**Engineering Analysis Centre of Excellence Private Limited** **Supreme Court of India** **In favour of Assessee**

**Issues discussed and addressed:**

**Issue No 1** Section 9 and 195 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 since 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.

**Facts of the case with respect to issue No 1:**

The appellant, Engineering Analysis Centre of Excellence Pvt. Ltd. (EAC), is a resident Indian end-user of shrink-wrapped computer software, directly imported from the United States of America.. The Assessing Officer by an order dated 15.05.2002, after applying Article 12(3) of the Double Taxation Avoidance Agreement (DTAA), between India and USA, and upon applying section 9(1)(vi) of the Income Tax Act, 1961 (Act), found that what was in fact transferred in the transaction between the parties was copyright which attracted the payment of royalty and thus, it was required that tax be deducted at source by the Indian importer and end-user, EAC. Since this was not done for both the assessment years, EAC was held liable to pay theamount of Rs. 1,03,54,784 that it had not deducted as TDS, along with interest under section 201(1A) of the Income Tax Act amounting to Rs. 15,76,567.

**Held by the Authorities with respect to Issue No 1:**

The definition of royalties contained in Article 12 of the DTAAs that there is no obligation on the persons mentioned in section 195 of the Income-tax Act, 1961 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. The amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/useof 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.

**Krishnappa Jayaramaiah ITA No. 405 (Bang.) of 2020 Bangalore ITAT In favour of Assessee**

**Issues discussed and addressed:**

**Issue No 1** Section 54 F The statute should be construed liberally; since the provisions permit economic growth has to be interpreted liberally, restriction on it too has to be construed so as to advance the objective of the provisions not to frustrate it. Accordingly house purchased in name of assessee's widow daughter is eligible for Sec. 54F exemption as she was havig no other source of earning and dependent upon father after death of husband.

**Facts of the case with respect to issue No 1:**

The assessee claimed deduction u/s 54F of the Act for the investment made in a residential property, in the name of his widowed daughter Smt. J. The assessee submitted before the A.O. that the property under question was received by inheritance by way of partition. The legal heirs of the property are the assessee, his wife, son and widowed daughter. All legal heirs have executed sale deed in favour of the purchaser. The entire sale consideration received was invested in residential house property in the name of his widowed daughter. The assessee claimed deduction u/s 54F of the Act on the capital gains in his return which was denied by A.O.

**Held by the Authorities with respect to Issue No 1:**

The assessee's married widowed daughter is having no independent source of income and is fully dependent on the assessee, on the death of her husband on 20-12-2017. This fact was also clarified by filing a Joint Affidavit by Smt. J and the assessee. Being so, the statute should be construed liberally; since the provisions permit economic growth has to be interpreted liberally, restriction on it too has to be construed so as to advance the objective of the provisions not to frustrate it. Accordingly, the assessee has invested the sale consideration on transfer of Capital Asset in purchasing a new residential property in the name of Smt. J who is being married widowed dependent daughter of the assessee and also legal heir of the assessee. Accordingly, the Assessing Officer is directed to grant exemption u/s. 54F of the Act.

**Judgments Relied upon by the Authorities with respect to Issue No 1:**

a. CIT v. Natarajan [(2007) 287 ITR 271 (Mad.)
b. Gurunam Singh [(2010) 327 ITR 278 (P&H)
c. Late Gulam Ali Khan v. CIT [165 ITR 228 (AP)

**Archroma India (P.) Ltd. Mumbai ITAT Against Assessee**

**ITA No. 6919 (Mum) of 2018 and 306 (Mum) OF 2019**

**Issues discussed and addressed:**

**Issue No 1** Section 32 The said section deals with depreciation on transfer of assets in case of succession amalgamation and demerger, and there is no exclusion anywhere in the income tax act regarding issue of depreciation on slump sale from the ambit of depreciation taxation under section 32. Hence on the principle of the Noscitur a sociis (meaning of an unclear word may be known from the accompanying words.), the asset transferred under slump sale would fall under the sweep of this section, i.e., 5th proviso to Section 32(1),

**Held by the Authorities with respect to Issue No 1:**

During the relevant previous year the appellant entered into an Agreement for Transfer of a Business (BTA) on 28-9-2013 with Clariant Chemicals (India) Pvt. Ltd for purchase of an undertaking under slump sale scheme for consideration of Rs. 209,15,00,000/-. As a result, as per the BTA, the assessee acquired various assets, goodwill etc. from the transferor company. The assets so acquired were shown as addition in the block of assets of the company. Consequent to the acquisition of the business, the assessee got aggregate of the fair value of the assets belonging to each block ascertained. Such aggregate of fair value of assets belonging to each block was taken as the cost of acquisition of those assets and was accordingly added to the W.D.V. of that block of assets. The AO held that the purchases amounted to succession and that the provisions of section 170(1) of the Act were applicable and according calculated depreciation as per the fifth proviso to section 32(1).

**Held by the Authorities with respect to Issue No 1:**

When there is no mention whatsoever about the issue of depreciation on assets acquired under slump sale under section 5OB the natural, corollary is that the depreciation on assets acquired under slump sale is to be governed by the general provisions given in the income tax act for the depreciation on assets. Section 170 deals with transfer of assets pursuant to succession to business by any person otherwise than death. In the present case assessee had acquired the said assets under slump sale. There is a business transfer agreement and by way of this agreement the assessee has purchased an undertaking under slump sale. Hence the provisions of section 170 are clearly applicable on the facts of the present case.