

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos. 2060 & 2061/Bang/2019
Assessment Years : 2016-17 & 2017-18

M/s. Stonehill Education Foundation, No. 150, 1 st Floor, Embassy point, Infantry Road, Bangalore – 560 001. PAN: AALCS9631D	Vs.	The Deputy Commissioner of Income-tax (International Taxation), Circle – 2 (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ajay Roti, CA
Revenue by	:	Shri Priyadarshi Mishra, Addl. CIT (DR)

Date of Hearing	:	31-03-2022
Date of Pronouncement	:	01-06-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed against common order dated 25.07.2019 passed by Ld.CIT(A)-12, Bangalore for A.Ys. 2016-17 & 2017-18.

2. Brief facts of the case are as under:

2.1 The assessee company M/s. Stonehill Education Foundation is an IB world school and offers all the three IB Programmes – the PYP, MYP and DP. During the years under consideration the assessee company has made certain payments to International Baccalaureate for use of registered trade mark and also for the use of copyright,

literary work without deducting tax at source on such payments as per provisions of section 195.

2.2 The Ld.AO held the assessee to be “assessee in default” u/s. 201(1) r.w.s. 195 of the Act. The Ld.AO also levied interest u/s. 201(1A).

2.3 The Ld.AO noted that following payments were made by the assessee to the **US entity** during the years under consideration.

AY 2016-17

S.No.	Recipient's name	Foreign Currency	Amount paid	Paid date	Nature of Transactions
1.	International Baccalaureate Organization – USA	USD 10,692	4,96,278	November 30,2015	IB Grade 12 Examination Fees

AY 2017-18

S.No.	Recipient's name	Foreign Currency	Amount paid	Paid date	Nature of Transactions
1.	International Baccalaureate Organization – USA	USD 2,088	1,38,503	June 13,2016	Submission for Unit Planners – International Baccalaureate Americans Online Registration

2.4 He also noted that payments were made by assessee to **Singapore branch of Swiss entity**, the details of which are as under:

AY 2016-17

S.No.	Recipient's name	Foreign Currency	Amount paid	Paid date	Nature of Transactions
1.	International Baccalaureate Organization – (SG BR)	SGD 31,182	14,75,186	September 15,2015	Annual Membership charges paid to accreditation body towards Middle Year Programs (MYP),

					Primary year (PYP) & Diploma Programs (DP) Annual Programme Fee for the period 01.09.2015 to 31.08.2016
2.	International Baccalaureate Organization (SG BR)	SGD 2,400	1,14,272	January 28,2016	IB Asia Pacific annual conference registration fee

AY 2017-18

S.No.	Recipient's name	Foreign Currency	Amount paid	Paid date	Nature of Transactions
1.	International Baccalaureate Organization – (SG BR)	SGD 18,390	8,59,796	May 18,2016	Registration fee for IBO workshops for Teachers
2.	International Baccalaureate Organization (SG BR)	SGD 32,587	16,21,608	August 25,2016	Primary Year Program ('PYP'), Middle Year Programs (MYP) & Diploma Programs (DP) Annual School Fee for membership and accreditation for Academic Year 2016-17
3.	International Baccalaureate Organization (SG BR)	SGD 970	48,331	September 07,2016	Workshop registration charges for MYP Languages workshop for Stonehill Staff

4.	International Baccalaureate Organization (SG BR)	SGD 3,800	1,86,274	November 19,2016	Workshop & Conference registration fee for PYP & MYP Stonehill Staff
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2.5 Before the Ld.AO, assessee claimed that the payments made by assessee to the US as well as Singapore branch is not in the nature of 'royalty' or 'FTS', and therefore the DTAA with India and DTAA with USA and Switzerland, would be applicable in the present facts.

3. The Ld.AR at the outset submitted that the Ld.CIT(A) relied on the principles laid down by *Hon'ble Karnataka High Court* in case of *CIT vs. Samsung Electronics Co. Ltd.* reported in (2011) 203 taxman 477 in support that, the payments made by the assessee is in the nature of royalty. The Ld.CIT(A) also relied on the decision of *Hon'ble Karnataka High Court* in case of *CIT vs. Wipro Ltd.*, reported in (2011) 16 taxmann.com 275 to hold that the payment made by assessee to the US entity and swiss entity is towards license to use the database maintained by the non-resident entity, and therefore, is to be regarded as 'royalty'.

Before us the Ld.AR placed reliance on the recent decision of *Hon'ble Supreme Court* in case of *Engineering Analysis Centre of Excellence Pvt.Ltd.*, reported in (2021) 125 taxmann.com 42 in support of the contention that the transactions has to be looked into based on the DTAA with USA and Singapore.

4. We note that *Hon'ble Supreme Court*, while considering the issue of sale of software to be in the nature of 'royalty' dwelled on various aspects of Copyrights Act, wherein, difference has been drawn between "right to use" and "ownership" of intellectual properties. We also note that, the authorities below have not considered the agreement entered into by the assessee with these entities for which

the payments were made, by the assessee in lieu of the services rendered. The services rendered by the non-residents are to be analysed based on the DTAA with respective countries.

5. Taking a considered view, we deem it appropriate to remit this issue back to the Ld.AO, to verify all the agreements and the terms and conditions agreed upon by the assessee. The Ld.AO is directed to analyse the terms and conditions under the agreement in the light of various principles laid down by *Hon'ble Supreme Court* in case of *Engineering Analysis Centre of Excellence Pvt.Ltd. (supra)*. He may call upon all relevant information in order to come to a conclusion, in accordance with law.

6. Needless to say that proper opportunity of being heard is to be granted to assessee.

Accordingly, the issue of taxability of the payments made by assessee has to be decided prior to coming to the conclusion, as to whether the assessee could be termed to be assessee in default. We therefore remit the issues to the Ld.AO for a *denovo* verification in accordance with law.

In the result, appeals filed by the assessee for both the years under consideration partly stands allowed for statistical purposes.

Order pronounced in open court on 01st June, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 1st June, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore