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

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1905/Del/2023
Assessment Year: 2020-21
.

Lionbridge Technologies LLC (formerly known as Lionbridge Technologies, Inc.), 890, Winter Street – Suite 225, Waltham, MA – 02451, USA	**Vs.**	ACIT, Circle International Tax - 2(2)(1), New Delhi
PAN :AAECL2198K		
(Appellant)		**(Respondent)**

Assessee by	Sh. Ajit Jain, CA Sh. Kunal Shah, CA
Department by	Sh. Vizay B. Vasanta, CIT(DR)

Date of hearing	20.09.2023
Date of pronouncement	20.09.2023

ORDER

Captioned appeal has been filed by the assessee challenging the final assessment order dated 28.04.2023 passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (in short 'the Act'), pertaining to assessment year 2020-21, in pursuance to directions of learned Dispute Resolution Panel (DRP).

2. The only dispute arising in the present appeal relates to addition of reimbursement of expenses from the India subsidiaries as royalty.

3. Briefly the facts are, the assessee is a non-resident corporate entity incorporated in United States of America ('USA') and a tax resident of USA. As stated by the Assessing Officer, the assessee is engaged in providing translation and localization solutions worldwide. It also provides content services and testing services to its customers globally. The assessee has also a subsidiary in India with whom the assessee has entered into an agreement, in terms of which, the Indian subsidiary provides back office support services to the assessee, for which, Indian subsidiary is remunerated at cost plus 15% markup. Apart from the agreement with Indian subsidiary, the assessee has entered into agreements with third party Software Companies, such as, Microsoft, Adobe etc. for use of programs/softwares, such as, Microsoft Windows, Outlook, MS Office etc. Software licences procured from third party software companies are sub-licensed by the assessee to its Associated Enterprises, including the Indian subsidiary for internal use in its business. Since, the assessee procures the software licences from third party software manufacturers by

paying cost, the cost so paid are cross charged to the Associated Enterprises on cost-to-cost basis without any markup.

4. In the assessment year under dispute, the assessee received an amount of Rs.5,80,59,230/- from Indian subsidiary towards reimbursement of cost of software licenses. Claiming that cost-to-cost reimbursement of software license expenses is not taxable in India under the provisions of India – USA Double Taxation Avoidance Agreement ('DTAA'), the assessee did not offer it to tax. In course of assessment proceeding, the Assessing Officer called upon the assessee to furnish the details of the software licences provided to the Indian subsidiary and the other transactions with the Indian subsidiary. In response to the query raised, the assessee furnished certain details before the Assessing Officer and reiterated its stand that cost-to-cost reimbursement of software license expenses is not taxable in India. After verifying the details furnished by the assessee and the submissions made, the Assessing Officer, ultimately, concluded that assessee's claim that the receipts are cost-to-cost reimbursement of software licence expenses is unacceptable, since, as per the agreement, the assessee has received markup of 16.87%. Accordingly, he treated the receipts on account of reimbursement of cost of software

licences as royalty income, both under the domestic law as well as treaty provisions and brought it to tax, while framing the draft assessment order.

5. Against the aforesaid decision of the Assessing Officer, the assessee raised objections before learned DRP. However, learned DRP did not interfere with the decision of the Assessing Officer. Accordingly, the assessment was finalized.

6. Before us, learned counsel appearing for the assessee reiterated the stand taken before the departmental authorities. He submitted that the assessee had purchased shrink-wrapped softwares from third party vendors and provided them to subsidiaries for internal use in its business. He submitted, the cost of software paid to the third party vendors were subsequently cross-charged to the subsidiaries based on various allocation keys, such as, number of use, the nature of software, number of employees using the software etc. In this context, he drew our attention to the copies of invoices raised by third party vendors, which according to the learned counsel, contains all the details relating to nature and character of software, their use in the country, wherein, the software is to be used etc. Thus, he submitted, the allegation of the Assessing Officer that the

assessee did not furnish the necessary details, is contrary to the facts and materials on record. He submitted, though, in reality the receipts from the subsidiaries towards software licences is on purely cost-to-cost basis, however, the Assessing Officer by mixing up facts relating to back office support service agreement with the Indian subsidiaries, has erroneously concluded that the assessee has charged a markup of 16.87 %, which is contrary to the materials on record.

7. Without prejudice, he submitted that what the assessee has given to the subsidiaries, including the Indian entity is shrink-wrapped software licences purchased from third party vendors, wherein, the assessee has no intellectual property rights ('IPR'). He submitted, the third party vendors are the actual owner of the copyright in the software and that has not been transferred to the assessee. He submitted, when the assessee itself is not having ownership over the copyright in the software, there is no question of assessee transferring use or right to use of copyright to its subsidiaries. Thus, he submitted, the cost received by the assessee, being towards sale of copyrighted articles, is not taxable as royalty income under the treaty provisions. In support of his contention, learned counsel relied upon the decision of the

Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence Pvt. Ltd. Vs. CIT (432 ITR 471) .

8. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned DRP.

9. We have considered rival submissions and perused the materials on record. Undisputedly, the assessee has purchased certain software licences from third party vendors, such as, Microsoft, Adobe etc. and distributed them amongst group entities across the globe for internal use in its business. The cost paid to the third party vendors towards acquisition of the software have been cross-charged to the group entities based on certain allocation keys. This is evident from the copies of invoices issued by the third party vendors placed in the paper-book. Therefore, the allegation of the Assessing Officer that necessary details relating to the cost of software etc. were not furnished, appears to be unfounded. At this stage, it is necessary to observe that the assessee has entered into a separate agreement with Indian subsidiary, in terms of which, the Indian subsidiary provides certain back office support services to the assessee and gets remunerated at cost plus 15% mark-up. A reading of the draft assessment order certainly gives an impression that the Assessing

Officer has mixed up both the transactions and under a misconceived notation that the assessee has received markup over the cost of software, has proceeded to treat the receipts as royalty. However, neither the Departmental Authorities have brought on record any material to establish that the reimbursement of cost to the assessee is inclusive of markup, nor at the time of hearing before us, learned Departmental Representative could place any evidence on record to demonstrate that the reimbursement of cost includes element of markup. Therefore, in our view, the cost-to-cost reimbursement of price paid towards software cannot be treated as royalty.

9. Even on merits also, the assessee has a strong case. As could be seen from the facts on record, the assessee has brought shrink-wrapped softwares, such as, Microsoft Windows, MS Officer etc. from third party vendors and distributed amongst other group entities located in various countries. Thus, the aforesaid fact itself demonstrates that the third party vendors are the real owners of the software having ownership over the IPR. The assessee has simply bought the softwares, which are copyrighted articles without having any right over the copyright. Therefore, when the assessee itself does not have any ownership

over the copyright engrained in the software, there is no question of assessee transferring such right or right to use the copyright to the group entity. Thus, what the assessee has sold to the group entities are copyrighted articles and not right to use copyright, Therefore, assessee's case is clearly covered by the ratio laid down by the Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence Pvt. Ltd. (supra).

11. In view of the aforesaid, we hold that the amount received by the assessee towards reimbursement of cost of software is not taxable as royalty income under the treaty provisions. Accordingly, we direct the Assessing Officer to delete the addition.

12. In the result, the appeal is allowed.

Order pronounced in the open court on 20th September, 2023

Sd/-	***Sd/-***
(DR. B.R.R. KUMAR)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Dated: 20th September, 2023.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi