

(2009) 12 KAR CK 0102

Karnataka High Court

Case No: Income Tax A. No. 1271 of 2006

The Commissioner of
Income Tax,
International Taxation
and The Income Tax
Officer, International
Taxation

APPELLANT

Vs

Synopsys India Pvt.
Ltd.

RESPONDENT

Date of Decision: Dec. 2, 2009

Acts Referred:

Income Tax Act, 1961 " Section 195 (2), 195 (4), 201 (1), 9

Citation: (2009) 12 KAR CK 0102

Hon'ble Judges: K.L. Manjunath, J; Aravind Kumar, J

Bench: Division Bench

Advocate: K.V. Aravind and M.V. Seshachala, for the Appellant; T. Suryanarayana, for King
and Patridge, for the Respondent

Final Decision: Allowed

Judgement

Aravind Kumar, J.

The revenue is in appeal assailing the order of the Income tax Appellate Tribunal passed
in ITA No. 290/Bang/3002

dated 6-1-2006.

2. At the time of admission of this appeal the following substantial questions of law has
been formulated on 7-8-2007 to consider the question of

law formulated in I.T.A. No. 265/2006.

1. Whether the Tribunal was correct in holding that the assessee is not liable to deduct TDS in respect of payments made for purchase of software

as the same cannot, be treated as income liable to tax in India as Royalty or Scientific Work u/s 9 of the Act read with Double Taxation Avoidance

Agreements and treaties.

2. Whether the Tribunal was correct in holding that since the assessee had purchased only a right to use the copyright i.e., the software and not the

entire copyright itself, the payment cannot be treated as Royalty as per the Double Taxation Avoidance Agreement and Treaties which is beneficial

to the assessee and consequently Section 9 of the Act should not take into consideration.

3. Whether the Tribunal should have recorded a finding that it is u/s 195(2) and (3) and (4) of the Act, the chargeability to tax or not of the

recipient is decided and having failed to obtain such a decision the assessee was bound to deduct tax at source as held by the Apex Court in The

Transmission Corporation of A.P. Ltd. and Anr Vs. The Commissioner of Income Tax, A.P., .

4. Whether the assessee. can question the taxability of the recipient in Section 201(1) of the Act proceeding when the assessee has to show only

without good and sufficient reasons failed to deduct and pay tax"" , which has not been shown in the facts of the present case and non taxability

cannot be taken as a sufficient reason, when Section 195(2)(3)(4) of the Act certificate is not. obtained.

5. Whether the Tribunal was correct in holding that the payment partakes the character of purchase and sale of goods and therefore cannot be

treated as royalty payment liable to Income Tax.

3. We have heard Sri. M.V. Seshachla learned Counsel for appellants and Sri. Suryanarayana, learned Counsel appearing for the respondent and

it is brought to the notice of the Court during the course of arguments the questions of law formulated in ITA 265/2006 has been answered by this

Court on 24-9-2009 in ITA 2808/2005 connected with other matters including ITA 265/2006 by answering the questions of law in favour of the

revenue and against the assessee.

4. Accordingly, following the said judgment we answer the questions of law formulated herein above in favour of the revenue and against the

assessee. The appeal is allowed. Parties to bear their costs.