telecommunication expenditure in connection with delivery of computer software was deductible from the export turnover.*

*3. The Hon'ble Commissioner of Income Tax (Appeals) erred in holding that the amount paid to obtain computer software is of the nature of royalty and the provisions of Section 40(a) (ia) are attracted.*

*4. The Hon'ble Commissioner of Income Tax (Appeals) erred in upholding the disallowance of depreciation claimed on computer software treating the said payment as revenue expenditure.*

*5. The appellant craves for leave to add to, delete from or amend the grounds of appeal.”*

3. The Id. AR of assessee reiterated the same contentions which were raised before CIT(A). At this juncture, it was pointed out by the bench that only two issues are involved in present appeal of the assessee. First issue is raised as per ground no. 2 which is covered by the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Tata Elxsi Ltd., 349 ITR 98. The second issue raised as per ground no. 3 is covered against the assessee by the judgment of Hon'ble Karnataka High Court rendered in the case of Samsung Electronics Co. Ltd. as reported in 203 Taxman 477. In reply the Id. AR of assessee had nothing to say. The Id. DR of revenue also agreed with the proposition put forward by the bench.
4. We have gone through the orders of authorities below and these two judgments of Hon'ble Karnataka High Court noted above. We find that ground no. 2 raised by the assessee is regarding computation of deduction allowable to the assessee u/s. 10A of the IT Act. For this purpose, the AO has reduced the amount of Rs. 60,11,633/- being telecommunication expense from export turnover and the case of the assessee is this that the same should be reduced from total turnover also. As per this judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Tata Elxsi Ltd.(supra), this was held that total turnover is sum total of export turnover and domestic turnover and therefore, if an amount is reduced from export turnover then the total turnover also goes down by the same amount automatically. Respectfully following this judgment of Hon'ble Karnataka High Court, we direct the AO to recompute the deduction allowable u/s. 10A of the IT Act by reducing this amount of Rs. 60,11,633/- being telecommunication expenses from total turnover also as it is already reduced from export turnover. Ground no. 2 of assessee is allowed for statistical purposes.
5. Regarding ground no. 3, we find that this issue was decided by CIT(A) in paras 6.1 to 6.3 of its order by following the judgment of Hon'ble Karnataka High Court rendered in the case of Samsung Electronics Co. Ltd. (supra). For the

sake of ready reference, these paras from the order of CIT(A) are reproduced hereinbelow.

*“6.1 I have carefully considered the appellant's submissions and perused the assessment order. In the case of M/s Samsung Electronics Company Ltd., the Hon'ble Karnataka High Court [2011] 203 Taxman 477 (Kar) has held that the amount paid for the supply of software would be construed as 'royalty' in terms of the provisions of the Income-tax Act 1961, and consequently, liable to withholding tax in terms of the relevant provisions and therefore the provisions of sec 40(a)(ia) is applicable on it. The court has held that:*

*"(i) U/s 9(1)(w) of the Act & Article 12 of the DTAA, "payments of any kind in consideration for the use of or the right to use, any copyright of a literary, artistic or scientific work" is deemed to be "royalty". Under the Copyright Act, 1957, a software programme constitutes a "copyright". A right to make a copy of the software and use it for internal business by making copy of the same and storing it on the hard disk amounts to a use of the copyright u/s 14 (I) of that Act because in the absence of such a licence, there would have been an infringement of the copyright. Accordingly, the argument that there is no transfer of any part of the copyright and the transaction involves only a sale of a copyrighted article is not acceptable. The amount paid to the supplier for supply of the "shrink-wrapped" software is not the price of the CD alone nor software alone nor the price of licence granted. It is a combination of all. In substance unless a licence was granted permitting the end user to copy and download the software, the CD would not be helpful to the end user;*

*(ii) There is a difference between a purchase of a book or a music CD because while these can be used once they are purchased, software stored in a dumb CD requires a license to enable the user to download it upon his hard disk, in the absence of which there would be an infringement of the owner's copyright."*

*6.2 There are two issues involved, one is whether the consideration paid for purchase of software can be capitalised and second, whether depreciation can' be claimed on the amount which is not eligible for depreciation.*

*6.3 The Appellant has used a circuitous route to claim deduction on an item which is allowable revenue expenditure subject to fulfillment of provisions of sec 40(a)(ia). The purchase consideration has been capitalised and depreciation @60% has been claimed stating it as statutory allowance as per Explanation 5 of Section 32 of the Act as per the rates prescribed under I.T. Rules. The amount paid to obtain computer software cannot be added to the block of assets of computer as the jurisdiction High Court has held that the nature of payment for computer software is that of Royalty. Accordingly, the assessing officer is directed to treat the expenditure on royalty as revenue expenditure. Since computer software no longer remains part of the*

*block of assets, so depreciation claimed on it needs to be disallowed. Further, since assessee failed to deduct tax at source u/s 195/194J in relation to payments made for the purchase of this computer software, so this purchase amount, which otherwise the assessee could have claimed as expenditure, cannot be allowed as expenditure as provisions of section 40 (a)(ia) of the Act get attracted.”*

6. Respectfully following this judgment of Hon'ble Karnataka High Court, we decline to interfere in the order of CIT(A) on this issue. Ground no. 3 is rejected.
7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

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

Sd/-  
(N.V. VASUDEVAN)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 06<sup>th</sup> April, 2018.  
/MS/

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

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.