

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1ST DAY OF MARCH 2012

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE RAVI MALIMATH

ITA.NO.3082 OF 2005

BETWEEN:

1. The Commissioner of Income-tax
International Taxation,
Rastrohana Building,
Nrupathunga Road,
Bangalore.
2. The Income-Tax Officer
International Taxation,
Ward-19(2), Rastrohana Building,
Nrupathunga Road,
Bangalore.

...APPELLANTS

(By Sri E.I.Sanmati, Advocate)

AND:

M/s.Rational Software Corporation(India) Ltd.,
3K, Esteem Asram,
Koramangala Industrial Layout,
Sarjapur Road,
Bangalore - 560 025.

...RESPONDENT

(By Smt.Vani H, Advocate)



This ITA filed under section 260-A of I.T.Act, 1961 arising out of order dated 04.05.2005 passed in ITA.No.3038/Bang/2004, for the Assessment year 2000-01, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the orders passed by the ITAT, Bangalore in ITA.No.3038/Bang/2004 dated 04.05.2005 and confirming the order of the Appellate Commissioner & confirm the order passed by the Income Tax Officer, (International Taxation), Ward-19(2), Bangalore.

This ITA coming on for hearing this day, N.KUMAR J., delivered the following:-

JUDGMENT

The revenue has preferred this appeal against the order passed by the Tribunal, which has granted relief to the assessee.

2. In fact, the substantial question of law which arises for consideration in this appeal arose for consideration before this court in two appeals, firstly, in the case of '**COMMISSIONER OF INCOME TAX AND ANOTHER v. SYNOPSIS INTERNATIONAL OLD LTD.,**' in **ITA Nos.11 to 15/2008 decided on 3.8.2010** where the substantial question of law was as under:

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"Whether the consideration paid by the Indian customers or end users to the assessee – a foreign supplier, for transfer of the right to use the software/computer programme in respect of the copyrights falls within the mischief of 'royalty' as defined under sub-clause [v] to Explanation 2 to Clause [vi] of section 9[1] of the Act."

3. Again in the case of '**COMMISSIONER OF INCOME TAX AND ANOTHER v. SAMSUNG ELECTRONICS PRIVATE LIMITED**' in **ITA No.2808/2005 and connected matters decided on 15.10.2011**, the substantial question of law framed was as under:

"The question which the High Court will answer is whether on facts and circumstances of the case, the ITAT was justified in holding that the amount[s] paid by the appellant[s] to the foreign software suppliers was not 'royalty' and that the same did not give rise to any 'income' taxable in India and, therefore, the appellant[s] was not liable to deduct any tax at source?"

4. In both the cases, it was held that the consideration paid by the Indian customers or end users to the assessee – a foreign supplier, for transfer of the right to use the software/computer programme in respect of the copyrights falls within the mischief of 'royalty' as defined under sub-clause [v] to Explanation 2 to Clause [vi] of section 9[1] of the Income Tax Act, 1961.

5. In view of the aforesaid law declared by this court, the substantial questions of law framed in this case are also answered in favour of the revenue and against the assessee.

6. Appeal is allowed.

Sd/-
JUDGE

Sd/-
JUDGE

Prs*