

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE
BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
ITA No.1243(Bang) 2013
(Assessment year : 2008-09)**

The Deputy Commissioner of Income Tax,
Circle-11(5), Nrupthunga Road,
Bangalore

Appellant

Vs

The Principal Officer,
Kirloskar Computer Services Ltd.,
Office of the Liquidator, High Court of Karnataka,
Corporate Bhavan, No.26-27, 12th Floor,
Raheja Towers, MG Rod,
Bangalore-560 001
Pan No.AABCK7280L

Respondent

**Revenue by : Dr.P.K.Srihari, Addl. CIT
Assessee by : Shri R.E.Balasubramanyam, CA**

**Date of hearing : 21-07-2016
Date of pronouncement : 12-08-2016**

ORDER

PER SHRI A.K.GARODIA, AM

This is revenue's appeal directed against the order of the Id. CIT(A)-I, Bangalore dated 31-05-2013 for the assessment year 2008-09.

2. The grounds raised by the revenue are as under;

0“1. The order of the Id. CIT(A) in so far as it is prejudicial to the interest of revenue is opposed to law and facts and circumstances of the case.

2. The CIT(A) on the facts and in the circumstances of the case erred in deleting the disallowance without appreciating that the company by providing the bandwidth is providing the right to use its scientific equipment or is providing service in connection with it and hence these payments are liable for TDS.

3. The CIT(A) on the facts and in the circumstances of the case, erred in deleting the disallowance made u/s 40(a)(i) of the payment of Rs.99,85,043/- being bandwidth charges paid to Singapore Telecommunication Ltd., by relying on the decision of

the ITAT in the case of Infosys Technologies Ltd., without appreciating the facts that the decision of the ITAT has not reached a finality and an appeal u/s 260A is preferred against the order of the ITAT in the case of Infosys Technologies Ltd., for the AY : 2004-05 in ITA No.1140(Bang)/2009.

4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be reversed and that of the AO be restored.

5. The appellant craves leave to add, to alter, amend or delete any of the grounds that may be urged at the time of hearing of the appeal”.

3. It was submitted by the ld. DR of the revenue that in the assessment order, the decision of the AO is on this basis that the impugned payment of Rs.99,85,043/- is in the nature of royalty but in the impugned order, the ld. CIT(A) has stated in para-5.4 of his order that the disallowance was made by the AO by stating that the amount can be considered as fees for technical services. He submitted that the entire basis of the order of the ld. CIT(A) is wrong and therefore, his order cannot be sustained and the same should be reversed and that of the AO be restored.

4. The ld. AR of the assessee supported the order of the ld. CIT(A). He also submitted that even if it is held that the ld. CIT(A) has not considered objection of the A.O. that the impugned payment is in the nature of royalty, the matter may be restored back to the file of the ld. CIT(A) for a fresh decision.

5. We have considered the rival submissions. We find force in this

submissions of the ld. DR of the revenue that the order of the ld. CIT(A) is not sustainable because the basis of the assessment order is this that the impugned payment is in the nature of royalty whereas in para-5.4 of the ld. CIT(A)'s order, he has proceeded on this basis that the AO has considered the impugned payment as fees for technical services. Under these facts, we hold that the order of the ld.CIT(A) is not sustainable but at the same time, we feel it proper that under these facts, the matter should go back to the file of the ld. CIT(A) for a fresh decision and accordingly, we set aside the order of the ld. CIT(A) and restore the matter back to his file for a fresh decision by considering the objection of the A.O. that the impugned payment is in the nature of royalty. Needless to say that the ld. CIT(A) should provide adequate opportunity of being heard to both sides and he should pass a speaking and reasoned order.

6. In the result, the appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Bangalore:

D a t e d : 12.08.2016

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

By order,
AR, ITAT, Bangalore

1.	Date of Dictation
2.	Date on which the typed draft is placed before the dictating Member
3.	Date on which the approved draft comes to the Sr. P. S.
4.	Date on which the order is placed before the dictating Member for pronouncement
5.	Date on which the order comes back to the Sr. P.S.
6.	Date of uploading the order on website
7.	If not uploaded, furnish the reason for doing so.....
8.	Date on which the file goes to the Bench Clerk
9.	Date on which order does for Xerox & endorsement
10.	Date on which the file goes to the Head Clerk.....
11.	The date on which the file goes to the Assistant Registrar for signature on the order.....
12.	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13.	Date of dispatch of order.....