

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.1102/Bang/2019
Assessment year : 2013-14

M/s. Kalki Communication Technologies Pvt. Ltd., 17/1, 4 th Floor, Kaadubeesaanahalli Outer Ring Road, Bengaluru – 560 103. PAN : AABCK 2059 D	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. K. R. Narayana, JCIT (DR)(ITAT), Bengaluru

Date of hearing	:	18.11.2019
Date of Pronouncement	:	27.11.2019

ORDER

Per N. V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 15.03.2019 of CIT(A) -12, Bengaluru, relating to Assessment Year 2013-14.

2. The assessee is engaged in the business of providing computer, communications and control solutions to the energy and automation industry. The assessee offers solutions in the form of sale of software. The assessee purchases the software licenses in the form of shrink wrapped and standardized software from Microsoft from their suppliers outside India. The purchases so made by the assessee and the sum that was paid to the non-resident, was as follows:

Payee	Amount
Net Module	37778
ODVA Inc	95479
SISCO Inc.	1693016
Triangle Micro Works INC	2941988
Total	47,68,261

3. According to the Revenue, the assessee ought to have deducted tax at source on the aforesaid payment under section 195 of the Income Tax Act, 1961 (“the Act”) Act and since the assessee failed to do so, proceedings under section 201(1) and 201(1A) of the Act were initiated against the assessee. The question before the AO was as to whether the payment in question constitute royalty within the meaning of the Act as well as the Double Taxation Avoidance Agreement (DTAA) with the respective countries of which the payees were tax residents. The assessee took the stand that the payment in question is not in the nature of royalty but the said plea was rejected by the Revenue authorities by following the decision of the Hon’ble Karnataka High Court in the case of CIT Vs. Samsung Electronics Ltd., 344 ITR 495 (Kar). Accordingly, the assessee was held to be an assessee in default under section 201(1) of the Act and was also held to be liable to pay interest on the tax not deducted at source under section 201(1A) of the Act.

4. Aggrieved by the aforesaid order of the AO, assessee preferred appeal before the CIT(A). The CIT(A) confirmed the action of the AO.

5. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. We have heard the rival submissions. The learned Counsel for the assessee submitted that as against the decision of the Hon’ble Karnataka High

Court in the case of Samsung Electronics, an appeal has been filed and pending before the Hon'ble Supreme Court. According to him, though the facts of the case of the assessee are identical in the case decided by the Hon'ble Karnataka High Court in the case of Samsung Electronics (supra), since the same has not become final, he reiterated submissions made before the lower authorities. The learned DR relied on the order of the CIT(A).

6. We have considered the rival submissions and are of the view that the case of the assessee is identical to the case decided by the Hon'ble Karnataka High Court in the case of Samsung Electronics (supra) and therefore, the decision of the Hon'ble Karnataka High Court has to be followed. The fact that an appeal against the said decision of the Hon'ble Karnataka High Court is pending before the Hon'ble Supreme Court cannot be the basis not to follow the decision of the Hon'ble Karnataka High Court. We also observe that the ground of appeal filed by the assessee are general and there is no reference to any particular provisions of DTAA based on which it is claimed that the sum in question is not taxable in India. In the circumstances, we find no merits in this appeal by the assessee. Consequently, we dismiss the same.

7. In the result, the appeal by the Assessee is dismissed.

Order pronounced in the open court on this 27th day of November, 2019.

Sd/-
(A. K. GARODIA)
Accountant Member

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 27th November, 2019.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.