

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 397/Del/2023, A.Y. 2019-20

Deputy Commissioner of income Tax, Circle 2(1)(1) (international Taxation), New Delhi	Vs.	M/s. inflow Technologies (Singapore) Pte. Ltd. 06/-46 1003, Bukit Merah Central, Singapore, Foreign PAN : AACCI2888K
Appellant		Respondent

Assessee by	Ms. Richa Bakiwala, CA
Revenue by	Shri Vizay b. Vasanta, CIT-DR

Date of Hearing	07/02/2024
Date of Pronouncement	09/02/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-43, New Delhi ["Ld. CIT(A)", for short], dated 26/12/2022 for the Assessment Year 2019-20. Grounds of the Revenue are as under :-

"1. Whether on the facts and circumstances of the case, the ld. CIT(A) erred in holding that re-sale of hardware and software products in India by M/s. Inflow Technologies (Singapore) Pte. Ltd. Is not taxable in India as 'Royalty' u/s. 9(1)(vi) of the Income Tax Act, 1961 r/w Article 12 of India-Singapore DTAA.

2. *Whether on the facts and circumstances of the case, the ld. CIT(A) erred in holding that taxability of income from sale of software to independent distributors is not taxable as royalty u/s 9(1)(vi) of the I.T.Act, 1961 in absence of PE in India.*

3. *The appellant craves to add, amend, modify or alter any grounds of appeal at any time or before the hearing of appeal.”*

2. Brief facts of the case as mentioned in the order of Ld. CIT(A) are as under :-

“ The appellant is a company incorporated in the Republic of Singapore and is engaged in the business of distribution of information management and unified communication products relating to Information Security, Storage Management, networking, Enterprise Mobility and Services.

2. *The appellant is a non-exclusive authorized distributor of these products in the specified territories. Its vendors include Cisco, McAfee, D-Link, Net app, Aruba, Zebra etc. These products are shrink-wrap products without any customization. The Assessee distribute these products to various customers in its domestic market i.e. Singapore as well exports it to other countries including India.*

3. *The Assessee filed its return of income for the Assessment Year 2017-18 on 31-Dec-2019 under section 139(4) declaring nil income and claiming a refund of Rs. 35,54,570/- on account of TDS deducted.*

4. *Notice under section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 31-Mar-2021 was issued to the Appellant intimating that the return filed has been selected for scrutiny.*

5. Further, notices uis 142(1) of the Act along with detailed questionnaire was issued electronically time to time. In response to various notices issued through the assessment module of ITBA compliances/submissions were made by the appellant company electronically.

6. A Show Cause notice was issued on 19-Sept-2021 questioning why the assessment proceedings for the year under consideration shall not be completed on the same lines as last Assessment year (AY 2017-18).

7. In response to the said Show Cause Notice, the Appellant made a detailed submission to the Assessing Officer providing all the information requested in connection with the Assessment.

8. Subsequently a draft Assessment Order was passed under section 144C of the Act. treating the revenue received of Rs 223,43,40,992/- (USD3,21,11,828) as per the submission of the assessee is adjudged as Income from Royalty and taxed accordingly as per Article 12 of India Singapore DTAA and Income Tax Act 1961.

9. Although aggrieved with the draft Assessment Order, the Appellant requested the ACIT (International Taxation), Circle 2(1)(1), Delhi ACIT (International Taxation) to pass the final order, preferring to file an appeal before your Ld. Authority.

10. Consequently, the final Assessment order was passed on 27th November, 2021.”

3. Aggrieved by the assessment order dated 27/11/2021, the Assessee preferred an appeal before the Ld. CIT(A). By relying on the Judgment of the Hon'ble Supreme Court the case of Engineering Analysis Centre of Excellence (P.) ltd. Vs. CIT [2021] 125 taxmann.com

42, deleted the addition. Aggrieved by the order of the ld. CIT(A), the department of Revenue preferred the present appeal.

4. The Ld. DR submitted that order impugned of the ld. CIT(A) is erroneous and further relying on the findings of the A.O. sought for reversal of the order of the Ld. CIT(A).

5. Per contra, ld. AR submitted that the issue involved in the appeal has been decided by the ld. CIT(A) by relying on the Supreme Court Judgment in the case of *Engineering Analysis Centre of Excellence (P.) ltd. (Supra)* therefore, sought for dismiss of the present appeal.

6. We have heard the parties and perusal the material available on record. The ld. CIT(A) while deleting the addition, relied on the ratio laid down by the Hon'ble Supreme Court in the case of *Engineering Analysis Centre of Excellence (P.) ltd. (Supra)* in following manner.

5.10 During the course of appellate proceedings when the authorized representative was asked to substantiate that the products sold by the appellant was off-the shelf and not customized. The authorized representative, on sample basis, took us through the Invoices raised on MIDC Technology Park, Pune India, vide which the appellant has sold "MFE Web Gateway 5500 Appl-B 1 Yr GL+ARMA" – 1 Qty, "MFE Complete EP Protect Ent 3Yr GL [P+]"– 3000 Qty, "MFE Web Protection Suite 3:3 GL" – 3000 Qty and "MFE Web Gateway 4500 Appl-B 1Yr GL+ARMA"– 3 Qty. The authorized representative then took us through the price catalogue of McAfee, the original manufacturer for this product and highlighted that these products are ready made and not customized. He also took me through more invoices including

the invoice raised on Genpact India Pvt. Ltd., Gurgaon, India for sale of Wombat Threat Sim Subscription for 30000 users, invoice raised on Apollo Hospitals Enterprise Limited, Chennai for sale of "MFE Endpoint Protection"- 3200 Qty and also the price catalogue of the original product manufacturers, indicating the products specification and price.

5.11 Upon carefully examining the submissions of the appellant and supporting documents, I find that the appellant is a pure non-exclusive distributor of

hardware and software products. The appellant has been authorized vide distribution agreements to resell hardware and software products in India and other neighboring countries. The appellant is not engaged into sale of any customized software or providing any technical solutions to its customers. Accordingly, the appellant's case clearly falls under the third category of cases dealt by the **Hon'ble Supreme Court of India** in the case of **Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42** i.e., 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.

5.12 The appellant during the hearing also furnished a copy of submission filed before the Assessing Officer which included break-up of its revenue. He also furnished a copy of rectification petition filed before the Assessing Officer to explain how the Assessing Officer erred in considering the entire revenue of the appellant while treating its revenue as royalty income.

5.13 The Assessing Officer in his order has made observation that the appellant is engaged in providing end-to-end solutions to its customers. However, the invoices and purchase orders produced before me clearly shows that appellant has not provided any solutions but just resold off-the-shelf software and hardware products to its customers in India under the distribution agreements entered by the appellant with foreign, non-resident sellers.

5.14 It is also observed that the Assessing Officer has vaguely, without any evidences, has alleged that the appellant being a wholly owned subsidiary of Inflow Technologies Pvt Ltd, an Indian entity, may have a permanent establishment in India, without probing into the facts and applying the rules and regulation relating to formation of Permanent Establishment as per Article 3 of the India-Singapore Tax Treaty.

5.15 Thus, respectfully following the judgement of the Hon'ble Supreme Court of India [supra] and my own appellate orders for the assessment year 2010-11, 2012-13 and 2017-18, I am of the opinion that the revenue generated by the appellant is not royalty. Thus, the entire addition made by the Assessing Officer for the assessment year 2019-20 is liable to be deleted. Resultingly, the other grounds of appeal raised by the appellant are not required to be adjudicated. In effect, appeal of the appellant is allowed.

7. Considering the fact that the Ld. CIT(A) after verifying the material on record found that Assessee is a pure non-exclusive distributor of hardware and software products, which is authorized by distribution agreement to re-sale hardware and software products in India and other neighboring countries and as the assessee is not engaged into the sale of any customized software or providing any technical solutions to the customer, applied the ratio laid down by the Supreme Court in the case of *Engineering Analysis Centre of Excellence (P.) ltd.* deleted the addition. Thus, in the absence of any error pointed out by the Revenue regarding the finding of fact or applying the ratio of the Hon'ble Supreme Court , we find no error and infirmity in the order of ld. CIT(A). Accordingly, the grounds of appeal of the Revenue are falls.

8. In the result the appeal of Revenue are dismissed.

Order pronounced in the open court on 09th February, 2024.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Date:- 09.02.2024

Binita/R,N, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI