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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA Nos.731 to 734/Bang/2020
Assessment years : 2007-08 to 2010-11

Ansys Software [P] Ltd., Prestige Tech Park, 2nd Floor, Mercury Block (2B), Kadubeesanahalli Village, Varthur Hobli, Outer Ring Road, Bangalore East Taluk, Bengaluru – 560 103. **PAN: AADCA 1658E**	Vs.	The Income Tax Officer, Ward 1(1), International Taxation, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	S/Shri S.V. Ravishankar & Narendra Sharma, Advocates
Respondent by	:	Shri Kannan Narayanan, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	12.08.2021
Date of Pronouncement	:	23.08.2021

O R D E R

Per Chandra Poojari, Accountant Member

These appeals by the assessee are directed against the separate orders of CIT(Appeals)-12, Bengaluru, all dated 27.03.2020 for the assessment year 2007-08 to 2010-11. They were heard together and are disposed of by this common order for the sake of brevity.

2. In all these appeals the assessee has raised common grounds of appeal as follows:-

"1. The order passed by the learned Assessing Officer under Section 201 [1A] of the Act dated 06/04/2015 and confirmed by the learned Commissioner of Income tax [Appeals] vide appellate order dated 27/03/2020, in so far as it is against the Appellant is against law, equity, facts and circumstances of the case.

2. The learned Commissioner of Income Tax [Appeals] erred in holding the Appellant as an assessee in default under Section 201[1] of the Act amounting to Rs. 2,05,13,007/-and liable to interest under Section 201[1A] of the Act amounting to Rs. 1,09,75,439/-, on the facts and circumstances of the case.

3. The learned Commissioner of Income Tax [Appeals] failed to appreciate that the software imported by the Appellant was a shrink wrap product and the same not being customized and hence no tax amount be deducted as per the provisions of Section 195 of the Act, on the facts and circumstances of the case.

4. The learned authorities below are not justified in law and on facts in not appreciating the fact that since the provisions of section 195 of the Act itself is not applicable then the appellant cannot be held as an assessee in default as per the provisions of section 201 [1] of the Act, on the facts and circumstances of the case.

5. The learned Commissioner of Income Tax [Appeals] failed to appreciate that consent cannot confer jurisdiction, the tax deducted and credited to the account of the central government is out of abundant precaution and the same cannot be considered as an acquiesce that the provisions of Section 195 of the Act are applicable on the payments made by the Appellant to M/s. Ansys Inc. USA, on the facts and circumstances of the case.

6. The learned authorities below failed to appreciate that when the appellant cannot be held as an assessee in default consequently the interest under section 201 [1A] of the Act is also not applicable and leviable under the facts and circumstances of the case.

7. Without Prejudice, the learned lower authorities failed to appreciate that the Appellant was under bonafide belief that there

was no requirement to deduct at source from the payments made for the purchase of software and accordingly, the Appellant cannot be treated as an assessee in default and consequently, the interest u/s. 201[1A] of the Act is also not applicable, on the facts and circumstances of the case.

8. The Appellant craves leave to add, alter, substitute and delete any or all the grounds of appeal urged above.

9. For the above and other grounds to be urged during the hearing of the appeal, the Appellant prays that the appeal be allowed in the interest of equity and justice."

3. In these cases, the lower authorities have observed that the assessee company has made payment to foreign company, M/s. Ansys Inc. USA in respect of which it withheld tax and made deposit into the Govt. account with long delay, hence interest u/s. 201(1A) was charges. One of the contentions of the ld. AR is that assessee is not liable to deduct tax at source in view of the order of the Tribunal in these assessment years and he drew our attention to the order of the Tribunal in ITA Nos.2036 to 2039/Bang/2019 dated 31.3.2021 wherein it was held as follows:-

"**2.5**. Admittedly the issue involved in these appeals has been set at rest by the decision of Hon'ble Supreme Court in a recent case of Engineering Analysis Centre of Excellence Pvt.Ltd. vs CIT reported in 2021 SCC online SC 159. Hon'ble Supreme Court while considering the issue of royalty on sale of software, have also considered the decision of Hon'ble Karnataka High Court in case of CIT vs Samsung Electronics Co.Ltd.(supra) and various other decisions. Hon'ble Supreme Court held as under:

"**CONCLUSION**

168. Given the definition of royalties contained in Article 12 of the DTAAs mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the Income Tax Act to deduct tax at source, as the distribution agreements/ EULAs in the facts of these cases do not create any interest or right in such distributors/end-users. which

> would amount to the use of or right to use any copyright. The provisions contained in the Income Tax Act (section 9(1)00, along 11711/1 explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessees, have no application in the facts of these cases.
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> 169. Our answer to the question posed before us, is that the amounts paid by resident Indian end-users/ distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Income Tax Act were not liable to deduct any TDS under section 195 of the Income Tax Act. The answer to this question will apply to all four categories of cases enumerated by us in paragraph 4 of this judgment.
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> 170. The appeals from the impugned judgments of the High Court of Karnataka are allowed, and the aforesaid judgments are set aside. The ruling of the AAR in Citrix Systems OAR) (supra) is set aside. The appeals from the impugned judgments of the High Court of Delhi are dismissed."

2.6. It has been submitted that present assessee has been one of the petitioner in the group case, disposed of by Hon'ble Supreme Court by order dated 02/03/2021. The Ld.AR has filed the case status from the website of Hon'ble Supreme Court which has been placed on record in support of this submission.

Ld.AR also submitted that subsequently on 18/03/2021 Hon'ble Karnataka High Court in assessee's own case for assessment rear 2006-07 in ITA No.453 of 2019 considered the issue in favour of assessee by following the ratio of Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence Pvt.Ltd. vs CIT (supra).

Respectfully following the ration laid down by Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence Put. Ltd. vs CIT (supra), and Hon’ble Karnataka High Court in

> assessee's own case for assessment year 2006-07 in ITA No.453 of 2019 by order dated 18/03/2021, we direct the disallowance to be deleted.
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> As the facts are same is all the appeals, the above view is applied to assessment years 2008-10 to 2010-11 mutatis mutandis.
>
> Accordingly, grounds raised by assessee stands allowed."

4. On the other hand, the ld. DR submitted that now the question before the Tribunal is very limited, whether the assessee deducted tax on the amount payable to foreign company and whether there was a delay in remitting the same to the Government account. Since there was a delay in remitting the TDS which was duly deducted from the parent company and the assessee retained it without depositing into the Government account, the assessee is liable to pay interest u/s. 201(1) & 201(1A) of the Act.

5. We have heard both the parties and perused the material on record. The main contention of the assessee is that it is not liable to deduct tax in view of the judgment of Hon'ble High Court of Karnataka and the Tribunal in assessee's own case cited *supra.* However, in our opinion, the assessee has not proved that it has not deducted any tax towards payment to foreign company. Once it has deducted and withheld the tax, the same has to be deposited to the Government account and it cannot be retained. This is so because the foreign company would have claimed benefit of this tax or refund of this tax which was deducted by the present assessee. In this event, the Government's revenue suffers loss which cannot be permitted. In view of this, we set aside the issue to the file of Assessing Officer to examine whether the TDS was actually deducted by the assessee and credit given to the foreign company. If credit is given to the foreign company, the assessee is liable to pay interest on the deduction and withholding of tax which is remitted with delay to the Government

exchequer. Accordingly, the issue in dispute is remitted to the Assessing Officer to decide afresh in the light of above observations.

6. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 23rd day of August, 2021.

Sd/-	Sd/-
(N V VASUDEVAN)	(CHANDRA POOJARI)
VICE PRESIDENT	ACCOUNTANT MEMBER

Bangalore,
Dated, the 23rd August, 2021.

/*Desai S Murthy /*

Copy to:
1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.