

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

IT(IT)A No.369/Bang/2016 : Asst.Year 2013-2014

IT(IT)A No.370/Bang/2016 : Asst.Year 2013-2014

M/s.IBM India Private Limited No.12, Subramanya Arcade Bannerghatta Main Road Bangalore – 560 029. PAN : AAACI4403L.	v.	The Dy.Commissioner of Income-tax, International Taxation, Circle (1) Bangalore.
(Appellant)		(Respondent)

ORDER

Per George George K, JM

This application u/s 158A(5) of the Income-tax Act seeks to amend the order of the ITAT passed in IT(IT)A No.369/Bang/2016 and IT(IT)A No.370/Bang/2016. The above appeals were disposed of by the ITAT vide its order dated 16.06.2017.

2. During the course of hearing of the above appeals on 13.06.2017, the learned AR submitted that the grounds taken in the appeals were covered against the assessee by the judgment of the Hon'ble Karnataka High Court in assessee's own case in ITA No.280 of 2005. It was further submitted by the learned AR that against the said judgment of the Hon'ble Karnataka High Court, the assessee has filed SLP before the Hon'ble Apex Court vide SLP No.396 of 2012 / Civil Appeal No.4419 of 2012, which was pending adjudication. The assessee had accordingly filed a declaration in Form No.8 u/s 158A(1) of the I.T.Act (for avoiding repetitive appeals) read with Rule 16 of the Income Tax Rules, 1962, for the year under consideration, submitting that identical question of law

is pending before the Hon'ble Supreme Court in SLP and Civil Appeal mentioned above. It was further stated that if ITAT were to apply the final outcome of the SLP to the impugned years, the assessee shall not raise the same question of law in further appeal. A copy of the declaration dated 22.03.2017 in Form No.8 is placed on record.

3. The ITAT dismissed the above appeals filed by the assessee following the judgment of the Hon'ble Karnataka High Court in assessee's own case subject to the outcome of the SLP pending before the Hon'ble Supreme Court.

4. By this application u/s 158A(5) of the I.T.Act, it is submitted that the Hon'ble Supreme Court vide its judgment dated 2nd March, 2021 in the case of Engineering Analysis Centre of Excellence Private Limited reported in 432 ITR 471 had overruled the judgment of the Hon'ble Karnataka High Court and decided the issue in favour of the assessee. Therefore, it was submitted that as per section 158A(5) of the I.T.Act, the ITAT is required to amend the order passed by it in IT(IT)A Nos.369/Bang/2016 & 370/Bang/2016 in conformity with the judgment passed by the Hon'ble Apex Court.

5. In conformity with the judgment of the Hon'ble Apex Court, we amend the order of ITAT [in IT(IT)A Nos. 369/Bang/2016 & 370/Bang/2016] and hold that the payment made by the assessee for purchase of software is not coming within the term "royalty" as per the provisions of section 9(1)(vi) and the DTAA. Accordingly, we hold that there is no liability for the assessee to deduct tax at source u/s 195

of the I.T.Act in respect of payment made for purchase of software. Accordingly, the order of the tax authority is set aside.

6. In the result, the appeals filed by the assessee are allowed.

Order pronounced on this 05th day of August, 2021.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 05th August, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-12, Bengaluru
4. The CIT (International Taxation), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore