

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No. 1293/DEL/2020 [A.Y. 2016-17]

Igroup Infotech India Pvt Ltd
119, Vinabapuri
New Delhi

Vs. The A.C.I.T., Circle
International Taxation (12(1))
New Delhi

PAN - AABCI 7221 B

(Applicant)

(Respondent)

Assessee By : Shri Sidhant Arora, CA
Shri Rajesh Arora, CA

Department By : Shri Vizay B. Vasanta, CIT-DR

Date of Hearing : 15.06.2023
Date of Pronouncement : 20.06.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 4, Delhi dated 18.02.2020 pertaining to Assessment Year
2016-17.

2. The grievance of the assessee read as under:

“1. The Ld. CIT(A) has erred in law and facts in disregarding the explanations and submissions made in regard to addition made by the Ld. AO by treating the payments made for purchases of Rs.10,51,32,369 for copyrighted articles as royalty and confirming the addition made by Ld. AO which is highly arbitrary, unjustified, uncalled for and bad in law.

2. The Ld. CIT(A) has erred in law and facts of the case in confirming the order of the Assessing Officer treating the payment made by the assessee for off the shelf copyrighted product as royalty rejecting the detailed submission of the assessee without specifying the reasons for disagreement to the decision of the jurisdictional high courts which is arbitrary, bad in late and against the principal of natural justice.

3. The Ld. CIT(A) has also erred in law and facts in confirming the action of AO in disallowing the payment made to M/s Innovative Education Services PTE Ltd, Singapore under section 40(a)(1) of the Act which is arbitrary, unjustified and bad in late.

4. The appellant craves the right to add, amend or modify any ground of appeal.”

3. Briefly stated, the said quarrel relates to the treatment of products, namely, turnitin and Ithenticate which are software solutions and not journals as mentioned in Form No. 15CA filed and claimed by the assessee.

4. The Assessing Officer was of the opinion that as per the provisions of section 9(1)(vi) of the Income-tax Act, 1961 [the Act, for short], consideration for software constitutes 'Royalty' under the Act and such royalty is taxable in India and hence the company was required to deduct TDS on payments made to Innovative Education Services PTE Ltd, Singapore. According to the Assessing Officer, provisions of India-Singapore DTAA will govern the taxability of such payments.

5. The assessee was asked to show cause as to why expenses incurred by the assessee company for purchase of turnitin and Ithenticate should not be disallowed u/s 40(a)(i) of the Act as due TDS was not deducted on such remittances even though the amount was taxable in India.

6. The assessee filed detailed reply which did not find any favour with the Assessing Officer who, after referring to various decisions, concluded as under:

154 If we read the definition of term royalty as provided in DTAA with Singapore it can be seen that the phrase used in "any such right, property or information The Explanation 4 provides that the transfer of all or any rights in respect of any right property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a license) irrespective of the medium through which such right is transferred. This clearly provides that "right for use or right to use a computer software" is covered under the definition of royalty under India Singapore DTAT as well in view the above discussion, the TDS had to be deducted on the expense payment in the nature of Royalty as per Article 12 of India Singapore DTAA

1. Total amount of expense on account of purchase of the above 2 softwares comes to Rs. 10,51,32,369/- during the relevant Assessment year.

1. As per Section 40 (a)(i) of the Act, if the assessee has paid sum chargeable under the Act to Non-resident (M's Innovative Education Services PTE Ltd, Singapore), on which tax is deductible at source under Chapter XVII-B of the Act and such tax has not been deducted, then such sums would not allowable as deduction while computing the income of the assessee Accordingly, expenditure of Rs 10,51,32,369/- which is income in the hands of M/s Innovative Education Services PTE Ltd, Singapore and which is subject to TDS under chapter XVII-B of IT Act, 1961, is being disallowed as per Section 40(a)(i) of the Act because due TDS has not been made by

the assessee on such payments. In fact the assessee had tried to mislead by mentioning these payments as subscription for journals' in Form 15CA filed by it knowing fully well that these payments were for software solutions. Accordingly, an addition of Rs. 10,51,32,369/-is being made to the income of the assessee.”

7. The assessee carried the matter before the ld. CIT(A) but without any success.

8. Before us, the ld. counsel for the assessee straightaway relied upon the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Pvt Ltd 432 ITR 471 and vehemently stated that the impugned quarrel has now been decided by the Hon'ble Supreme Court in favour of the assessee and against the revenue.

9. The ld. DR fairly conceded to this.

10. We have carefully considered the orders of the authorities below. It is a fact that the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence [supra] has settled the dispute in favour of the assessee and against the Revenue. The Hon'ble Supreme

Court has grouped four categories while deciding the appeal as under:

(i) The first category deals with cases in which computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer.³

(ii) The second category of cases deals with resident Indian companies that act as distributors or resellers, by purchasing computer software from foreign, non-resident suppliers or manufacturers and then reselling the same to resident Indian end-users.⁴

(iii) The third category concerns cases wherein the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users.⁵

(iv) The fourth category includes cases wherein computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.”

11. The present appellant comes under Category III.

12. The DTAA considered by the Hon'ble Supreme Court at Para 40 as the DTAA between India and Republic of Singapore at Item No. 14. Category III which belongs to the assessee has been considered by the Hon'ble Apex Court at Para 44 of its

judgment and the Hon'ble Supreme Court has arrived at a conclusion as under:

“168. Given the definition of royalties contained in Article 12 of the DTAAAs 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)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assesseees, have no application in the facts of these cases.

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”.

Respectfully following the decision of the Hon'ble Supreme Court [supra], we direct the Assessing Officer to delete the impugned addition.

13. In the result, the appeal of the assessee in ITA No. 1293/DEL/2020 is allowed.

The order is pronounced in the open court on 20.06.2023.

Sd/-

**[SAKTIJIT DEY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 20th JUNE, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
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