



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

INCOME TAX APPEAL NO. 632 OF 2023

BETWEEN:

1. PRL., COMMISSIONER OF INCOME TAX,
(INTERNATIONAL TAXATION),
KORMANGALA, BANGALORE.
2. THE DEPUTY COMMISSIONER OF
INCOME TAX, INTERNATIONAL TAXATION,
CIRCLE1(2), KORMANGALA,
BANGALORE.

...APPELLANTS

(BY SRI. E.I.SANMATHI, ADVOCATE)

AND:

M/S. IBM INDIA PVT. LTD.,
NO.2, SUBRAMANYA ARCADE,
BANNERGHATTA MAIN ROAD,
BANGALORE - 560 029, PAN:AACCI2917B.

...RESPONDENT

(BY SMT.TANMAYEE RAJKUMAR, ADVOCATE)

THIS ITA/INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 08/06/2023 PASSED IN ITA NO.318/BANG/2023, FOR THE ASSESSMENT YEAR 2017-18 PRAYING TO 1.DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED 08/06/2023 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, BANGALORE, AS SOUGHT



FOR, IN THE RESPONDENT-ASSESSEE'S CASE, IN APPEAL PROCEEDINGS IN ITA NO.318/BANG/2023 FOR A.Y. 2017-18 (ANNEXURE - A) AND GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This appeal by the Revenue calls in question the ITAT order dated 08.06.2023 whereby its appeals vide ITA Nos.317 & 318/Bang/2023 for the Assessment Years 2015-16 & 2017-18 have been negatived. The Revenue has framed the following as the substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal's order is perverse in nature in by holding that the payment made to non-resident entities in respect of purchase of software was not royalty and that the same did not give rise to income taxable in India and therefore, the petitioners were not liable to deduct tax at source under section 195 of the Act"?

2. Whether on the facts and in the circumstances of the case, the Tribunal's order



is perverse in nature in holding that the payments made to non-resident entities were not in the nature of royalty as defined in Explanation 2 to Section 9(1)(vii) of the Act and the Double Taxation Avoidance Agreement as well?

3. Whether on the facts and in the circumstances of the case, the Tribunal's order is perverse in nature in holding that the sale of software license did not include a right or interest in copyright, which thus did not give rise to payment of royalty and would be an income deemed to accrue in India under section 9(1)(vi) of the Act, requiring the deduction of tax at source?

4. Whether on the facts and in the circumstances of the case, the Tribunal's order is perverse in nature in not considering the fact that the development of advanced cloud-based computer software by Section 14(a)/14(b) of the Copy Right Act?

5. Whether on the facts and in the circumstances of the case, the Tribunal's order is perverse in nature in not appreciating that conditions for holding applying Explanation 2(v) to Section 9(1)(vi) of the Act were fully satisfied in present case as payments were made to a non-resident by way of royalty for use of or the right to use any copy right and Review Petition filed by Revenue is pending for adjudication before Supreme court in case Engineering Analysis Centre of Excellence (reported in 432 ITR page 471)?"



2. Learned counsel representing the assessee submits that the fact matrix of this appeal is substantially similar to the one in **ENGINEERING ANALYSIS CENTRE OF EXCELLENCE (P) LTD., vs. COMMISSIONER OF INCOME TAX¹**, wherein the questions raised by the Revenue are answered in favour of the assessee and that even the review petition in Diary No.35475/2023 in C.A.Nos.106/2013 & 1407/2013, vide order dated 23.04.2024 has been negatived. Despite vehement submissions learned Panel Counsel appearing for the Revenue is not in a position to demonstrate that this appeal is not covered by the said decision.

3. Our system operates ordinarily on the principle of parity and equality, in the sense that like cases should be decided alike, unless there are demonstrable differences, which are absent in this case.

In the above circumstances, this appeal is liable to be and accordingly rejected, costs having been made easy.

¹ [2021] 125 taxmann.com 42 (SC)



The request of learned panel counsel that liberty should be reserved to seek review of this judgment depending upon the outcome of the review in **ENGINEERING ANALYSIS CENTRE OF EXCELLENCE (P) LTD. (SUPRA)**, is liable to be rejected inasmuch as the assessee's review, as mentioned above, itself is rejected.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE**

RD/snb