

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH : BANGALORE**  
**BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER**  
**AND**  
**SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.2019/Bang/2019</b>
<b>Assessment Year : 2010-11</b>

M/s Sartorius Stedim India Pvt. Ltd., 69/2, 69/3, Jakkasandra, Kunigla Road, Nelamangala Taluk, Bengaluru.	<b>Vs.</b>	The Asst. Commissioner of Income Tax, TDS Circle-3(1), Bengaluru.
<b>PAN - AABCS 7591 Q</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Shri Narendra Kumar Jain, Advocate
Respondent by	:	Shri R Premi, JCIT

Date of Hearing	:	01-12-2020
Date of Pronouncement	:	11-12-2020

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals has been filed by assessee against separate orders dated 25/07/2019, passed by Ld. CIT (A), Bangalore-9 for assessment year 2010-11 on following grounds of appeal:

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*"I. The Order of the learned Commissioner of income Tax (Appeals) - 9, Bangalore (hereinafter referred to as CIT(A)), to the extent prejudicial to the Appellant is bad in law.*

*GROUND RELATING TO SECTION 201:*

2. The learned CIT(A) has erred in confirming the action of the AO in;  
a) Not appreciating the fact that, the requirement for withholding tax on purchase of software was mandated vide Finance Act 2012 as well as Karnataka High Court decision in the case of CIT vs. Samsung Electronics Co Ltd 203 Taxman 477 (Karnataka), which were not in force when the Appellant complied with TDS provisions. The Appellant was therefore not required to deduct tax at source at the time of purchase of software license;

b) Not appreciating the fact that, the impugned payments are towards purchase of computer software licenses and it constitutes payments for the purchase of 'copyrighted article or product' which is not liable for deduction of tax at source both under the provisions of the Act (section 194J as well as section 195) and the provisions of respective tax treaty. Accordingly, provisions of section 201 are not attracted;

c) Passing order u/s 201(1) & (IA) after almost seven years appreciating that the same is barred by limitation.

3. The learned CIT(A) has erred in not appreciating that in the absence of limitation period under section 201(3) of the Act, the order should have been passed within a reasonable period of four years as laid out in various judicial precedents.

4. The learned CIT(A) has erred in concluding that the Appellant must have made application before AO u/s 195(2) of the Act without appreciating that the payments were not liable to TDS, when the payments were made.

5. The learned CIT(A) has erred in making reference to the judicial decisions which are distinguishable both on facts and provisions of law.

**GROUND RELATING TO INTEREST U/S 201(1A)**

6. The learned CIT(A) has erred in confirming the action of the learned AU in levying interest under section 201(1 A) of the Income Tax Act, 1961 without appreciating that, in the given facts and circumstances of the case the provisions of Section 201(1) are not applicable. Even otherwise the interest levied under section 201(IA) is excessive. The Appellant denies its liability to pay interest under section 201(IA).

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The Appellant prays accordingly.”

**ITA No. 2020/B/2019**

“1. The Order of the learned Commissioner of Income Tax (Appeals) - 9, Bangalore (hereinafter referred to as CIT(A)), to the extent prejudicial to the Appellant is bad in law.

*GROUND RELATED TO PENALTY U/S 271(l)(C):*

2. *The learned CIT(A) has erred in confirming the action of the AO in;*  
 a) *Levying penalty u/s 271C, without appreciating the fact that, the requirement for withholding tax on purchase of software was mandated vide Finance Act 2012 as well as Karnataka High Court decision in the case of CIT vs. Samsung Electronics Co Ltd 203 Taxman 477 (Karnataka) was not in force when the Appellant complied with TDS provisions. The Appellant was therefore not required to deduct tax at source at the time of purchase of software license;*

b) *Not appreciating the fact that, the penalty u/s 271C could not be levied in the facts and circumstances of the case, as the Appellant was not liable for deduction of tax at source under the provision of respective tax treaty.*

c) *Levying Penalty u/s 271C without appreciating the fact that the Appellant had reasonable cause for not deducting tax at source as the payment made towards purchase of computer software licenses was not liable for deduction of tax at source both under the provisions of the Act and the provision of respective tax treaty at the time of purchase of software.*

3. *The learned CIT(A) has erred in making reference to the judicial decisions which are distinguishable both on facts and provisions of law.*

*The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.*

*The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income- tax Appellate Tribunal to decide the appeal according to law.*

*The Appellant prays accordingly.*

**Brief facts of the case are as under:**

2. Assessee is engaged in the business of designing, engineering, manufacturing, supplying, trading, sub contracting, installation and commissioning and after sales services for large-scale filtration system and fermentation system. During the year under consideration assessee purchased computer software from both residents and non-resident vendor is. The computer software purchased was capitalise on the books of accounts and depreciation thereon was claimed by assessee in the return of income. Assessment order was passed under section 143 (3) on 21/03/2014 wherein a disallowance was made under section

40(a)(ia) of the Act for non-deduction of tax at source on purchase of software.

3. On an appeal before Ld.CIT(A), the addition was deleted on the ground that section 40(a)(ia) of the Act cannot be invoked when computer software purchased was capitalised.

4. Subsequently, ACIT TDS Circle issued notice under section 201(1) and 201(1A) on 15/03/2017 for non-deduction of TDS on payments was of software. Order under section 201(1) and 201(1A) of the Act was passed on 30/03/2017 for want of details, regarding date of booking and nature of said expenditure in assessee's books of account.

5. Ld.AO also initiated penalty under section 271C on 08/05/2017 for failure to comply with the provisions of TDS. The Ld.AO after taking into consideration submissions of assessee was of the opinion that assessee should have complied with the TDS provisions by virtue of decision of *Hon'ble Karnataka High Court* in case of *CIT vs Samsung Electronics Co.Ltd., & Ors.*, reported in (2011) 203 Taxman 477. The Ld.AO thus levied penalty of Rs.2,84,644/- under 271C of the Act for failure to deduct tax at source.

6. Aggrieved by order passed by Ld.CIT(A) assessee filed appeal before the Ld.CIT(A).

7. Before Ld.CIT(A) assessee contended that requirement for withholding tax on purchase of software was mandated by Finance Act, 2012. During the relevant period under consideration assessee was not required to deduct tax at source

is for purchase of software licenses. It was thus submitted that provisions of section 201(1) and (1A) could not be applicable to the year under consideration.

8. Ld.CIT(A) concluded that, assessee should have deducted TDS under section 195(2) by virtue of decision of *Hon'ble Karnataka High Court* in case of *CIT vs Samsung Electronics Co.Ltd., & Ors. (Supra)*.

9. In appeal filed against order passed by Ld. AO under section 271C, Ld.CIT(A) upheld action of Ld.AO by holding that, assessee could not establish a reasonable cause for failure to deduct tax. He relied on order of *Hon'ble kerala High Court* in case of *CIT vs Muthoot Bankers (Aryasala)*, reported in (2016) 71 *Taxmann.com* 110.

10. Aggrieved by the orders passed by Ld. CIT (A) assessee is in appeal before us now.

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11. Assessee is aggrieved by levy of interest under section 201(1A) in the present facts of the case.

12. Ld.AR submitted that requirement of withholding tax on purchase of software was incorporated in the act by way of amendment in Finance Act, 2012. He submitted that decision of *Hon'ble Karnataka High Court* in case of *CIT vs Samsung Electronics Co.Ltd., & Ors. (Supra)* was not passed when the assessee purchased the software licenses. It was submitted that the said decision was rendered in the month of October 2011 that is financial year 2011-12.

13. On the contrary Ld. CIT DR relied on orders passed by authorities below.

14. We have perused submissions advanced by both sides in light of records placed before us.

15. We note that assessee purchased software from non-residents and that no TDS was deducted TDS from the payments made towards the said purchases. Ld.AO had treated the assessee as assessee in default and initiated proceedings under section 201(1). Ld.AO held that the payment made for purchase of license to use a software was “royalty” income in the hands of non-resident accordingly, assessee should have deducted tax at source under section 195 from the payments made to the non-residents towards consideration for purchase of license to use software. In the instant case, assessee was under bonafide belief that it was not required to deduct tax at source from the payments made for purchase of software, which was supported by following decisions of coordinate bench of this *Tribunal* at the relevant time:

(a) Teekays Interior Solutions P Ltd (ITA No.400/Bang/2017)

(b) Infineon Technologies India P Ltd (IT(TP)A No.405/Bang/2015)

(c) GE Medical Systems India P Ltd (ITA 1368/Bang/2019)

(d) WS Atkins India P Ltd (2015)(41 ITR(T) 397)(Bang. Trib)

Subsequently, *Hon’ble Karnataka High Court in CIT vs. Samsung Electronics Co. Ltd(supra)* held that the payments made for purchase of software was in the nature of royalty and the said

decision came to be pronounced on 15.10.2011. Accordingly, the present facts of case assessee could not be treated as an assessee in default in respect of payments made for purchase of licensed software prior to 15.10.2011, being the date of pronouncement of the decision in the case of *Samsung Electronics Co. Ltd (supra)*. Accordingly, demand raised in the hands of the assessee u/s 201(1) and 201(1A) cannot not be sustained and the demands raised in respect of payments made prior to 15.10.2011 in assessment year 2012-13 deserves to be quashed.

16. Above view is fortified by view taken by coordinate bench of this *Tribunal* by order dated 05/10/2020, in case of *Acer India Pvt.Ltd.Vs DCIT in IT(IT)No.107-114 of 2018* for assessment years 2009-10 to 2012-13, this *Tribunal* held as under:

*“7. ....In the instant case also, the assessee was under bonafide belief that there was no required to deduct tax at source from the payments made for purchase of software, since there were certain decisions holding so. However, the jurisdictional High Court held that the payments made for purchase of software is in the nature of royalty and the said IT(IT)A Nos.107 to 114/Bang/2018 M/s. Acer India Private Limited, Bangalore decision came to be pronounced on 15.10.2011. Accordingly, following the principles laid down by the co-ordinate benches in the above cited cases, we hold that the assessee cannot be treated as an assessee in default in respect of payments made for purchase of licensed software prior to 15.10.2011, being the date of pronouncement of the decision in the case of Samsung Electronics Co. Ltd (supra). Accordingly, the demand raised in the hands of the assessee u/s 201(1) and 201(1A) for assessment years 2009-10 to 2011-12 could not be sustained and the demands raised in respect of payments made prior to 15.10.2011 in assessment year 2012-13 could also not be sustained.*

*8. Accordingly, we set aside the orders passed by Ld CIT(A) for assessment years 2009-10 to 2011-12 and direct the AO to delete the demands raised u/s 201(1) and 201(1A) of the Act. We also modify the order passed by Ld CIT(A) for assessment year 2012-13 and direct the AO to delete the demands raised in respect of payments made prior to 15.10.2011 in that year.”*

17. Respectfully following the view taken by the *Tribunal* in above cases, we delete penalty levied under section 201 (1) and (1A) of the Act.

**Accordingly grounds raised by assessee in this appeal stands allowed.**

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18. This appeal is filed by assessee against penalty under section 271C of the Act for non-deduction of TDS.

In above paragraph, we have expressed our view that, in the present facts of the case, assessee cannot be held to be in default for non-deduction of TDS. For sake of convenience we refer to and rely upon the observations in para 14-17 hereinabove.

Under such circumstances the penalty levied under section 271C deserves to be quashed and set-aside.

**Accordingly, grounds raised by assessee in both the appeals stands allowed.**

**In the result appeal is filed by assessee stands allowed.**

Order pronounced in the open court on 11<sup>th</sup> Dec, 2020

Sd/-  
(B. R. BASKARAN)  
Accountant Member  
Bangalore,  
Dated, the 11<sup>th</sup> Dec, 2020.  
/Vms/

Sd/-  
(BEENA PILLAI)  
Judicial Member

**Copy to:**

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

By order

Assistant Registrar, ITAT, Bangalore

		<b>Date</b>	<b>Initial</b>	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-12-2020		Sr.PS
3.	Draft proposed & placed before the second member	-12-2020		JM/AM
4.	Draft discussed approved by Second Member.	-12-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-12-2020		Sr.PS/PS
6.	Kept for pronouncement on	-12-2020		Sr.PS
7.	Date of uploading the order on Website	-12-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-12-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS