HC-KAR

NC: 2025:KHC:31121-DB
ITA No. 698 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2025

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

INCOME TAX APPEAL NO. 698 OF 2023

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX
(INTERNATIONAL TAXATION),
KORAMANGALA, BANGALORE.

2. THE DY. COMMISSIONER OF INCOME TAX
INTERNATIONAL TAXATION,
CIRCLE 1(2), KORAMANGALA,
BANGALORE.

...APPELLANTS

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

AND:

M/S. SYNAMEDIA LIMITED
(FORMERLY KNOWN AS NDS LIMITED),
BLOCK NO.9A AND 9 B,
PRITECH PARK, SURVEY NO.51-64/4,
SARJAPUR OUTER RING ROAD,
BELLANDUR VILLAGE,
BENGALURU-560103
PAN: AABCN 2524L

...RESPONDENT

(BY SRI. T. SURYANARAYANA, SR. ADV. FOR
SMT. TANMAYEE RAJKUMAR, ADV.)

Digitally signed by VALLI MARIMUTHU
Location: HIGH COURT OF KARNATAKA

THIS APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 14/02/2022 PASSED IN ITA NO. 3350/BANG/2018, FOR THE ASSESSMENT YEAR 2014-15, PRAYING TO 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 14.02.2022 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.3350/BANG/2018 FOR A.Y 2014-15 (ANNEXURE-A) AND ETC.

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

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K.V. ARAVIND)

Heard Sri E.I. Sanmathi, learned Senior Standing Counsel for the appellants-Revenue and Sri T. Suryanarayana, learned Senior Advocate for Smt. Tanmayee Rajkumar, learned counsel for the respondent-Assessee.

2. This appeal under Section 260-A of the Income Tax Act, 1961 is filed by the Revenue, challenging the order dated 14.02.2022 passed by the Income Tax Appellate Tribunal, 'C' Bench, Bengaluru, in ITA No.3350/Bang/2018, relating to the assessment year 2014-15.

3. The Revenue has formulated the following substantial questions of law for consideration:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal's order is perverse in nature in setting aside the additions made in assessment order by relying the judgment of Hon'ble Apex Court in case of Engineering Analysis Centre of Excellence Pvt. Ltd. Vs. CIT (reported in 432 ITR page 471) without appreciating that in the case of assessee are not similar and even when Review Petition filed by Revenue is pending for adjudication before Supreme Court in case Engineering Analysis Centre of Excellence?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal's order can be said as perverse in nature in disregarding the findings rendered by assessing officer that the provisions of the DTAA between India-UK with regard to Royalty are to be interpreted in harmony with the Section 9 of the Act?"

4. The facts in brief are that the respondent-Assessee, being a foreign company, was in receipt of income from the sale of software. The Assessing Officer treated such income as 'Royalty'. The draft assessment order passed by the Assessing Officer was challenged before the Dispute Resolution Panel (for short, 'DRP'). The DRP held that the said receipt was taxable

under the head 'Royalty'. Pursuant thereto, the Assessing Officer, by final assessment order dated 23.10.2018, held that the income from sale of software is taxable as 'Royalty'.

5. The Tribunal, on appeal by the Assessee, upon analyzing the terms of the agreement and applying the principles of law laid down by the Hon'ble Apex Court in ***Engineering Analysis Centre of Excellence Private Limited v. Commissioner of Income-Tax and another***[1], held that the receipts from sale of software are not taxable as 'Royalty'. Aggrieved thereby, the Revenue is in appeal challenging the order of the Tribunal.

6. Learned Senior Standing Counsel Sri. E.I. Sanmathi, appearing for the appellants-Revenue, submits that the facts in ***Engineering Analysis Centre of Excellence Private Limited*** (supra) and the present case are not identical, and therefore, the law laid down by the Hon'ble Apex Court in the said decision is not applicable to the facts of the present appeal. It is further submitted that the Revenue has preferred a review petition in ***Engineering Analysis Centre of Excellence Private Limited*** (supra).

[1] *(2021) 125 TAXMANN.COM 42 (SC)*

7. Learned Senior Standing Counsel further submits that the supply of Tata Sky viewing cards involves embedded software and entails a licence to use such software. It is contended that, under the agreement between Tata Sky and the Assessee, Tata Sky was required to pay licence fee for the use of the viewing cards, and the Assessee had permitted such use on payment of licence fee. Hence, it is submitted that the grant of licence would fall within the definition of 'Royalty' under Section 9(1)(vi) of the Act.

8. On the other hand, Sri. T. Suryanarayana, learned Senior Counsel appearing on behalf of Smt. Tanmayee Rajkumar, learned counsel for the Assessee, submits that the Tribunal, after analyzing the terms of the agreement in light of the law laid down by the Hon'ble Apex Court in ***Engineering Analysis Centre of Excellence Private Limited*** (supra), has held that the receipts from transfer of licence are not taxable as 'Royalty'. It is further submitted that the substantial questions of law raised for consideration stand covered by the judgment of the Hon'ble Apex Court in ***Engineering Analysis Centre of Excellence Private Limited*** (supra).

8.1 Learned Senior Counsel further submits that the issue regarding the licence fee paid by Tata Sky being treated as 'Royalty' is squarely covered by the judgment of the Hon'ble Supreme Court in ***Engineering Analysis Centre of Excellence Private Limited*** (supra). It is further submitted that the appeal memo does not raise any substantial question of law or ground with respect to the payments made by Tata Sky to the Assessee.

9. Heard learned counsel for the parties and perused the substantial questions of law framed as well as the findings recorded by the Tribunal.

10. A careful perusal of the order of the Tribunal makes it clear that the Tribunal, after analyzing the terms of the agreement, has held that, in view of the judgment of the Hon'ble Apex Court in ***Engineering Analysis Centre of Excellence Private Limited*** (supra), the amount in question relating to sale of software is not taxable as 'Royalty'.

11. This Court is of the considered view that the issue raised in the present appeal stands squarely covered by the judgment

of the Hon'ble Apex Court in ***Engineering Analysis Centre of Excellence Private Limited*** (supra). The Revenue has not demonstrated any distinction either on facts or in law.

12. Learned Senior Counsel for the respondent-Assessee submitted that the Review Petition filed by the Revenue in some of the cases which were part of common order in ***Engineering Analysis Centre of Excellence Private Limited*** (supra), are dismissed by the Hon'ble Supreme Court. The said submission could not be disputed by learned Senior Standing Counsel.

13. Insofar as the contention that the consideration paid by Tata Sky to the Assessee constitutes 'Royalty' under Section 9 of the Act, we find that no substantial question of law has been raised by the Revenue on this issue. Furthermore, no grounds in that regard have been urged.

14. A careful perusal of the order of the Tribunal indicates that a similar issue had been answered against the Assessee in its own case by the Tribunal. In the absence of any substantial question of law having been raised or made out by the

Revenue, it cannot be contended that the issue is not covered by the judgment of the Hon'ble Supreme Court in ***Engineering Analysis Centre of Excellence Private Limited*** (supra). Hence, no substantial question of law arises for consideration. Accordingly, the appeal stands ***dismissed***.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

NC/MV
CT:bms
List No.: 1 Sl No.: 22