

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.1626/Chny/2024
निर्धारण वर्ष /Assessment Years: 2010-11

Newgen Imaging Systems Private
Limited,
No.268, Royapettah High Road,
Royapettah, Madras,
Tamil Nadu-600014.
[PAN: AAACN2041B]

Deputy Commissioner of Income
International Taxation-2(2),
Chennai.

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

(प्रत्यर्थी/Respondent)

Shri G. Shiva Kumar, Advocate
Shri Keerthi Narayanan, JCIT

सुनवाई की तारीख/Date of Hearing : 02.09.2024
घोषणा की तारीख /Date of Pronouncement : 27.11.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/APL/S/250/2023-24/1063186830(1) dated 22.03.2024 of the Commissioner of Income Tax [herein after "CIT(A)"] for the assessment years 2010-11. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 22.03.2024 passed by CIT(A)", Chennai.

2.0 The only issue in this case is regarding an addition of Rs.14,44,380/- added by the revenue by the order u/s 201(1) / 201(1A) dated 31.03.2017. The Ld. Counsel for the assessee informed that it had remitted an amount of Rs.14,44,380/- towards purchase of software to a US based company namely XY enterprises Inc. The Ld. AO held the view that explanation-IV to section 9(1) (vi) of the IT act as amended by finance act 2012 postulates that amounts paid for right to use computer software would tantamount to income of the deductee within the meanings of that section and therefore TDS deduction u/s 40(a)(i) was required to be done. Consequently by placing reliance upon some case laws of Hon'ble Karnataka High Court and AAR Delhi the AO added the same u/s 201(1) / 201(1A). The Ld. CIT(A) concurred with the findings of the Ld. AO and sustained the addition. The Ld. Counsel for the assessee submitted a detailed paper book and contested that the impugned addition is unwarranted and that in its case the issue is covered in its favour by the decisions of Hon'ble Supreme Court in the cases of *"...Engineering Analysis Centre of Excellence Pvt Ltd, SC, (2021) 432 ITR 471(SC), Saipem India Projects Pvt Ltd. HC-MAD, 2021(12) TMI 1447, Dassault Systems Sumulia Pvt Ltd. HC – MAD, 2021(4) TMI 180, M/s. Financial Software and Systems Pvt Ltd, HC – MAD, 2021(11) TMI 587 and M/s.Amec Foster Wheeler India Pvt Ltd. ITAT – Chennai, 2022(8) TMI 1341 – ITAT Chennai..."*. The Ld. Counsel for the assessee, without prejudice, also submitted that the impugned amendment is with retrospective effect and was not there on statute when deduction was to be made. It was argued that no blame therefore can be placed upon the assessee. The Ld. DR placed his reliance upon decision of lower authorities.

3.0 We have heard the rival submissions in the light of material available on records. We find sufficient force in the argument of the assessee that no blame can be placed upon the assessee as the impugned amendment is with retrospective effect and was not there on statute when deduction was to be made. We have also noted that Hon'ble Coordinate bench of this tribunal in the case of AMEC foster wheeler India Pvt Ltd vide order dated 03.08.2022 in ITA No.799/Chny/2017 has held as under:

"....We have heard the rival contentions and had gone through the facts and circumstances of the case. The brief facts of the case are that the assessee has purchased off-the-shelf software products which are in the nature of Microsoft Office [MS Office], IBM Lotus Notes, AVEVA, Auto CAD, etc. The claim of the Assessee is that the said expenditure merely represents the cost-to-cost reimbursement of the expenditure incurred on behalf of the Assessee. The Assessing Officer has held the nature of payment to be royalty and had disallowed the expenditure on account of the non-withholding of taxes under Section 40(a)(i) of the Act. The main issue is as regards to the treatment of payment for purchase of the off-the-shelf software products and as to whether the Associated Enterprises of the Assessee provides this directly to the Assessee or through another entity is not material. The Assessee has received certain software products and has made the payments for it is the most important fact. The same is taxable under the Income Tax Act, 1961 as well as the Double Taxation Avoidance Agreement [DTAA] between India and the United States, United Kingdom and Ireland. However, the transaction name given by the Assessee to the transaction is not material. The Dispute Resolution Panel [DRP] also confirmed the action of the Assessing Officer and disallowed the expenditure incurred towards the off-the-shelf software products by observing in paragraph No.2.6.3, as under:

"2.6.3 The Assessing Officer has discussed in detail the position under the Income Tax Act, 1961 as well as the provisions of the DTAA. The Panel has examined and found the same to be in order. The Panel finds that the decision of the Delhi High Court in the case of Ericsson A.B. was rendered in the context of sale of equipment where the software was embedded and therefore, it was not applicable to the facts of the present case. The decision of the Hon'ble Karnataka High Court in the case of Samsung Electronics Company Limited (cited supra) is with reference to the position as existed before the amendment and the facts being the same, the decision is squarely applicable in this case. Accordingly, the Assessing Officer's decision is correct and the objections are not accepted."

Aggrieved, the Assessee is in appeal before the Tribunal.

16. We noted that during the year 2011 - 2012 relevant to the Assessment Year, the Assessee debited an amount of Rs.7,79,78,139/- under computer software and maintenance. According to the Assessing Officer, the Assessee has to deduct Tax Deducted at Source [TDS] and under the Domestic Law the above payment is treated as "Royalty" and is taxable in India u/s.9(1) Explanation (vi)(b) of the Act and the Assessing Officer on the directions of the Dispute Resolution Panel had made the addition of this computer software and maintenance payment considering the same as "Royalty".

17. The learned Counsel for the Assessee now argued that the expenditure incurred towards its share of software cost which are in the nature of off-the-shelf software products such as of Microsoft Office [MS Office], IBM Lotus Notes, AVEVA, Auto CAD, etc. It was contended that the above said expenses were negotiated and incurred at a group level with the third-party vendors by the overseas Associated Enterprises [AE] on behalf of all the group entities and the corresponding cost was recharged to the various entities on a cost-to-cost basis without any mark-up. He stated that this issue stands now covered by the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Limited Vs. Commissioner of Income Tax reported in [2021] 125 Taxmann.com 42 (SC), wherein the Hon'ble Supreme Court has held that "the amount paid by resident Indian and end-user / distributors to non-resident computer software manufacturers / suppliers , as consideration for resale / use of computer software through EULAs / distribution agreement, is not payment of royalty for use of copyright in computer software, and thus, the same does not give rise to any income taxable in India."

18. We noted that this issue is covered by the decision of the Hon'ble Supreme Court wherein it is held that the expenditure incurred towards the purchase of the off-the-shelf software products is not in the nature of "Royalty" for use of copyright in the software and thus not liable for withholding of tax u/s 195 of the Act, we delete the disallowance and allow this issue of the Assessee.

4.0 We have also noted that Hon'ble Madras High Court in the cases of Saipem India Pvt Ltd, Dasault, Financial software supra have also held that in view of the apex court decision in the case of Engineering Analysis supra no TDS deduction is required in cases having facts as that of present assessee. In respectful compliance to the impugned decisions the order of lower authorities set aside and the Ld. AO is directed to delete the impugned addition. Accordingly, all the grounds of appeal raised by the assessee are allowed.

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5.0 In the result the grounds of appeal raised by the assessee is allowed.

Order pronounced on 27th, November-2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / **Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 27th, November-2024.

KB/-

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF