

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.2353 to 2356/PUN/2016  
निर्धारण वर्ष / Assessment Years : 2008-09 to 2011-12

India Soft Technologies Private Ltd.,  
'Nirvana', 2<sup>nd</sup> Floor, Commercial 3,  
Plot No. 18, S. No. 213/214/215,  
Kalyani Nagar, Pune - 411006

PAN : AABCI0540H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Deputy Director of Income Tax,  
(International Taxation)-1, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni  
Revenue by : Mrs. Shweta Mishra

सुनवाई की तारीख / Date of Hearing : 31-07-2018  
घोषणा की तारीख / Date of Pronouncement : 03-08-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

These four appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-IT/TP, Pune dated 17-07-2013 passed u/s. 201(1) & 201(1A) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") common for the assessment years 2008-09, 2009-10, 2010-11 and 2011-12. In all these four appeals the assessee has

assailed charging of interest u/s. 201(1A) of the Act for non-deduction of tax at source.

Since, the issues involved in all these appeals are identical and are arising from same set of facts, these appeals are taken up together for adjudication and are being disposed of vide this common order.

2. Shri M.K. Kulkarni appearing on behalf of the assessee submitted at the outset that initially the assessee has filed combined appeals u/s. 201(1) & 201(1A) of the Act. However, to counter technical defect in filing of appeals, the assessee has filed separate appeals assailing charging of interest u/s. 201(1A) of the Act. The ld. Counsel for assessee pointed that the Co-ordinate Bench of Tribunal in set of appeals filed by the assessee in ITA Nos. 1709 to 1712/PUN/2013 for assessment years 2008-09 to 2011-12 decided on 24-01-2018 against the liability foisted under the provisions of section 201(1) has remitted the issue back to the file of Assessing Officer. Since, the appeals of assessee filed u/s. 201(1) have been restored to Assessing Officer, these set of appeals have to be decided in a similar manner.

3. Mrs. Shweta Mishra representing the Department fairly admitted that these set of appeals filed u/s. 201(1A) of the Act and the earlier appeals filed by the assessee in ITA Nos. 1709 to 1712/PUN/2013 (supra) against the order passed u/s. 201(1) have to be decided in similar manner.

4. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered the order of Co-ordinate Bench in assessee's own case in

appeals filed by the assessee in ITA Nos. 1709 to 1712/PUN/2013 (supra).

The Co-ordinate Bench has restored the appeals of assessee in proceedings

u/s. 201(1) to the file of Assessing Officer by following observations :

*“14. We heard both the parties on the issues, i.e. existence of PE, nature of payments as Royalty, rights given by the suppliers to the dealer, applicability of the provisions of section 195 of the Act etc. On hearing both the sides, we find there are some gaps relating to the facts which are required to be collected by the revenue authorities.*

*(a) Regarding the right to sub-lease the software products, no finding of fact is gathered by the authorities that assessee has actually subleased the software products to various dealers/sub-dealers. Same is the case with regard to the right to modify the existing software received from the suppliers. Specific to the products received by the assessee for the customers in India, one need to examine if these products were infact subjected to modifications if any, to meet the specific requirements of the customers in India, before the payments are remitted to the suppliers. AO need to examine subleasing of the dealership rights to others as authorized by the agreement between the suppliers and the assessee. There is need for remanding the issue to the file of AO for fresh consideration.*

*(b) Regarding the existence of PE for the payees abroad UK/USA, this issue has come up for the first time before the Tribunal. The fact on the existence of PE, according to Ld. AR for the assessee, is a matter both on facts and law. Therefore, this issue is rightly raised from the legal point of view and prayed for admitting the same and remanding to the file of AO for adjudication, if required. Considering the fact that this issue is also partly legal in nature, we are of the opinion that Ground No.3 and other related limbs of grounds of appeal are admitted and remanded to the file of AO for a decision before invoking the Article 12 and 13 of the respective DTAAs. Further, we notice that the above referred issues relating to PE are required to be adjudicated considering the judgmental law in existence as on date. There is need for remanding the issue to the file of AO for fresh consideration.*

*(c) Regarding the nature of payments, whether it constitutes Royalty or otherwise, the same depends on facts of each case which are to be gathered by the AO in the proposed remand proceedings. There are divergent decisions in law on the said Royalty. If the remittances are relatable to mere receiving the software products from the suppliers and passing it on to the customers, playing the role of a dealer, we do not find there is any Royalty involved in these remittances. However, as argued by the Ld. DR for the Revenue, relying on the orders of the AO and the CIT(A), if there is exploitation of the software products obtained from the suppliers for commercial benefits of the assessee or its customers through the mechanism of subleasing or through mechanism of incorporating the modification in the said software to meet the demands of the customers, the conclusions may vary depending on the facts. Therefore, we are of the opinion that the AO should invoke the requisite verification and modification and application of law to the above referred issues and decide the issue afresh as per the law. AO shall grant reasonable opportunity of being heard to the assessee. Accordingly, the grounds raised by the assessee for A.Y. 2008-09 are allowed for statistical purposes.*

*15. In the result, appeal of the assessee for A.Y. 2008-09 is allowed for statistical purposes.”*

5. We agree with the submissions of ld. Counsel for assessee that the fate of interest charged u/s. 201(1A) will depend upon the outcome of the proceedings in section 201(1) of the Act. Accordingly, we deem it appropriate to restore all the four appeals to the file of Assessing Officer with similar directions as in ITA Nos. 1709 to 1712/PUN/2013 (supra). The Assessing Officer shall decide all these issues in a composite manner after affording opportunity of hearing to the assessee, in accordance with law.

6. In the result, all the four appeals of the assessee are allowed for statistical purpose.

Order pronounced on Friday, the 03<sup>rd</sup> day of August, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated :03<sup>rd</sup> August, 2018

RK

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

1. अपीलार्थी / The Appellant.
  2. प्रत्यर्थी / The Respondent.
  3. आयकर आयुक्त (अपील) / The CIT(A)-IT/TP, Pune
  4. The DIT (TP/IT), Pune
  5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
  6. गार्ड फ़ाइल / Guard File.
- //सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune