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

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI D. S. SUNDER SINGH, ACCOUNTANT MEMBER

ITA Nos.2897 & 2898/Bang/2019
Assessment year : 2005-06 & 2006-07

M/s. ANSYS Software (P) Ltd., **'Kabra Excelsior, 3rd Floor,** **No.6A, 7th Main, 1st Block,** **Koramangala, Bengaluru-560034.** **PAN : AADCA1658E**	Vs.	The Deputy Commissioner of Income Tax, Circle – 11(1), Presently Circle-1(1)(1), BMTC Building, 80 Feet Road, 6th Block, Koramangala, Bengaluru-560 095.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. L. Rajasekhar Reddy, CIT (DR)(ITAT), Bengaluru

Date of hearing	:	27.11.2019
Date of Pronouncement	:	29.11.2019

O R D E R

Per N. V. Vasudevan, Vice President

These are appeals by the assessee against two orders both dated 31.8.2017 of CIT(A) -1, Bengaluru, relating to Assessment Year 2005-06 & 2006-07.

2. The assessee is engaged in the business of import and sale of computer software and technical enhancements, provision of technical support and marketing support services for computer software products. The Assessee made a payment for purchase of software licenses to non-residents.

3. According to the Revenue, the assessee ought to have deducted tax at source on the aforesaid payment under section 195 of the Income Tax Act, 1961 ("the Act") Act as the payment was in the nature of right to use software and

was in the nature of royalty which was chargeable to tax in the hands of the non-resident in India. Since the assessee failed to do so, the revenue authorities were of the view that the sum of Rs.12,54,85,108/- claimed as revenue expenditure in AY 2005-06 and Rs.10,77,21,425/- claimed as revenue expenditure in AY 2006-07 should be disallowed as per the provisions of Sec.40(a)(ia) of the Act for non-deduction of tax at source. The question before the AO was as to whether the payment in question constitute royalty within the meaning of the Act as well as the Double Taxation Avoidance Agreement (DTAA) with the respective countries of which the payees were tax residents. The assessee took the stand that the payment in question is not in the nature of royalty but the said plea was rejected by the Revenue authorities by following the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Samsung Electronics Ltd., 344 ITR 495 (Kar). Accordingly, the sums claimed as deduction were disallowed u/s.40(a)(ia) of the Act.

4. Aggrieved by the aforesaid orders of the AO, assessee preferred appeals before the CIT(A). The CIT(A) confirmed the action of the AO in both the AYs.

5. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. We have heard the rival submissions. The learned Counsel for the assessee submitted that as against the decision of the Hon'ble Karnataka High Court in the case of Samsung Electronics(supra), an appeal has been filed and pending before the Hon'ble Supreme Court. According to him, though the facts of the case of the assessee are identical in the case decided by the Hon'ble Karnataka High Court in the case of Samsung Electronics (supra), since the same has not become final, he reiterated submissions made before the lower authorities. The learned DR relied on the order of the CIT(A) and pointed out that in Assessee's own case, for AY 2003-04 reported in (2012) 23

taxmann.com 344 (Kar.) Ansys Software (P) Ltd. Vs. CIT in ITA No.129/2007 judgment dated 20.3.2012, the Hon'ble Karnataka High Court held that identical payments were liable to be disallowed u/s.40(a)(ia) of the Act.

6. We have considered the rival submissions and are of the view that the case of the assessee is identical to the case decided by the Hon'ble Karnataka High Court in the case of Samsung Electronics (supra) and therefore, the decision of the Hon'ble Karnataka High Court has to be followed. The fact that an appeal against the said decision of the Hon'ble Karnataka High Court is pending before the Hon'ble Supreme Court cannot be the basis not to follow the decision of the Hon'ble Karnataka High Court. We also observe that the ground of appeal filed by the assessee are general and there is no reference to any particular provisions of DTAA based on which it is claimed that the sum in question is not taxable in India. In AY 2005-06, the Assessee has challenged the validity of initiation of reassessment proceedings on the ground that proviso to Sec.147 of the Act is applicable and the reopening is based purely on a change of opinion. These grounds were rightly rejected by the CIT(A) as there was no proceedings u/s.143(3) for AY 2005-06 and therefore the proviso to Sec.147 of the Act will not be applicable. Similarly, the reopening of assessment was made in AY 2005-06 on the basis of the decision of the Hon'ble Karnataka High Court in Assessee's own case referred to in the earlier paragraph and therefore it cannot be said that the reopening of assessment was based on change of opinion. In the circumstances, we find no merits in these appeals by the assessee. Consequently, we dismiss the same.

7. In the result, the appeals by the Assessee are dismissed.

Order pronounced in the open court on this 29th day of November, 2019.

Sd/-	Sd/-
(D. S. SUNDER SINGH)	**(N. V. VASUDEVAN)**
Accountant Member	**Vice President**

Bangalore.
Dated: 29th November, 2019.
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Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.