

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री मंजूनाथा. जी, माननीय लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.922/Chny/2023
निर्धारण वर्ष/Assessment Year: 2018-19

M/s.INDIX Corporation, C/o S. Venkatram & Co LLP., 218, T.T.K. Road, Alwarpet, Chennai – 600 018. [PAN: AAECI 8965 M] (अपीलार्थी/Appellant)	v.	The Income Tax Officer (International Taxation), Ward-2(1), Chennai. (प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Ms.Pavitra Mani, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri ARV Sreenivasan, Addl.CIT
सुनवाई की तारीख/Date of Hearing	:	21.02.2024
घोषणा की तारीख /Date of Pronouncement	:	13.03.2024

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-16, Chennai, dated 27.06.2023, and pertains to assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:

1. The Commissioner of Income Tax (Appeals) ("CIT(A)") erred both in law and on the facts of the case in not treating the amount received by the Appellant from M/s.Samsung R&D Institute India Bangalore Private

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Limited (Indian Payee) as royalty income (for the data services provided by the Appellant).

2. The CIT(A) erred in not appreciating the fact that the Appellant had entered into a Production Agreement with Samsung India Electronics Private Limited ("Samsung") for providing the license to use the Indix Data Services for Samsung's new shopping application (Indix data services aggregates Samsung's shopping application) in exchange for a consideration in the nature of royalty as defined in Explanation 2 to section 9(vi) of the Act and the same is to be taxed @ 10% as per 115A(1)(b)(A) of the Act.

3. The CIT(A) erred in concluding that the tax deducted by the Indian payee @ 20% as per section 206AA of the Act is according to law even though the Appellant had obtained a Permanent Account Number (PAN)- the fact that the Appellant has a PAN is amply evidenced even in the order u/s.143(1) of the Act.

4. The Appellant therefore prays that:

a) the income received by the Appellant be treated as royalty income and consequently, the tax deducted by the Appellant @10% according to 115A(1)(b)(A) be accepted;

b) the AO be directed to reduce the demand by Rs.8,08,830/- being the difference between the tax deducted by the Indian payee (at the rate of 20%) and the tax declared by us in the return of income (@10%).

c) Issue the resultant refund to the Appellant.

3. The brief facts of the case are that the assessee is a company incorporated in United States of America (USA) and is a Non-Resident as per provisions of Sec.6 of the Income Tax Act, 1961 (in short "the Act"). The assessee company has filed its return of income for AY 2018-19 on 31.10.2018 declaring total income of Rs.80,88,278/- and offering the same to tax @10% as per Sec.115A(1)(b)(A) of the Act, and also claimed refund of Rs.8,08,830/-. The return of income filed by the assessee was processed u/s.143(1) of the Act, without considering the tax credit towards tax deducted at source amounting to Rs.16,17,656/-. The assessee carried the matter in appeal before the First Appellate Authority,

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and challenged denial of credit for taxes as per Form No.26AS. The Ld.CIT(A) for the reasons stated in their appellate order dated 27.06.2023, directed the AO to verify Form No.26AS of the assessee and give credit for taxes amounting to Rs.16,17,656/-. The Ld.CIT(A) further held that the sum received by the assessee from M/s.Samsung R&D Institute India Bangalore Pvt. Ltd., is taxable @20% as rightly deducted by the Indian payee, as no information was provided proving the income received to be in the nature of royalty which is taxable as per Sec.115A(1)(b)(A) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.Counsel for the assessee, Ms.Pavitra Mani, Advocate, submitted that the Ld.CIT(A) is erred in not appreciating the fact that sum received by the assessee from M/s.Samsung R&D Institute India Bangalore Pvt. Ltd., is a royalty as per provisions of Sec.9(1)(vi) of the Act, for right to use a computer software and consideration received is for the transfer of all or any right/s (including granting of license) to use of computer software owned by the assessee. The Ld.Counsel for the assessee further submitted that the assessee was offering a cloud based product information platform. It also built a broad and deep product catalog to enable mobile and desktop apps and websites to become product-aware. The assessee services are centered on proprietary algorithms that structure crawled product data and a data-as-a-service business model and the said model offers coverage for most consumer

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retail product categories. The Ld.Counsel for the assessee referring to agreement between the assessee company and M/s.Samsung R&D Institute India Bangalore Pvt. Ltd., dated 24.04.2017 submitted that said agreement is for use of Indix Data services to internally copy, store, reproduce and modify assessee's license data for their shopping application. Further, integrating the Indix Data service into the shopping application and developing the shopping application, is also held as per said application. From the nature of services as referred to in agreement coupled with provisions of Sec.9(1)(vi) of the Act, it is clear that the services provided is in the nature of transfer of right to use a computer software, including granting of license which is in the nature of royalty and thus, the assessee has rightly offered income as per Sec.115A(1)(b)(A) of the Act. The Ld.CIT(A) without appreciating relevant facts simply taxed the sum received by the assessee as other sum and taxed @20%.

5. The Ld.DR, Shri ARV Sreenivasan, Addl.CIT, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee could not file any evidences, including copy of agreement between the parties before the First Appellate Authority to substantiate its claim, that sum received by the assessee is in the nature of royalty referred to as per provisions of Sec.9(1)(vi) of the Act. Therefore, the Ld.CIT(A) has rightly taxed sum received by the assessee @ 20% and their orders should be upheld.

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6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee has developed a data base cloud Indix which enable the customers to structure crawled product data and a data-as-a-service business model for most consumer retail product categories. As per agreement between the assessee and M/s.Samsung R&D Institute India Bangalore Pvt. Ltd., the assessee had agreed to categories and integrates data services as shopping application of the Indian Company, whereby, the Indian Company would use Indix Data services to internally copy, store, reproduce and modify assessee's licensed data for their shopping application. Further, integrating the Indix Data services into the shopping application and developing shopping application and also use a reasonable number of copies of documentation or materials provided solely in connection with the Indix Data services. From a combined understanding of the assessee's services, as per agreement between the parties and as per provisions of Sec.9(1)(vi) of the Act, it is clear that the services provided by the assessee to Indian company is in the nature of transfer of right to use a computer software and the consideration received is for the transfer of all or any right/s (including granting of license) to use of computer software owned by the assessee and thus, in our considered view, the services provided by the assessee to the India payee falls under the definition of royalty in terms of Sec.9(1)(vi) of the Act. Therefore, the assessee offering income as per Sec.115A(1)(b)(A) of the Act @ 10% is in

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accordance with law. The Ld.CIT(A) without appreciating relevant facts and also not considering the agreement between the parties, simply directed the AO to assess sum received by the assessee @ 20% and thus, we set aside the order of the Ld.CIT(A) and direct the AO to assess royalty received by the assessee from Indian Company u/s.115A(1)(b)(A) of the Act, and charge tax @10%. The AO is also directed to verify Form No.26AS of the assessee and give credit for the taxes amounting to Rs.16,17,656/-.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 13th day of March, 2024, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/VICE PRESIDENT

Sd/-
(मंजूनाथा. जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 13th March, 2024.
TLN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF