IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.409 of 2015

M/s. Financial Software and
Systems Private Limited,
"Saradha" Ground Floor,
No.42, Third Main Road,
Gandhi Nagar, Adyar,
Chennai. ... Appellant

Vs.

Commissioner of Income Tax I,
Chennai. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 05.06.2014 passed in I.T.A.No.2190/Mds/2013.

For Appellant : Mr.N.V.Balaji

For Respondent : Mr.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT

(Judgment was delivered by **T.S. SIVAGNANAM, J.**)

This Tax Case Appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 05.06.2014 passed in I.T.A.No.2190/Mds/2013 for the Assessment Year 2003-04.

2.The appeal has been admitted on 06.07.2015 on the following substantial question of law :

> **"***Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that reopening the assessee under Section 147 of the Income Tax Act, made by the Assessing Officer is valid?***"**

3.We have heard Mr.N.V.Balaji, learned counsel for the appellant/assessee and Mr.Karthik Ranganathan, learned Senior Standing Counsel for the respondent/Revenue.

4.Though the appeal filed by the assessee pertains to a challenge to the validity of reopening of the assessment for the relevant Assessment Year under Section 147 of the Act, the question of law which is involved is with regard to whether the assessee was liable to deduct Tax at Source in respect of the Computer Software which was dealt with by them, procured from a Non-Resident and sold in the Indian Market. This legal issue has been decided by the Hon'ble Supreme Court in the case of ***Engineering Analysis Centre of Excellence Private Limited v. Commissioner of Income Tax and another*** reported in ***(2021) SCC Online SC 159***.

5.In the said decision, there were four categories of cases as mentioned below :

> **"***4.The appeals before us may be grouped into four categories:*
>
> *i) The first category deals with cases in which computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer.*
>
> *ii) The second category of cases deals with resident Indian companies that act as distributors or resellers, by*

purchasing computer software from foreign, nonresident suppliers or manufacturers and then reselling the same to resident Indian end-users.

iii)The third category concerns cases wherein the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, nonresident seller, resells the same to resident Indian distributors or end-users.

iv) The fourth category includes cases wherein computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users."

6.After elaborately considering the entire issues, the Hon'ble Supreme Court held as follows :

"172. Given the definition of royalties contained in Article 12 of the DTAAs mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the Income Tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright. The provisions contained in the

Income Tax Act (section 9 (1)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessees, have no application in the facts of these cases.

173. Our answer to the question posed before us, is that the amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Income Tax Act were not liable to deduct any TDS under section 195 of the Income Tax Act. The answer to this question will apply to all four categories of cases enumerated by us in paragraph 4 of this judgment.

174. The appeals from the impugned judgments of the High Court of Karnataka are allowed, and the aforesaid judgments are set aside. The ruling of the AAR in Citrix Systems (AAR) (supra) is set aside. The appeals from the impugned judgments of the High Court of Delhi are dismissed."

7.In the light of the above decision, the challenge to the reopening proceedings has become academic. Nevertheless, since the Tribunal has upheld the validity of the reopening proceedings, we have to necessarily decide this case against the Revenue and in favour of the assessee, or else, the reopening proceedings may continue to remain valid, though the basis for reopening was held to be unsustainable, as the question of law has been answered in favour of the assessee in the case of *Engineering Analysis Centre of Excellence Private Limited (supra).*

8.Therefore, for such reasons, this Tax Case Appeal is allowed and the reopening is held to be unsustainable in law in the light of the decision rendered by the Hon'ble Supreme Court in the case of *Engineering Analysis Centre of Excellence Private Limited (supra).* For such reason, the substantial question of law stands answered accordingly. No costs.

(T.S.S., J.) **(S.S.K., J.)**

03.09.2021

mkn (9/14)

Internet : Yes
Index : Yes / No

To

The Commissioner of Income Tax-I,
Chennai.

T.S. SIVAGNANAM, J.
and
SATHI KUMAR SUKUMARA KURUP,

J. mkn

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