Team Code- R 118

2nd KIIT University National Moot Court Competition, 2014

In the High Court of Judicature at Bombay

Civil Writ Petition No. __OF 2014

Case Concerning

Income Tax Act, 1961

In The Matter Of:

CHEETAH & CHETAK PVT. LTD

(Petitioner)

Versus

INCOME TAX AUTHORITY

(Respondent)

Memorandum on behalf of Respondent

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S.	Section
AAR	Authority for advance rulings
Act	Income Tax Act, 1961
ACIT	Additional Commissioner of Income Tax
AIR	All India Reporter
AO	Assessing officer
Asst.	Assistant
Bom	Bombay
Cal	Calcutta
CBDT	Central Board of Direct Taxes
CIT	Commissioner of Income Tax
CTR	Current Tax Reporter
Co.	Company
DCIT	Deputy Commissioner of Income Tax
Del	Delhi
DIT	Department of Income Tax
DTAA	Double Taxation Avoidance Agreement
DTR	Direct Tax Reports
Dy.	Deputy
ed.	Edition
Id.	Ibidem

IT	Income Tax
ITA	Income Tax Appeal
ITAT	Income Tax Appellant Tribunal
ITD	Income- Tax Tribunal Decision
ITO	Income Tax Officer
ITR	Income Tax Reporter
KAR	Karnataka
Ltd.	Limited
Mad	Madras
Mum	Mumbai
Ors.	Others
SC	Supreme Court
SCC	Supreme Court Cases
Trib	Tribunal
TTJ	Tax Tribunal Judgment
UOI	Union of India
u/s	Under Section
v.	versus

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1. **Zeon** is a private company incorporated in the Cayman Islands but carries on its software business primarily through Singapore. However, Zeon has not been able to obtain a Tax Residency Certificate from Singapore, in order to claim Singapore tax residency for Indian tax purposes. Zeon is an IT & ITES company, having several employees across the world, including India. Zeon had presence in India through a liaison office. The Indian liaison office is primarily engaged in liaising with potential clients, and provided them with presentations that discussed the various software products that Zeon has to offer.

2. After many years of perseverance, hard work and dedication, Zeon has designed software which has the possibility of changing how the world thinks. The software, called Neo, was the most revolutionary product that the human resource industry has seen. The software was in the nature of shrink-wrapped software. The software could predict how well a new recruit would perform in an organization that was going to hire him/her. Incidental to this, the software also predicted how well the employee would blend in the organization with respect to the culture, values etc. of the organization.

3. **Cheetah &Chetak Private Limited**, an Indian manufacturing private limited company, having its registered office in Mumbai decided to buy this software in AY 2003-04, as it was facing some issues with the employees that it was hiring.

4. An agreement was entered into between the manufacturing company and Zeon for purchase of software **("Agreement")** .The payment for the software was on a year on year basis and thus every year the manufacturing company paid Zeon the agreed sum of INR 35,00,000. No TDS was deducted by the manufacturing company at the time of making payments.

5. Some key terms of the Agreement were as follows:

   "LICENCE AGREEMENT between Zeon (licensor) and Cheetah &Chetak Private Limited (licensee).

   2. GRANT, SUPPLY AND USE OF LICENCE

   a) Zeon grants Licensee a non-exclusive, non-transferable licence to use the software in accordance with this Agreement. The licence is *perpetual* in nature.

b) Any third party software incorporated in the software is licensed only for use with the software.

c) Zeon will supply one copy of the software for each site and, when applicable, one set of support information to the Licensee. Licensee shall pay Zeon a fee for additional copies of any printed support information supplied by Zeon.

d) *Licensee may make one copy of the software and associated support information for backup purposes*, provided that the copy shall include Zeon's copyright and other proprietary notices. All copies of the Software shall be the exclusive property of Zeon.

f) The Software shall be used only for Licensee's own business and shall not, without prior written consent from Zeon: (i) be loaned, rented, sold, sublicensed or transferred to any third party (ii) used by any parent, subsidiary or affiliated entity of Licensee (iii) Used for the operation of a service bureau or for data processing.

g) Licensee is also granted an educational licence, and thus the Software may only be used for instruction or research purposes and not for any commercial purposes.

h) Licensee may not copy, decompile, disassemble or reverse-engineer the Software without Zeon's written consent. *The Licensee's rights shall not be restricted by this Clause 2(h) to the extent that local law grants Licensee a right to do so for the purpose of achieving interoperability with other software and in addition thereto Zeon undertakes to make information relating to interoperability available to Licensee subject to such reasonable conditions as Zeon may from time to time impose including a reasonable fee for doing so.*

4. OWNERSHIP, INTELLECTUAL PROPERTY AND INDEMNITY- All copyrights and intellectual property rights in and to the Software, and copies made by Licensee, are owned by or duly licensed to Zeon. Zeon warrants that it has the power to grant the licence rights contained in this Agreement."

6. The manufacturing company filed its income tax return regularly without delays. For AY 03-04 and 04-05 assessment order under Section 143(3) of the Income Tax Act, 1961 was passed. For AY 2005-06, assessment was completed under Section 143(1) and for the AYs 2006-07, 2007-08, 2008-09 it was completed under 143(3). The assessing officer had accepted the returns and the transaction with Zeon in all these years. At the time when the

assessments were taking place, the assessee co-operated with the tax department and provided it with all documents as and when the assessing officer asked.

7. However, on July 4, 2014, the assessing officer sent a notice under Section 148 to Cheetah & Chetak Private Limited. The assessing officer disallowed the deduction claimed for payments made for these AYs and sort to recover Rs. 50 lacs from the assesse. The reason cited by the assessing officer for all these years was that payments made by the Indian manufacturer constituted 'royalty' under section 9 of the Income tax Act, 1961, and thus tax should have been withheld at the rate of 25% for all these years, while making payment to Zeon for the software. The manufacturing company was also being charged under the ITA as an 'assessee-in-default'.

8. The assessee has filed a writ petition in the High Court of Bombay challenging all the AYs for which it had received a 148 notice.

ISSUES RAISED

1. WHETHER THE PRESENT WRIT PETITION IS MAINTAINABLE BEFORE THIS HON'BLE HIGH COURT?

2. WHETHER, ON THE FACTS AND CIRCUMSTANCES OF THE CASE AND IN LAW, THE LEARNED AO WAS RIGHT IN DISALLOWING THE PAYMENT MADE TO PURCHASE THE SOFTWARE FROM ZEON AS IT IS IN THE NATURE OF 'ROYALTY' AND TAXABLE IN INDIA?

3. WHETHER, ON THE FACTS AND CIRCUMSTANCES OF THE CASE AND IN LAW, THE ASSESSEE SHOULD BE CONSIDERED AS AN 'ASSESSEE IN DEFAULT' AND SHOULD BE LIABLE TO PAY INTEREST FOR NOT DEDUCTING TAX AT SOURCE?

1. **ON THE FACTS AND CIRCUMSTANCES OF THE CASE AND IN LAW THE PRESENT WRIT PETITION IS NOT MAINTAINABLE BEFORE THIS HON'BLE HIGH COURT.**

The Revenue submits that the present writ petition filed to quash the reassessment notice issued under Section 148 by the AO is not maintainable because the assessee has not exhausted the alterative remedy available under the Income Tax Act and further, the writ petition has been filed at a premature stage. Further, the AO has acted within his jurisdiction while issuing such reassessment notice by complying with the conditions provided under section 147 and also, the circular of CBDT dated 29.05.2012 is not applicable in the instant case.

2. **ON THE FACTS AND CIRCUMSTANCES OF THE CASE AND IN LAW, THE LEARNED AO WAS CORRECT IN DISALLOWING PAYMENT MADE TO PURCHASE SOFTWARE FROM ZEON.**

Pursuant to section 40(a)(i) of the Income Tax Act the AO was indeed correct in disallowing the annual payments which were furthered to Zeon in the relevant AYs in lieu of the purchase of the 'shrink wrapped software'. The disallowance was directed owing to the reason that benefits under India-Singapore DTAA cannot be availed by the assessee; and the payments advanced shall be subjected to the provisions of the Income Tax Act solely, pursuant to which, the same are in the nature of 'royalty'. Pursuant to s.9(1)(vi), the payments advanced by the assessee, are liable to be disallowed as Explanation 4 appended retrospectively, expressly includes right to use a computer software and also, the subject matter of the 'Agreement' is not 'good'; and software being a literary work, payments advanced in lieu of the same constitutes 'royalty'**.** Also, a conjoint reading of section 115A of the Act with second Proviso of Section 9(1)(vi) leads to the inference that payments advanced amounts to 'royalty'. Moreover, the right accorded to use the said software also tantamounts to use of an 'invention', 'process' or any other 'similar property'. *Without prejudice to the above*, even if the benefits under the DTAA are accorded to the assessee, still the said payments would be deemed to be in the nature of 'royalty.'

3. **ON THE FACTS AND CIRCUMSTANCES OF THE CASE AND IN LAW, THE ASSESSEE CAN BE CHARGED AS AN 'ASSESSEE IN DEFAULT'.**

The assessee submits that initiation of proceedings under S. 201 are liable to be set aside as the same are time barred and the same cannot be invoked on the basis of a retrospective amendment.

[I.] ON THE FACTS AND CIRCUMSTANCES OF THE CASE AND IN LAW, THE PRESENT WRIT PETITION IS NOT MAINTAINABLE BEFORE THIS HON'BLE HIGH COURT.

The Revenue submits that the present writ petition filed to quash the reassessment notice issued under Section 148 by the AO is not maintainable because the assessee has not exhausted the alterative remedy available under the Income Tax Act; **[A].** Further, the AO has acted within his jurisdiction while issuing such reassessment notice; **[B]** and the circular of CBDT[1] dated 29.05.2012 is not applicable in the instant case; **[C]**.

[I.A] THE PETITIONER HAS NOT EXHAUSTED THE ALTERNATIVE REMEDY PROVIDED UNDER THE INCOME TAX ACT, 1961.

The Revenue submits that the present writ petition should be dismissed on the ground that the assessee has not resorted to the alternative remedy **[A.1]** and further, the writ petition has been filed at a premature stage **[A.2].**

[A.1] 'Alternative Remedy' is provided under Income Tax Act, 1961.

It is an established legal principle that to seek a relief under Article 226 of the Constitution of India, the petitioner has to exhaust all the alternative remedies available to him.[2] The Apex Court in *Thansingh Nathumal v Supdt of Taxes*[3] held that "*a High Court shall not entertain a writ petition, where the petitioner has an alternative remedy, which without being unduly onerous provides an equally efficacious remedy*." If a right or liability is created by a statute, then it is essential to resort to the statutory remedy provided therein for the enforcement of the right or the liability before invoking the extraordinary and prerogative writ jurisdiction of the High Court.[4] The Supreme Court in *Abraham v ITO*[5] ruled that "*when the taxing statute provides complete machinery for assessment of tax, imposition of penalty and obtaining relief in respect of any improper orders passed by the authorities, the aggrieved person has to resort to the statutory remedies before filing a writ petition*."

The Apex Court in *CIT v Chabil Das Agarwal*[6] has reiterated the same legal proposition, wherein it was held that, "*High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the*

[1] F.No.500/111 12009-FTD-I (Pt.)
[2] Union of India v T.R.Varma, AIR 1957 SC 882, Municipal Council, Customs v Shantilal, AIR 1966 SC 197, Vali Pero v Fernando Lopez, (1989) 4 SCC 671.
[3] AIR 1964 SC 1419.
[4] V.C.Ramachander, Law of Writs, 214-215 (6th ed. 2006).
[5] AIR 1961 SC 609.
[6] (2014) 1 SCC 603.

action complained of contains a mechanism for redressal of grievance. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation." In this regard, it is brought forth that the Income Tax Act provides for an appeal mechanism under Section 246A and Section 253, wherein an assessee can challenge any action of the assessing officer and seek redressal for the action so taken; thus, the Income Tax Act in itself provides for an alternative efficacious remedy which the assessee must exhaust before filing a writ under Article 226. Thus, it is most humbly submitted that the failure of the assessee in the instant case to exhaust alternative remedy which was available renders this writ petition to be non maintainable and hence liable to be dismissed.

[A.2] <u>The writ petition challenging the said reassessment notice has been filed at a premature stage.</u>

It is submitted that a writ is made maintainable only if it is filed at the appropriate stage of proceedings. The Supreme Court in the case of <u>*GKN Driveshafts v ITO*</u>[7] has laid down the exact procedure specifically with respect to Section 148 of the Income Tax Act which has to be followed by the assessee to challenge a reassessment notice. The Hon'ble, the Supreme Court pronounced "*that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the assessee is to file return and if he so desires, to seek reasons for issuing such notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the assessee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. A writ can only be filed subsequent to the compliance with the aforementioned procedure.*" The recent judgment of the Madras High Court in <u>*JCIT v Kalanithi Maran*</u>[8] following the same view has increased the rigour before which a writ petition can be filed for challenging a reassessment proceeding and held that "*a challenge to an order passed on the objections of the assessee is in effect a challenge to a notice under s. 148 of the Act. Such an order passed by the AO is only at the stage of process of determination and not a determination by itself. The process of reassessment is not required to be challenged before Court of law, as it is a still born child. Therefore, the assessee cannot have a legal right as there is no legal injury suffered by them at that stage. Therefore a writ filed at this stage is ought to be dismissed*." In reference to the instant case, it is brought forth that the assessee was issued a reassessment notice under Section 148 of the Income Tax Act.[9] The assessee instead of following the procedure of filing objections against the same has directly filed a writ before the Hon'ble High Court. Thus, the reassessment proceedings are still in the process of determination and

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[7] (2003) 259 ITR 19 (SC).
[8] MANU/TN/0961/2014
[9] Refer Moot Proposition, Para 4.

hence, there has been no violation of any legal right of the assessee, which is a necessary prerequisite in order to invoke Article 226;[10] and in absence of the same, the present writ petition is liable to be dismissed.

[I.B] THE REASSESSMENT PROCEEDING IS NOT ULTRA VIRES THE JURISDICTION.

Section 147 of the Income Tax Act empowers the AO to reopen the assessment proceedings if he has '*reason to believe*' that income liable to be taxed has escaped assessment. In this regard, it is submitted that the AO in the instant case had '*reason to believe*' to reopen the proceedings as there has been a material non disclosure on the part of the assessee.

It is further submitted that the assessee might put forth an argument that the assessee is absolved from any liability once he produces all the documents and materials before the AO and it is the duty of the AO thereafter to make inferences from the same and thus, if the assessment is reopened merely on the basis of the AO realizing the intricacies pertaining the transaction at a later stage of time, the same only amounts to a '*change of opinion.*' However, in this regard, it is submitted that there prevails a difference between '*no opinion*' and '*a change in opinion*'[11] and thus, the aforementioned assertion of the assessee stands negated pursuant to Explanation 1 to Section 147 and also in light of the judgment of Bombay High Court in the case of *Infotech Ltd v ACIT*[12] where the Court while analyzing the said explanation observed that, "*Producing voluminous records before the Assessing Officer does not absolve the assessee of the obligation to disclose and the assessee, therefore, cannot be heard to say that if the AO were to conduct a further enquiry, he would come into possession of material evidence with the exercise of due diligence as the primary obligation to disclose is on the assessee and burden of making a full and true disclosure does not shift to the AO and thus, the assessee cannot challenge the reopening of the assessment on the ground that if the AO were to initiate a line of enquiry, he could have arrived at material evidence.*"[13] The same proposition was reiterated by the Apex Court in the case of *Kantamani Venkata Naryana & Sons v ITO*[14] and Delhi High Court in *Rakesh Agarwal v CIT*.[15] Thus, in reference to the present case, the revenue submits that during the assessment proceedings, '*no opinion*' could be formed by the AO in regard to the intricacies involved in the disputed transaction and thus, the reassessment notice is valid.

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[10] Bangalore Medical Trust v B.S.Muddappa, (1991) 4 SCC 54, Gopabandhu v Krishna Chandra, (1998) 4 SCC 447, Lekhi Ram v State of Haryana, (1981) 2 SCC 674.

[11] CIT v Usha International, (2012) 348 ITR (Del).

[12] (2010) 329 ITR 257 (Bom).

[13] CIT v USHA International, (2012) 348 ITR (Del).

[14] (1967) 63 ITR 638 (SC), Consolidated Photo & Finest Ltd v ACIT, (2006) 281 ITR 394 (SC).

[15] (1996) 221 ITR 492 (Del)

Additionally, it is submitted that the Hon'ble Bombay High Court in *Indo European Breweries Ltd v ITO*[16] has held that, "*Where there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment, the re-opening of the assessment would stand validated even if it takes place beyond the expiry of a period of four years.*[17]" In this regard, it is submitted that in the instant case, vide Section 195(6) of the Act[18] read with Rule 37BB of the Income Tax Rules, the assessee was mandatorily required to submit Form 15CA and Form 15CB for every payment made to a non-resident.[19] Failure of the assessee to do so amounts to material non disclosure within the scope of the Section.[20] Thus, the action of the AO in reopening the assessment was justified as the assessee had defaulted in complying with the provisions of the Act. Reliance in this regard to ascertain the validity of the instant reassessment notice is drawn to the case of *Honda Siel Power Products Ltd. v CIT*[21] wherein it was held that a retrospective amendment shall be made applicable to govern the transactions of the assessee even if, the same is brought in the statute book after filing of returns by the assessee, but within the assessment proceedings and the reassessment proceedings though initiated after expiry of four years were deemed to be valid in the aforesaid case. Thus, it is submitted that the reassessment notice in the instant case is not completely *ultra vires* the jurisdiction and thus, the writ should be deemed non-maintainable.

Furthermore, it is submitted that the AO's '*reason to believe*' that '*income liable to be taxed had escaped assessment*' is also substantiated pursuant to the retrospective amendment brought vide Finance Act, 2012. In this regard, reference is drawn to the judgment of the Supreme Court in the case of *M.K.Venkatachalam v Bombay Dyeing & Manufacturing Co*[22] wherein it was held that, *"as long the conditions for the applicability of the Section 147 are satisfied, the action taken is valid. Under this principle, it is held that one of the reasons for reopening in the present case being the retrospective amendment, the notice sent pursuant to the same is valid as it formed a tangible material for the AO."* Following this decision, the Supreme Court in the case of *Maharaj Kumar Kamal Singh v CIT*[23] held that retrospective amendment serve as a new piece of information and the action of the AO pursuant to the same is justified under Section 147. Various

[16] TS-666-HC-2011(Bom).
[17] Proviso to Section 148 of the IT Act, 1961.
[18] Inserted under Finance Act, 2008, w.e.f. July, 2009 and thus, for AY 2008-09 in respect of the said payments, mandate under s. 195(6) was to be complied with.
[19] This can be ascertained from the fact that Guidelines for Part B of the form (particulars of remittance in TDS) states that: if no tax has been deducted then value 0.00 should be mentioned in amount of TDS field.
[20] The said inference is drawn on the basis of Note 1 appended to the Moot Proposition which provides that 'only' those documents were furnished by the assessee which the AO specifically asked for. Thus, it is submitted that the aforementioned inference is not on the basis of an adverse interpretation of the said Note.
[21] (2011) 197 Taxman 415.
[22] (1958) 34 ITR 143 (SC).
[23] (1959) 35 ITR 1 (SC).

High Courts have also held that retrospective amendment form a tangible material which justifies the action of AO in reopening the proceedings as it is not a mere change of opinion which takes place.[24]

Thus, it is humbly submitted that present writ petition should be dismissed as the action of the AO is valid as all the conditions under Section 147 were complied with and hence the AO acted well within the scope of its jurisdiction.

[I.C] THE CIRCULAR OF CBDT DATED 29.05.2012, IS NOT APPLICABLE IN THE INSTANT CASE.

It is pertinent to note that the said circular provides that the assessments which have been completed under Section 143(3) of the Act before April 1, 2012 cannot be reopened relying on the retrospective amendments brought w.e.f. 1.4.1962 or 1.4.1976. In this regard, it is submitted that the said circular is inapplicable in the instant case as retrospective amendment to Section 9(i)(vi) has been brought with retrospective effect from 1.6.1976 and not from the dates which find mention in the said circular. Hence, the said Circular cannot be made a ground to invalidate the instant reassessments proceedings.

It is further submitted that the Supreme Court in the case of *Faridabad Iron & Steel Traders Association v UOI*[25] and Rajasthan High Court in *Popular Backing Lvt Ltd v UOI*[26] held that a circular in contravention to any retrospective amendment is void and inoperative. Finally, the Constitution Bench of the Apex Court in the *CCE v Ratan Melting & Wire Industries Ltd*[27] has held that, "*circulars which are contrary to the existing provisions of law have really no existence at all and are not binding upon the authorities.*" Thus, it is submitted that in the light of the foregoing submissions, the reassessment notice is not *ultra vires* and hence, the present writ petition is liable be dismissed by this Hon'ble High Court.

[II.] ON THE FACTS AND CIRCUMSTANCES OF THE CASE AND IN LAW, THE AO WAS RIGHT IN DISALLOWING THE PAYMENTS MADE TO PURCHASE THE SOFTWARE FROM ZEON AS THEY ARE IN THE NATURE OF 'ROYALTY'.

It is most humbly submitted that pursuant to section 40(a)(i) of the Income Tax Act, 1961 the AO was indeed correct in disallowing the annual payments which were furthered to Zeon in the relevant AYs in lieu of the purchase of the 'shrink wrapped software'. The disallowance was directed owing to the reason that benefits under India-Singapore DTAA cannot be

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24 Ester Industries Ltd v UOI, (2013) 215 Taxman 673 (Delhi), Kartikeya International v CIT, (2010) 329 ITR 539 (All), Central Warehousing Corporation v CIT, (2014) 2 AD (Delhi) 517.

25 (2005) 181 ELT A68 (SC).

26 (2004) 175 ELT 33 (Raj).

27 (2008) 220 CTR 98 (SC).

availed by the assessee, **[A]**; and the payments advanced shall be subjected to the provisions of the Income Tax Act solely, pursuant to which, the same are in the nature of 'royalty', **[B]**. ***Arguendo:*** Without prejudice to the above, even if the benefits under the DTAA are accorded to the assessee, still the said payments would be deemed to be in the nature of 'royalty.'

[II.A] THE ASSESSEE IS NOT ENTITLED TO SEEK BENEFITS UNDER THE INDIA-SINGAPORE DTAA IN THE ABSENCE OF TAX RESIDENCY CERTIFICATE.

It is submitted that since the non-resident to which payments were furthered by the assessee in the instant case, i.e. Zeon has not been able to obtain a Tax Residency Certificate from Singapore, in order to claim Singapore tax residency for Indian tax purposes; and hence, pursuant to Article 4 of the DTAA[28] the benefits under the same cannot be accorded to the assessee.

In this regard it is submitted that, obtaining a Certificate of Residency (COR)[29] is a mandatory prerequisite under the taxation laws of Singapore before a company can enjoy the benefits in the DTAAs that Singapore has concluded with other treaty countries.[30] A company is considered as a tax resident of Singapore only if the control and management of its business is exercised in Singapore.[31] Thus, merely on the ground that Zeon carries on its software business primarily through Singapore, treaty benefits cannot be availed by the assessee in the instant case.

Reliance in this regard is also drawn to the judgment rendered in the case of *ITO v Nasiruddin A. Jesani*[32] wherein the court while carving out a difference between being merely a citizen of a country and being the tax resident of that country held that, 'in order to claim the treaty benefits, it is obligatory on the part of the assessee to provide documentary evidence to show that he is the tax resident of the contracting state, and in absence of the tax residency certificate, the benefits of the DTAA will not be available to the assessee.' Further, in *E* Trade Mauritius Ltd. v DIT*[33] it was held that 'by virtue of the Circular No. 789 issued by CBDT[34] the TRC is at least a presumptive evidence of the residency status and the burden is on assessee to prove that he can claim DTAA benefits and is required to prove the same by producing atleast TRC as evidence.

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[28]Article 4 reads as under: 'For the purposes of this Agreement, the term "resident of a Contracting State" means any person who is a resident of a Contracting State in accordance with the taxation laws of that State.' Thus, in the instant case, Zeon has to assert its tax residency on the basis of the taxation laws of Singapore.

[29]A COR is a letter certifying that the company is a tax resident in Singapore for the purpose of claiming benefits under the Avoidance of Double Taxation Agreement (DTA).

[30]http://www.iras.gov.sg/irashome/page04.aspx?id=458

[31]Section 2 of Income Tax Act, 1947 of Singapore

[32]ITA Nos. 4132 To 4137 (Mum.) of 2008 and 2961-2962 (Mum.) of 2010 C.O. Nos. 203 to 208 (Mum.) of 2008

[33][2010]324ITR1(AAR)

[34] Validity of which has been upheld by the Supreme Court in Azadi Bachao Andolan v UOI, 263 ITR 706(SC).

Thus, it is most humbly submitted that since Zeon has not been able to obtain a valid TRC, the assessee in the instant case is not entitled to avail the benefits under the DTAA and hence, the nature of the payments are to be gathered pursuant to the relevant provisions of the IT Act only.

[II.B] PURSUANT TO THE INCOME TAX ACT, 1961 PAYMENTS MADE TO ZEON FOR THE PURCHASE OF THE SHRINK WRAPPED SOFTWARE ARE IN THE NATURE OF 'ROYALTY'.

It is most humbly submitted that pursuant to s.9(1)(vi) of the Income Tax Act, the annual payments advanced by the assessee in all the relevant AYs, are liable to be disallowed under Section 40(a)(i) as Explanation 4 appended retrospectively, expressly includes right to use a computer software, **[B.1]**; further, the subject matter of the 'Agreement' under deliberation in the instant case is not 'good', **[B.2]**; and software being a literary work, payments advanced in lieu of the same constitutes 'royalty' **[B.3].** Also, a conjoint reading of section 115A of the Act with second Proviso of Section 9(1)(vi) leads to the inference that payments advanced even for mere use of software amounts to 'royalty', **[B.4]**. Moreover, the right accorded to use the said software also tantamounts to use of an 'invention', 'process' or any other 'similar property', **[B.5]**.

[B.1] Explanation 4 to s. 9(1)(vi) expressly includes right to use computer software.

The Finance Act, 2012 has inserted explanation 4 to section 9(1)(vi) of the Income tax Act, 1961 retrospectively which provides that transfer of all or any rights in respect of any right, property or information, includes and has always included transfer of all or any right to use or right to use a computer software. In *Keshavji Ravji and Co. v. CIT*[35]the Supreme Court held that, '*an Explanation, is intended to explain the meaning of certain phrases and expressions contained in the statutory provisions and it is introduced by way of abundant caution in order to place what legislature considers to be true meaning beyond any controversy or doubt.*' Thus, Explanation 4 has to be read as part and parcel of Section 9(1)(vi). It is submitted, that the Assessee might argue that section 40(a)(i) refers to explanation 2 of s. 9(1)(vi) only and thus, explanation 4 cannot be considered while disallowing payments. But, then the same stands negated on the ground that the *Memorandum explaining the amendments relating to Direct Taxes in the Finance Bill, 2012*[36] mentions that Explanation 2 has to be conjointly read with Explanation 4 for disallowing payments pursuant to s. 40(a)(i) of the Act.

[B.2] The Subject Matter of the 'Licence Agreement' is not in the nature of 'Goods'.

The Respondent most humbly submits that the said payments can be attributed to be in the nature of royalty as license of shrink wrapped software does not amount to sale[37] and the ratio rendered

[35][1990] 183 ITR 1 (SC),
[36] See at: Indiabudget.nic.in/ub2013-14/mem/mem1.pdf
[37] DCIT v. All Russia Scientific Research Institute of Cable Industry, 92 TTJ 74 (Mum)].

in the case of *Tata Consultancy v State of AP*[38] is not applicable in the instant case. In this regard, reference is drawn to the case of *CIT v. Davy Ashmore India Ltd.*[39]wherein it was held that an outright transfer to be treated as sale/purchase of property as opposed to license, alienation of all rights in the property is necessary.[40] Further, in *DDIT v Reliance Communications Infrastructure Ltd.,*[41]it was held that 'the mere fact that customs law or sales tax law deems it to be goods (As per Tata Consultancy Services Co.'s case) for the purpose of their Act, does not change the inherent character of the 'software'. In fact, World Trade Organisation (WTO) enumerates 3 main agreements, *viz.* Agreement on trade of goods (GATT), Agreement on trade of services (GATS) and Agreement on trade of intellectual property rights (TRIPS) which goes on to indicate that IPRs (Software is an IPR) are a distinct and different class than those of goods and or services. Reliance is also drawn to the case of *CIT v. Sun Engineering Works (P) Ltd.*[42]wherein the Hon'ble Supreme Court has pointed out that, '*it is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of question under consideration and treat it to be the complete 'law' declared by this court.*[43] *The judgments cannot be divorced from the context of the questions under consideration by this court, to support the reasoning when the question did not even fall to be answered in that judgment.'* The same principle was enunciated in *Madhav Rao Jivaji Rao ScindiaBahadur v. UOI.*[44]

Pursuant to which, it is brought forth that in *Tata Consultancy Services'* case the issue under consideration was whether a sale of disc/floppy containing software program amounted to sale of goods under the sales tax law of Andhra Pradesh. In fact, the issue of transfer of right to use the goods (as per expanded definition of sale) did not come up for consideration in that case. Further, the issue under consideration in the present case is entirely different as the question here is whether the consideration paid is for the use or right to use copyright and whether the same can be considered as royalty. Further, a license granted for a shrink wrapped software does not amount to sale,[45] as held in *DCIT v All Russia Scientific Research Institute*[46]. Thus, it is submitted that the argument which the assessee has furthered that pursuant to the ratio of the Tata Consultancy case, the said payments can be deemed to be made in lieu of purchase of a 'good' and hence the same cannot be attributed to be in the nature of royalty is bad in law.

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[38] Tata Consultancy Services v State of Andhra Pradesh, AIR 2005 SC 371
[39] *(2003-TIOL-207-HC-KOL-IT*)
[40] M/S. Frontline soft Limited ITA no 1080-1081/Hyd/03 *;*
[41] (2014)159TTJ(Mum)589
[42] (1992) 198 ITR 297 (SC)
[43] Commissioner of Income Tax, International Taxation vs. Samsung Electronics Co. Ltd. (2011)245CTR(Kar)481
[44] (1971) 3 SCR 9.
[45] D.B.Group Ltd v CIT, [1996] 17 NZTC 12446.
[46] 92 TTJ 74 (Mum), CIT v Davy Ashmore India Ltd, (1991) 190 ITR 626 (Cal), Parsons Brinckerhoff India Pvt Ltd v ADIT, 24 SOT 341 (Del).

Reference in this regard is also made to the case of *Gracemac Corporation v ADIT*[47], wherein the court held as under, '*the term "Copyrighted Article" may be aptly used for a book or music CD but it is a misnomer in the case of computer program (software.)*' The Court also maintained that since there is no ambiguity in the definition of the term 'royalty' as appearing in Explanation 2 to Section 9(1)(vi) of the Act, therefore there is no need for resorting to any external aid of construction for importing the expression 'copyrighted article' from OECD Commentary[48] or US Regulations on Classification of Transactions involving Computer Program.[49] The same view was upheld in *M/S. Frontline Soft Limited v DCIT*[50] wherein the Court observed that "*the domestic law is clear, unambiguous and does not suffer from any void or gap, and thus, the spirit or intention of international convention, under no circumstances, can override the express provisions of domestic law.*"

Further, it also brought forth that section 80HHE was introduced in the Act w.e.f. 1.4.1991 for granting deduction in respect of profits from export of software. The need to bring in the said amendment was mainly because such profits were not entitled for deduction u/s. 80HHC as the software is not considered as goods or merchandise.[51] Thus, in light of foregoing arguments, it is most humbly submitted that the subject matter of the 'Agreement' under deliberation in this case is not in the nature of 'goods'.

[B.3] Software being a 'literary work', payments advanced in lieu of the same constitutes 'royalty'.

It is most humbly submitted that the Copyright Act, 1957 provides that a 'literary work' includes computer programs, tables and compilations including computer databases.[52] Further, the definition of term 'royalty' appearing in Clause (v) of Explanation 2 is inclusive and the legislature in its wisdom has used the word 'copyright' independent of subsequent words 'literary, artistic or scientific work...' by separating them by use of a punctuation mark coma (,) appearing in the said clause which cannot be interpreted to mean that there has been an omission of word *'of'* while enacting the law. It is a settled law that where the statutory word is plain and unambiguous, it is not for the judges to invent fancied ambiguities.[53] Thus, the respondent submits that the language employed in Clause (v) of Explanation 2 to Section 9(1)(vi) is clear and unambiguous to include the said payments as royalty.

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47 2011 (8) ITR (Trib) 522 (Delhi).

48 In Airport Authority of India, In Re, 304 ITR 216, "it was held that OECD views are not binding as India is not a signatory to the Convention."

49 US Regulations on Classification of Transactions involving Computer Programmes Reg. § 1.861-18, 61 Fed.Reg.58, 153 (1996).

50 ITA no 1080-1081/Hyd/03.

51 DDIT v Reliance Communications Infrastructure Ltd., (2014)159TTJ(Mum)589.

52 Section 2(o) of the Copyright Act, 1957.

53 Gracemac Corporation v. ADIT 2011 (8) ITR (Trib) 522 (Delhi).

Reference is also drawn to the case of ***DDIT v Reliance Communications Infrastructure Ltd.,***[54] wherein it was maintained, *that a copyright subsists in a computer program as it is not only unauthorized reproduction but also the storage of a program in a computer constitutes copyright infringement. Whenever an object program is run on a computer, it is thereby copied; and whenever a source program is compiled in a computer, it is thereby copied or adapted. A software license can, therefore, be legitimately considered to be a copyright license.*

Further, in *Citrix Systems Asia Pacific Pvt. Ltd.*[55], it was held that, when a software is licensed for use, the right to use the copyright embedded therein is also licensed as, if a software is used without being lawfully acquired either by purchase or by license, that would amount to an infringement of the copyright because of the copyright embedded in the software. It is not possible to divorce the software from the intellectual property right of the creator of the software embedded therein.[56] It is submitted that when the use of software, without anything more, renders the user liable for infringement of the copyright embedded in the software, then it can reasonably be asserted that sale or the licensing of the software involves the grant of a right to use the copyright in the software and right to use the intellectual property embedded in the software.[57] Therefore, the payments made in lieu of licensing of software for use by the end-user customer can rationally be attributed to be in the nature of royalty.[58] In this regard, it is also submitted that Section 52 of the Copyright Act provides that the right to make back-up copies does not amount to copyright infringement only if duly authorized by the License. In the instant case, though the assessee was accorded a '*non-exclusive and non-transferable license*', but then was also accorded a right to make back-up copies[59] and bestowing of such a right leads to the conclusion that even copyright associated with the software was transferred to the assessee.[60]

The aforementioned submissions furthered by the Department are substantiated by the *Circular No 621 dated 19/12/1991 issued by CBDT,* wherein it has been categorically stated that payment for acquisition of software under a License is royalty. The same position has been reiterated in *Circular No 794 of 2000 of CBDT*. Thus, in the instant case, the payments made pursuant to the License Agreement under deliberation are in the nature of 'royalty'.

[54] (2014) 159 TTJ (Mum) 589.
[55] 343 ITR 001.
[56] CIT v PSI Data Systems, ITA No 2978 of 2005.
[57] Millennium IT Software Ltd.v.The Director of Income Tax, [2011] 202 TAXMAN 510 (AAR).
[58] Acclerys KK v DDIT, (2012) 248 CTR (AAR) 162.
[59] Agreement, Clause 2(d).
[60] IMT Labs (India) Pvt Ltd, In Re, (287) ITR 450.

[B.4] <u>A conjoint reading of section 115A with Section 9(1)(vi) leads to the inference that right to use a software implicates use of a copyright associated with the same.</u>

The Revenue submits that the expression 'computer software' is independently covered in Explanation 2 to Section 9(1)(vi) which is based on a conjoint reading of second proviso to Section 9(1)(vi) of the Act and Section 115A of the Act. These provisions are a pointer to the legislative 'intent' of first bringing software under 'royalty provision' and then granting 'conditional exemption' wherever necessary.

Pursuant to second proviso to Section 9(1)(vi), it is asserted that the said proviso carves out an exception from main section, '*exempting lump sum payment made by a resident for the transfer of all or any rights in respect of computer software under any scheme approved under the Policy on Computer Software Export, Software Export, Software Development and Training, 1986 of the Government of India*.' The Respondent submits that this proviso cannot stand on its own legs as provisos are incorporated to establish that what is stipulated in the proviso will remain excluded from the main clause and are highlighted more as an abundant cautionand hence, cannot be held as a substantive provision. It would, therefore, mean that Section 9(1)(vi) from very inception included computer software for the purposes of royalty on the rationale that anything can be taken out from a bundle of things only if it includes the same.[61] This proposition gets further fortified by provisions of Section 115A(1A) which provides different rate of tax for different incomes of non residents and refers to royalty from "*copyright in any book*" or "*in respect of any computer software*". This is a clear indication that (i) computer software is very much covered under the definition of "royalty" as appearing in the Act and (ii) the law treats computer software as different from copyright in any book; because, if royalty income from the use or the right to use or transfer of all or any right (including the granting of the licence) in respect of copyright in computer programme was not taxable under Section 9(1)(vi) of the Act, the Parliament would not have prescribed special rate of income tax in respect of royalty income in respect of any computer software Under Section 115A(1A).

In this regard, it is submitted that the most basic rule of interpretation is embodied in the Latin maxim '*ex visceribus actus'*, which means that a statute has to be read as a whole and not piecemeal. Further, interpretation must not lead to conflict with the other provisions of the statute and the intention of the Legislature must be found by a reading of the statute as a whole and in its context which is derived from the contextual scheme. Reliance in this regard is drawn to the judgment rendered by the Hon'ble Supreme Court in *<u>Unique Butyle Tube Industries (P.) Ltd. v.</u>*

[61]CIT vs. Synopsis International Ltd, 212 Taxman 454 (Kar).

U.P. Financial Corporation[62] wherein it was held that every part of a section should be interpreted in terms of its own context and in relation to other part of the section and ultimately the interpretation placed in a particular provision should result in the whole statute remaining a consistent enactment. The same was enunciated in *Poppatlal Shah v. State of Madras*[63]. In view of above, the respondent submits that it is clear that provisions of Section 9(1)(vi) have to be considered in the light of provisions of Section 115A(1A) which leads to an inference that the said payments are in the nature of royalty.

Further, the use of expressions "*in respect of copyright in any book to an Indian concern*" or "*in respect of any computer software to a person resident in India*" in Section115A(1A) shows that for the purposes of income tax, the copyright in "computer software" is different from copyright in any "book" though both are literary works under the Copyright Act, 1957. The Income tax Act and the Copyright Act operate in different fields, and any reference to Indian Copyright Act 1957 has to be made for the limited purpose of finding out the meaning of the word 'copyright' and that too for the reason that the term 'copyright' is not defined in the Income tax Act. It is also pertinent to note herein that the opening words of Section 14 of the Copyright Act expressly state that '*for the purposes of this Act*' and also since the word 'Copyright' does not find mention in the definition clause of the Copyright Act, it can be asserted that the intention of the Parliament in expressing the meaning of the word 'Copyright' is only limited to the said Act. Reliance in this regard is drawn to the judgment of Supreme Court rendered in the case of *Jagatram Ahuja v CIT*[64] wherein it was held that the interpretation in one statute cannot be made applicable to another statute. Therefore, while understanding the meaning of the word 'royalty', in Explanation 2 to Section 9(1)(vi), the meaning assigned to the word 'Copyright' cannot be literally superimposed.[65] Thus, it is submitted that pursuant to a non-exclusive and a non-transferable license, if the end user is not permitted to make a commercial use of a 'copyrighted article', it would not take the case out of provision of Section 9(1)(vi).

Without prejudice to the above, it is also submitted that emphasis be supplied to the phrase '*in respect of'* finding mention Clause 5 of Explanation 2 of Section 9(1)(vi). The sphere of application of the said phrase has been exhaustively dealt in *Anusya Vithal v J.H.Mehta*[66], *TolaramRelumal v State of Bombay*[67] and *UOI v Vijay Chand Jain*[68] wherein it has been

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[62] [2003] 2 SCC 455
[63] AIR 1953 SC 274
[64] 246 ITR 609 (SC)
[65] DDIT v Reliance Communications, (2014) 159 TTJ (Mum) 589.
[66] AIR 1960 Bom 201.
[67] (1955) 1 SCR 158.
[68] AIR 1977 SC 1302.

enunciated that the phrase '*in respect of*' admits a very wide connotation[69] and has to be used in the sense of being '*connected with*' or '*attributable to*'[70] or '*relating to or reference to*'.[71] Thus, it is submitted that if in the instant case, the 'License Agreement' is deemed to not transfer any copyright associated with the software, then also the said payments would amount to royalty as ultimately the consideration paid is for the usefulness of the material object in respect of which there exists a copyright[72] as, owing to the use of aforementioned phrase, it can be asserted that the intention of legislature was not to exclude the consideration paid for use of such material object which is popularly called 'copyrighted article'.

Emphasis is also placed on the phrase '*including the granting of a license*'. The said phrase by the virtue of using the word '*include*' indicates to an expansive definition and should be understood as taking in the grant of a '*license simpliciter*'; meaning thereby that by virtue of a License, a right is accorded to use 'copyright' embodied *thereunder;* and the consideration paid is for the use of intellectual property embedded in such a 'copyright' and therefore, the same amounts for transfer of one of those rights which is envisaged in '*any rights*' as provided in Explanation 2. Thus, in the light of the foregoing discussion, that the said payments made can very well be attributed to be 'royalty.'

[B.5] The right accorded to use the said software tantamounts to use of an invention, process or any other similar property.

The Respondent submits that Explanation 2(iii) to Section 9(1)(vi) provides that consideration paid for use of any invention, process or similar property amounts to royalty. In the instant case, the subject matter of the License Agreement, *Neo*, is a revolutionary product[73] and thus, can be said to be an invention. According to Black's Law Dictionary, "*invention is a newly discovered machine, design or any new and useful improvement thereof*."[74] In *Sonata Information Technology v ACIT*[75], it was held that, '*even if software is not patented, a software program is essentially an invention as they involve high technology work and are not routine but are highly sophisticated and complex'*. The Tribunal further observed that an inventor's property rights in the invention may be transferred by granting a license to use his invention and the consideration paid *inter alia* for the physical use of an innovative article or an innovative process amounts to royalty.

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69 Shahdara Saharanpur Light Railway Co Ltd v Upper Doab Sugar Mills Ltd, AIR 1960 SC 695.
70 Asher v Seafod Estates Ltd, [1950] AC 508, Cunard's Trustees v Inland Revenue Commissioners, [1946] 174 LT 133.
71 CIT v ChunnilalRameshwarLal, AIR 1968 Pat 364.
72 DDIT v Reliance Communication Infrastructure Ltd, (2014) 159 TTJ (Mum) 589.
73 Refer Moot Proposition, para 2
74 Bryan A. Garner, Black's Law Dictionary, 824(8th ed., 2004).
75 (2007) 106 TTJ (Bang) 797.

Alternatively, a software program can also be classified as a '*process*' as software is an array or sequence of instructions which are used by the computer or computer related equipment to do a certain thing by carrying out procedures in a systematic manner.[76]The argument of the assessee that a shrink wrapped software cannot be deemed as a process as the end user of the software in the case of shrink-wrap software does not have any access to source code and he only has right to use the software is negated by the virtue of Explanation 5 of 9(1)(vi) pursuant to which *the possession or control over any right is immaterial in deeming a particular transaction to be in the nature of royalty.*

[ARGUENDO]: **<u>*WITHOUT PREJUDICE TO THE ABOVE*, EVEN IF THE BENEFITS UNDER THE DTAA ARE ACCORDED TO THE ASSESSEE, STILL THE SAID PAYMENTS WOULD BE DEEMED TO BE IN THE NATURE OF ROYALTY.</u>**

The Respondent submits that even if the benefits under DTAA are accorded to the assessee, then also the said payments would still amount to royalty pursuant to the case of <u>*BEA Systems Incorporation v DDIT.*</u>[77]Further in the case of <u>*CIT v Sunary Computers Pvt Ltd*</u>[78] , it was held that payments made for supply of software which was utilized by the assessee would amount to royalty pursuant to DTAA.[79] Reliance is also placed on <u>*Article 3(2) of India-Singapore DTAA*</u> which provides that domestic laws of the Contracting State can be resorted to if an ambiguity arises regarding interpretation of any term under DTAA. In this regard, it is submitted that to analyze the domain of the phrase '*use or right to use*' which finds mention in Article 12 of the DTAA, reliance can be placed on Explanation clauses appended to Section 9(1)(vi) of the Income Tax Act. The Supreme Court in <u>*CIT v PVAL Kulandagan Chettiar*</u>[80] held that reference can be drawn to the national laws of India while expounding any ambiguity in the DTAA. Further, reference can be placed to Circular dated 29.12.2000 of the Govt. of Singapore which exempts shrink-wrap software from withholding tax. Since, Singapore has granted specific exemption regarding payment for the acquisition of shrink-wrap software and thus, absence of a similar specific exemption in the DTAA, the payment received for supply of software is royalty**.**

Thus, the AO was indeed justified in disallowing the said payments pursuant to Section 40(a)(i) as the same are in the nature of 'royalty'.

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[76]Oxford English Dictionary, 545(10th ed., 2003).
[77] TS-481-ITAT-2012-(Bang).
[78](2012) 348 ITR 196 (Kar)
[79]Article 12 of India-US DTAA which in essence is similar to Article of India Singapore DTAA.
[80](2004) 6 SCC 235.

[III.] ON THE FACTS AND CIRCUMSTANCES OF THE CASE AND IN LAW, THE ASSESSEE CAN BE CHARGED AS AN 'ASSESSEE IN DEFAULT'.

The assessee in the instant case can be validly charged as 'assessee in default' under Section 201 owing to the failure of deducting TDS pursuant to Section 195 as no limitation period has been provided under Section 201, **[A];** and further, the invoking of the said provision are mandatory in nature, **[B]**.

[III.A] THE PROCEEDINGS UNDER SECTION 201 ARE NOT TIME BARRED.

Section 201 and Section 201(1A) do not prescribe any time limit for deeming a defaulter under Section 195 as an 'assessee in default'. The Revenue submits that, if a statute is silent on the limitation period, then there cannot be any imposition of time limit within which action is to be taken[81]. In *CIT v HMT Ltd*[82] and in *Bhura Exports Pvt Ltd v ITO*[83] it was held that, "*no period of limitation can be read if there is no period of limitation specified for taking action u/s. 201(1) or 201(1A).*" Further, Supreme Court in *Rao Bahadur Ravulu Subba Rao v CIT*[84] held that, "*the Indian Income tax Act is a self-contained code exhaustive of the matters dealt with therein and the provisions of Limitation Act does not apply.*" *Thus,* in the instant case, as the assessee furthered payments to a non-resident and failure to do deduct TDS justifies the action of the AO for invoking the provisions of Section 201 and in the absence of a prescribed limitation period for payments made to a non resident, under Section 201 and Section 201(1A), time period cannot be read into the provisions in light of the aforementioned judgments and hence the proceedings were not time barred.

[III.B] THE INVOKING OF SECTION 201(1A) ON FAILURE TO DEDUCT TDS IS MANDATORY.

Section 201(1A) of the Act enabling the AO to levy interest in case of failure to deduct TDS is a mandatory provision. In *CIT v ITC*[85] held that, "*Section 201(1A) makes the payment of simple interest mandatory as the provision is not penal and no waiver of such interest can be granted on ground that the default was not intentional or on any other basis*." The same rationale has been reiterated in *Bennett Coleman Co. Ltd. v. V.P. Damle*[86] and *CIT v. Prem Nath Motors*[87] Thus, it is humbly submitted that this being a mandatory provision, the AO was justified in levying interest for the failure of the assessee to deduct TDS.

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[81] Ishar Singh v Financial Commissioner & Ors, AIR 1984 SC 1719.
[82] ITA No. 524 of 2009 dated 17/7/2011
[83] (2011) 202 Taxman 88 (Cal).
[84] (1956) 30 ITR 163 (SC).
[85] ITA No. 475/2010
[86] [1986] 157 ITR 812 (Bom.)
[87] [2002] 120 Taxman 584 (Delhi)

PRAYER

Wherefore, in the light of arguments advanced, authorities cited and facts stated the Respondent humbly prays that:

a. This Hon'ble Court may be pleased to dismiss the present writ petition as the assessee has not exhausted the alternative remedy available under Income Tax Act, 1961.

b. Without prejudice to the above, this Hon'ble Court may be pleased to declare that the learned AO was right in disallowing payment made to Zeon pursuant to s. 40(a)(i) of the Income Tax Act, 1961 as it constituted Royalty.

c. This Hon'ble Court may be pleased to declare that the petitioner is an 'assessee in default' and is liable to pay interest for not deducting tax at source.

Pass any other order as it deems fit in the interest of equity, justice and good conscience.

For This Act of Kindness, the Respondent Shall Duty Bound Forever Pray.

Place- Mumbai

Date- 7th August, 2014

S/d-

(Counsel for the Respondent)