



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.5411/Mum./2017  
(Assessment Year : 2012-13)

M/s. Technograph Engineering Pvt. Ltd.  
4A1, 4<sup>th</sup> Floor, Gundecha Enclaves  
Khairani Road, Saki Naka  
Andheri (E), Mumbai 400 072  
PAN - AADCT1161F

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-13(3)(2), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Shri S.K. Bepari

Date of Hearing - 12.09.2018

Date of Order - 19.09.2018

**ORDER**

Aforesaid appeal has been filed by the assessee challenging the order dated 5<sup>th</sup> June 2017, passed by the learned Commissioner (Appeals)-21, Mumbai, for the assessment year 2012-13.

2. The dispute in the present appeal is confined to disallowance of ₹ 1,36,05,426, under section 40(a)(ia) of the Income Tax Act, 1961 (for short "*the Act*").

3. When the appeal was called for hearing, none was present on behalf of the assessee. It is seen from record, notice of hearing issued

to the assessee per registered post in the address mentioned in Col. No.10 of Form no.36, has returned unserved. Therefore, I proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative.

4. Brief facts are, the assessee company filed its return of income for the impugned assessment year on 30<sup>th</sup> September 2012, declaring nil income. During the assessment proceedings, the Assessing Officer noticed that in the relevant previous year, the assessee has made addition of an amount of ₹ 2,26,75,710, in the block of assets on account of purchase of computer software. After calling for necessary details, the Assessing Officer found that the assessee had purchased computer software from an overseas company M/s. Tekla. He, therefore, called upon the assessee to explain why the amount paid to the foreign company towards purchase of software should not be disallowed under section 40(a)(ia) of the Act, since, such payment was towards fees for technical services / royalty. In response to the query raised by the Assessing Officer, it was submitted by the assessee that the provisions of section 40(a)(ia) of the Act would not be applicable, since, the assessee is claiming depreciation on assets. The Assessing Officer, however, did not find merit in the submissions of the assessee. He observed, since, the payment made by the assessee towards purchase of computer software is in the nature of fees for technical

services / royalty, the assessee was liable to deduct tax at source while making such payment. Accordingly, he disallowed depreciation claimed by the assessee of ₹ 1,36,05,426 on the capitalized value of the computer software and added back to the income of the assessee. Being aggrieved of such addition, the assessee preferred appeal before the first appellate authority.

5. The learned Commissioner (Appeals) after considering the submissions of the assessee, however, sustained the disallowance made by the Assessing Officer.

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals) and the Assessing Officer.

7. I have heard the learned Departmental Representative and perused the material on record. Though, the Assessing Officer in the assessment order has observed that the entire computer software amounting to ₹ 2,26,75,710, was purchased from M/s. Tekla, a foreign company, however, as could be seen from the impugned order of the learned Commissioner (Appeals), the computer software amounting to ₹ 2,26,75,710, were purchased from four parties, out of which, three are Indian and only M/s. Tekla, is a foreign company and the value of software purchased from M/s. Tekla, amounted to ₹ 2,11,78,942.

Therefore, the Assessing Officer was not correct with his observations that the provisions of section 194J of the Act and section 40(a)(ia) applies to the payment made to M/s. Tekla, since, the said provisions apply to payment made to residents only. The appropriate provision which will be applicable to such payment is section 195 and section 40(a)(i) of the Act. Be that as it may, though, it may be a fact that the assessee has not claimed the amount of ₹ 2,26,75,710, as an expenditure, however, it is a fact that the assessee has claimed depreciation on such amount, therefore, the disallowance under section 40(a)(i)/ 40(a)(ia) of the Act has to be restricted to that extent. That being the case, the assessee's claim that the provisions of section 40(a)(ia) of the Act is not applicable to deduction claimed under section 32 of the Act becomes irrelevant. As regards the nature of payment, whether fees for technical service / royalty? Though, the assessee has claimed that these are off-the-shelf software purchased by the assessee, hence, cannot be treated as fees for technical service / royalty, however, the assessee has not proved such fact by bringing cogent material before the Departmental Authorities. Even, at this stage also, the assessee has absented himself repeatedly which is evident from a number of hearing notices issued per registered post which have returned unserved due to unavailability of the assessee in the given address. In the aforesaid circumstances, the assessee's

claim that it has purchased off-the-shelf software remains unproved.

In view of the aforesaid, I dismiss the grounds raised by the assessee.

8. In the result, assessee's appeal is dismissed.

Order pronounced in the open Court on 19.09.2018

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 19.09.2018**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai