IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 24th day of September, 2009

PRESENT

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR JUSTICE ARAVIND KUMAR

ITA Nos. 2808 of 2005, 2809 of 2005, 2810 of 2005, 2911 of 2005, 2988 of 2005, ITA No.2989 of 2005 C/w 2991 of 2005, ITA No. 3075 of 2005 C/w 3076 of 2005, 3077 of 2005, 3078 of 2005, 3079 of 2005, 3080 of 2005, ITA No. 266 of 2006 C/w 265 of 2006, ITA Nos. 268 of 2006, 269 of 2006, 270 of 2006, 606 of 2006, 610 of 2006, ITA No. 611 of 2006 C/w 609 of 2006, ITA No. 612 of 2006, ITA Nos.1055 of 2006 & 585-594 of 2009 C/w 1056 of 2006 & 552-556 of 2009, 1066 of 2006, 1067 of 2006 & 557-575 of 2009, 1053 of 2006 & 611-613 of 2009, 1061 of 2006 & 657-682 of 2009, ITA Nos. 1062 of 2006, 1258 of 2006, 1264 of 2006, 1265 of 2006, ITA No.1268 of 2006 C/w 1269 of 2006, ITA No.1270 of 2006, ITA Nos. 1060 of 2006 & 595-604 of 2009, 737 of 2007, 738 of 2007, 739 of 2007, 740 of 2007, 741 of 2007, 745 of 2007, 746 of 2007, 747 of 2007, 777 of 2007, 780 of 2007, 782 of 2007, 785 of 2007, 786

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of 2007, 787 of 2007 and 953 of 2007, ITA Nos. 1203 of 2006, 1204 of 2006, 1205 of 2006, 1206 of 2006, 1207 of 2006, 1208 of 2006, 1209 of 2006, 1210 of 2006, 1211 of 2006, 1212 of 2006, 1213 of 2006, 1214 of 2006, 1215 of 2006, 1216 of 2006, 1217 of 2006, 1218 of 2006, 1219 of 2006, 1220 of 2006, 1221 of 2006, 1222 of 2006, 1223 of 2006, 1224 of 2006, 1225 of 2006, 1236 of 2006, 1237 of 2006, 1238 of 2006, 1239 of 2006, 1240 of 2006, 1241 of 2006, 1242 of 2006, 1243 of 2006 and 1244 of 2006, ITA Nos. 1246 of 2006 & 543-548 of 2009, 1247 of 2006 & 605-610 of 2009, 1248 of 2006 & 580-584 of 2009, 1250 of 2006 & 576-579 of 2009 and 1251 of 2006, ITA Nos. 77 of 2007 & 549-551 of 2009 and 94 of 2007 & 650-656 of 2009, ITA Nos. 919 of 2007 & 533-542 of 2009 and 921 of 2007 & 503-532 of 2009

In ITA No. 2808 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER TDS-I,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE ... APPELLANTS

http://www.itatonline.org

[By Sri. M.V. Seshachala & Sri. K.V. Aravind, Advs.]

And :

M/S. SAMSUNG ELECTRONICS CO. LTD.
INDIA SOFTWARE OPERATIONS
LEVEL 6TH AND 7TH,
PRESTIGE MERIDIAN-II,
NO.30, M.G. ROAD,
BANGALORE - 560 001. ... RESPONDENT

[By Sri. K.P. Kumar, Sr. Counsel for Universal Legal]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 18.02.2005 PASSED IN ITA NO. 266/B/2002 FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 2809 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER TDS-I,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE ... APPELLANTS

[By Sri. M.V. Seshachala, Adv.]

And :

M/S. SAMSUNG ELECTRONICS CO. LTD.,
INDIA SOFTWARE OPERATIONS
LEVEL 6TH AND 7TH,
PRESTIGE MERIDIAN-II,
NO.30, M.G. ROAD,
BANGALORE - 560 001. ... RESPONDENT

http://www.itatonline.org

[By Sri. K.P. Kumar, Sr. Counsel for Universal Legal]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 18.02.2005 PASSED IN ITA NO. 264/B/2002 FOR THE ASSESSMENT YEAR 1999-2000 AND ETC.,

In ITA No. 2810 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER TDS-I,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE ... APPELLANTS

[By Sri. M.V. Seshachala, Adv.]

And :

M/S. SAMSUNG ELECTRONICS CO. LTD.,
INDIA SOFTWARE OPERATIONS
LEVEL 6TH AND 7TH,
PRESTIGE MERIDIAN-II,
NO.30, M.G. ROAD,
BANGALORE - 560 001. ... RESPONDENT

[By Sri. K.P. Kumar, Sr. Counsel for Universal Legal]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 18.02.2005 PASSED IN ITA NO. 265/BANG/2002 FOR THE ASSESSMENT YEAR 2000-2001 AND ETC.,

http://www.itatonline.org

In ITA No. 2911 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
C.R. BUILDING,
QUEENS ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER (TDS)-I,
C.R. BUILDING,
QUEENS ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala, Adv.]

And :

M/S. RAFFLES SOFTWARE PVT. LTD.,
7TH FLOOR, NO.121,
DICKENSON ROAD,
BANGALORE - 560 042. ... RESPONDENT

[By Sri. R.B. Krishna, Sri. Murthy & Sri. Kumar, Advs.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.03.2005 PASSED IN ITA NO. 151/BANG/2002 FOR THE ASSESSMENT YEAR 2000-2001 AND ETC.,

In ITA No. 2988 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,

http://www.itatonline.org

NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO.193, 1ST FLOOR,
R.V. ROAD, BASAVANGUDI,
BANGALORE - 560 004. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.04.2005 PASSED IN ITA NO. 3133/BANG/2004 FOR THE ASSESSMENT YEAR 2002-2003 AND ETC.,

In ITA No. 2989 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO.193, 1ST FLOOR,

http://www.itatonline.org

R.V. ROAD,
BASAVANGUDI,
BANGALORE - 560 004. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.04.2005 PASSED IN ITA NO. 864/BANG/2004 FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 2991 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO.193, 1ST FLOOR,
R.V. ROAD,
BASAVANGUDI,
BANGALORE - 560 004. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

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THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.04.2005 PASSED IN ITA NO. 865/BANG/2004 FOR THE ASSESSMENT YEAR 2002-2003 AND ETC.,

In ITA No. 3075 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA SOFTWARE LTD.,
APS TRUST BUILDING,
1/4, BULL TEMPLE ROAD,
N.R. COLONY,
BANGALORE - 560 017. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.04.2005 PASSED IN ITA NO. 2989/BANG/2004 FOR THE ASSESSMENT YEAR 2002-2003 AND ETC.,

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In ITA No. 3076 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA SOFTWARE LTD.,
APS TRUST BUILDING,
1/4, BULL TEMPLE ROAD,
N.R. COLONY,
BANGALORE - 560 017. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.04.2005 PASSED IN ITA NO. 2988/BANG/2004 FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 3077 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

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2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA SOFTWARE LTD.,
APS TRUST BUILDING,
1/4, BULL TEMPLE ROAD,
N.R. COLONY,
BANGALORE - 560 017. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.04.2005 PASSED IN ITA NO. 868/BANG/2004 FOR THE ASSESSMENT YEAR 2002-2003 AND ETC.,

In ITA No. 3078 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

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And :

M/S. SONATA SOFTWARE LTD.,
APS TRUST BUILDING,
1/4, BULL TEMPLE ROAD,
N.R. COLONY,
BANGALORE - 560 017. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.04.2005 PASSED IN ITA NO. 2987/BANG/2004 FOR THE ASSESSMENT YEAR 2000-2001 AND ETC.,

In ITA No. 3079 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA SOFTWARE LTD.,
APS TRUST BUILDING,
1/4, BULL TEMPLE ROAD,
N.R. COLONY,
BANGALORE - 560 017. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

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THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.04.2005 PASSED IN ITA NO. 867/BANG/2004 FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 3080 of 2005

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA SOFTWARE LTD.,
APS TRUST BUILDING,
1/4, BULL TEMPLE ROAD,
N.R. COLONY,
BANGALORE - 560 017. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 28.04.2005 PASSED IN ITA NO. 866/BANG/2004 FOR THE ASSESSMENT YEAR 2000-2001 AND ETC.,

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In ITA No. 266 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. HEWLETT PACKARD INDIA
SOFTWARE OPERATION PVT. LTD.,
NO.29, CUNNINGHAM ROAD,
BANGALORE - 560 052. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 19.08.2005 PASSED IN ITA NO. 970/BANG/2004 FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 263 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

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2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. HEWLETT PACKARD INDIA
SOFTWARE OPERATION PVT. LTD.,
NO.29, CUNNINGHAM ROAD,
BANGALORE - 560 052. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 19.08.2005 PASSED IN ITA NO. 969/BANG/2004 FOR THE ASSESSMENT YEAR 2000-2001 AND ETC.,

In ITA No. 268 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

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And :

M/S. APARA ENTERPRISES
SOLUTIONS PVT. LTD.
OXFORD TOWERS, SUIT 801,
7TH FLOOR, 139 AIRPORT ROAD,
KODIHALLI,
BANGALORE - 560 088. ... RESPONDENT

[By Sri. S. Parthasarathy, Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 29.07.2005 PASSED IN ITA NO. 3799/BANG/2004 FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 269 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. APARA ENTERPRISES SOLUTIONS PVT. LTD.
OXFORD TOWERS, SUIT 801,
7TH FLOOR, 139 AIRPORT ROAD,
KODIHALLI,
BANGALORE - 560 088. ... RESPONDENT

[By Sri. S. Parthasarathy, Adv.]

http://www.itatonline.org

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 29.07.2005 PASSED IN ITA NO. 3800/BANG/2004, FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 270 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. APARA ENTERPRISES SOLUTIONS PVT. LTD.
OXFORD TOWERS, SUIT 801,
7TH FLOOR, 139 AIRPORT ROAD,
KODIHALLI,
BANGALORE - 560 088. ... RESPONDENT

[By Sri. S. Parthasarathy, Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 29.07.2005 PASSED IN ITA NO. 3801/BANG/2004 FOR THE ASSESSMENT YEAR 2002-2003 AND ETC.,

In ITA No. 606 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,

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RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala, Adv.]

And :

M/S. EDS TECHNOLOGIES PVT. LTD.
NO.153, 2ND CROSS,
PROMENADE ROAD,
FRAZER TOWN,
BANGALORE - 560 005. ... RESPONDENT

[By M/s. Holla & Holla, Advs.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 30.09.2005 PASSED IN ITA NO. 1450/BANG/2004 FOR THE ASSESSMENT YEAR 2000-2001 AND ETC.,

In ITA No. 610 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

http://www.itatonline.org

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. HEWLET PACKARD INDIA PVT. LTD.,
NO. 24, SALARPURIA ARENA,
HOSUR MAIN ROAD,
ADUGODI,
BANGALORE - 560 030. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 23.09.2005 PASSED IN ITA NO. 3708/BANG/2004 FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 611 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. HEWLET PACKARD INDIA PVT. LTD.,
NO. 24, SALARPURIA ARENA,
HOSUR MAIN ROAD,
ADUGODI,
BANGALORE - 560 030. ... RESPONDENT

http://www.itatonline.org

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 23.09.2005 PASSED IN ITA NO. 3709/BANG/2004 FOR THE ASSESSMENT YEAR 2002-2003 AND ETC.,

In ITA No. 609 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. HEWLET PACKARD INDIA PVT. LTD.,
NO. 24, SALARPURIA ARENA,
HOSUR MAIN ROAD,
ADUGODI,
BANGALORE - 560 030. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 23.09.2005 PASSED IN ITA NO. 3707/BANG/2004 FOR THE ASSESSMENT YEAR 2000-2001 AND ETC.,

http://www.itatonline.org

In ITA No. 612 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. .. APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. HEWLET PACKARD INDIA PVT. LTD.,
NO. 24, SALARPURIA ARENA,
HOSUR MAIN ROAD,
ADUGODI,
BANGALORE - 560 030. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 23.09.2005 PASSED IN ITA NO. 3710/BANG/2004 FOR THE ASSESSMENT YEAR 2003-2004 AND ETC.,

In ITA Nos. 1055 of 2006 & 585-594 of 2009

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

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2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO.193, 1ST FLOOR,
R.V. ROAD, BASAVANGUDI,
BANGALORE - 560 004. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THESE APPEALS ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 31.01.2006 PASSED IN ITA NO 1593-1603/BANG/2004, AND ETC.,

In ITA Nos. 1056 of 2006 & 552-556 of 2009

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

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And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO.193, 1ST FLOOR,
R.V. ROAD, BASAVANGUDI,
BANGALORE - 560 004. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THESE APPEALS ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 31.01.2006 PASSED IN ITA NO. 3495-3500/BANG/2004, AND ETC.,

In ITA No. 1066 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Aravind, Advs.]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO.193, 1ST FLOOR,
R.V. ROAD, BASAVANGUDI,
BANGALORE - 560 004. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

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THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 31.01.2006 PASSED IN ITA NO. 1770/BANG/2004, AND ETC.,

In ITA Nos. 1067 of 2006 & 557-575 of 2009

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO.193, 1ST FLOOR,
R.V. ROAD, BASAVANGUDI,
BANGALORE - 560 004. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THESE APPEALS ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 31.01.2006 PASSED IN ITA NO. 1561-1580/BANG/2004, AND ETC.,

In ITA Nos. 1053 of 2006 & 611-613 of 2009

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,

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RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO.193, 1ST FLOOR,
R.V. ROAD, BASAVANGUDI,
BANGALORE - 560 004. ... RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for Smt. Vani. H., Adv.]

THESE APPEALS ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 31.01.2006 PASSED IN ITA NO. 3428-3431/BANG/2004, AND ETC.,

In ITA Nos. 1061 of 2006 & 657-682 of 2009

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

http://www.itatonline.org

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO.193, 1ST FLOOR,
R.V. ROAD, BASAVANGUDI,
BANGALORE - 560 004. ... RESPONDENT

THESE APPEALS ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 31.01.2006 PASSED IN ITA NO. 1682-1708/BANG/2004, AND ETC.,

In ITA No. 1062 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

M/S. MPHASIS BFL LIMITED,
NO.139/1, HOSUR ROAD,
KORAMANGALA,
BANGALORE - 560 095. ... RESPONDENT

[By M/s. King & Partridge, Advs.]

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THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 20.01.2006 PASSED IN ITA NO. 980/BANG/2004 FOR THE ASSESSMENT YEARS 2001-2002 AND ETC.,

In ITA No. 1258 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER
INTERNATIONAL TAXATION,
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

ENGINEERING ANALYSIS CENTRE
OF EXCELLENCE (P) LTD.,
PHASE-3, SITE NO.152,
HOODI VILLAGE,
EXPORT PROMOTION INDUSTRIAL AREA,
PHASE, WHITE FIELD ROAD,
BANGALORE - 560 066. ... RESPONDENT

[By Sri. S. Ganesh, Sr. Counsel, Sri. V. Ganga Bai,
Sri. Pavan Sharma, & Sri. Kuber Devan, Advs.
for Universal Legal]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 25.11.2005 PASSED IN ITA NO. 954/BANG/2004 FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

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In ITA No. 1264 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
TDS-1,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

INFINEON TECHNOLOGIES INDIA PVT. LTD.,
10TH FLOOR, DISCOVERY BUILDING,
INTERNATIONAL TECHNOLOGY PARK
WHITE FIELD ROAD,
BANGALORE - 560 066. ... RESPONDENT

[By Sri. K.P. Kumar, Adv. for M/s. King & Partridge]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 25.11.2005 PASSED IN ITA NO. 468/BANG/2002, FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 1265 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,

http://www.itatonline.org

TDS-1,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

INFINEON TECHNOLOGIES INDIA PVT. LTD.,
10TH FLOOR, DISCOVERY BUILDING,
INTERNATIONAL TECHNOLOGY PARK
WHITE FIELD ROAD,
BANGALORE - 560 066. .. RESPONDENT

[By Sri. K.P. Kumar, Adv. for M/s. King & Partridge]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 25.11.2005 PASSED IN ITA NO. 467/BANG/2002, FOR THE ASSESSMENT YEAR 2000-2001 AND ETC.,

In ITA No. 1268 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
TDS-1
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

GE INDIA TECHNOLOGY CENTRE PVT. LTD.
INDUSTRIAL PARK, PHASE-I,

http://www.itatonline.org

HOODI VILLAGE,
WHITE FIELD,
BANGALORE - 560 066. ... RESPONDENT

[By Sri. S. Ganesh, Sr. Counsel, Sri. Pavan Sharma & Sri. Kuber Devan, Advs. for Universal Legal]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 25.11.2005 PASSED IN ITA NO. 373/BANG/2002 FOR THE ASSESSMENT YEAR 2001-2002 AND ETC.,

In ITA No. 1269 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
TDS-1
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

GE INDIA TECHNOLOGY CENTRE PVT. LTD.
INDUSTRIAL PARK, PHASE-I,
HOODI VILLAGE,
WHITE FIELD,
BANGALORE - 560 066. ... RESPONDENT

[By Sri. S. Ganesh, Sr. Counsel, Sri. V. Ganga Bai, Sri. Pavan Sharma, & Sri. Kuber Devan, Advs. for Universal Legal]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED

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25.11.2005 PASSED IN ITA NO. 372/BANG/2002 FOR THE ASSESSMENT YEAR 2000-2001 AND ETC.,

In ITA No. 1270 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER,
INTERNATIONAL TAXATION
WARD-19(1),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... APPELLANTS

[By Sri. M.V. Seshachala & Sri. K.V. Arvind, Advs.]

And :

ENGINEERING ANALYSIS CENTRE
OF EXCELLENCE (P) LTD.,
PHASE-3, SITE NO. 152,
HOODI VILLAGE,
EXPORT PROMOTION INDUSTRIAL AREA,
PHASE, WHITE FIELD ROAD,
BANGALORE - 560 066. ... RESPONDENT

[By Sri. S. Ganesh, Sr. Counsel, Sri. Pavan Sharma,
& Sri. Kuber Devan, Advs. for Universal Legal]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 25.11.2005 PASSED IN ITA NO. 955/BANG/2004 FOR THE ASSESSMENT YEAR 2002-2003 AND ETC.,

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In ITA Nos. 1060 of 2006 and 595-604 of 2009, 737 of 2007, 738 of 2007, 739 of 2007, 740 of 2007, 741 of 2007, 745 of 2007, 746 of 2007, 747 of 2007, 777 of 2007, 780 of 2007, 782 of 2007, 785 of 2007, 786 of 2007, 787 of 2007 and 953 of 2007

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE INCOME-TAX OFFICER
INTERNATIONAL TAXATION,
WARD-19(2),
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... COMMON APPELLANTS

[By Sri. M.V. Seshachala, Sr. Standing Counsel]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO. 193, 1ST FLOOR,
R.V. ROAD,
BASAVANGUDI,
BANGALORE - 560 004. ... COMMON RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for
Smt. H. Vani, Adv.]

ITA NOS. 1060 OF 2006 & 595-604 OF 2009 ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 31.01.2006 PASSED IN ITA NO. 3084-3094/BANG/2004 AND ETC.,

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ITA NOS. 737 OF 2007, 738 OF 2007, 739 OF 2007, 740 OF 2007, 741 OF 2007, 745 OF 2007, 746 OF 2007, 747 OF 2007, 777 OF 2007, 780 OF 2007, 782 OF 2007, 785 OF 2007, 786 OF 2007 & 787 OF 2007 ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 13.04.2007 PASSED IN ITA NOS. 307/BANG/2007, 305/BANG/2007, 302/BANG/2007, 301/BANG/2007, 298/BANG/2007, 325/BANG/2007, 296/BANG/2007, 295/BANG/2007, 297/BANG/2007, 300/BANG/2007, 304/BANG/2007, 303/BANG/2007, 306/BANG/2007 & 308/BANG/2007 AND ETC.,

ITA NO. 953 OF 2007 IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 10.08.2007 PASSED IN ITA NO. 211/BANG/2006 FOR THE ASSESSMENT YEAR 2006-2007 AND ETC.,

In ITA Nos. 1203 of 2006, 1204 of 2006, 1205 of 2006, 1206 of 2006, 1207 of 2006, 1208 of 2006, 1209 of 2006, 1210 of 2006, 1211 of 2006, 1212 of 2006, 1213 of 2006, 1214 of 2006, 1215 of 2006, 1216 of 2006, 1217 of 2006, 1218 of 2006, 1219 of 2006, 1220 of 2006, 1221 of 2006, 1222 of 2006, 1223 of 2006, 1224 of 2006, 1225 of 2006, 1236 of 2006, 1237 of 2006, 1238 of 2006, 1239 of 2006, 1240 of 2006, 1241 of 2006, 1242 of 2006, 1243 of 2006 and 1244 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

2 THE ADDITIONAL COMMISSIONER
OF INCOME-TAX (ASSESSMENT)
INTERNATIONAL TAXATION,
RANGE-19,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... COMMON APPELLANTS

http://www.itatonline.org

[By Sri. M.V. Seshachala, Sr. Standing Counsel]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO. 193, 1ST FLOOR,
R.V. ROAD,
BASAVANGUDI,
BANGALORE - 560 004. .. COMMON RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for
Smt. H. Vani, Adv.]

THESE APPEALS ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 07.04.2006 PASSED IN ITA NOS. 768/BANG/2005, 769/BANG/2005, 771/BANG/2005, 770/BANG/2005, 772/BANG/2005, 774/BANG/2005, 144/BANG/2005, 145/BANG/2005, 776/BANG/2005, 778/BANG/2005, 1016/BANG/2005, 453/BANG/2005, 452/BANG/2005, 1015/BANG/2005, 773/BANG/2005, 206/BANG/2005, 777/BANG/2005, 205/BANG/2005, 146/BANG/2005, 450/BANG/2005, 451/BANG/2005, 775/BANG/2005, 1026/BANG/2005, 1019/BANG/2005, 1025/BANG/2005, 1021/BANG/2005, 1023/BANG/2005, 1024/BANG/2005, 1018/BANG/2005, 1017/BANG/2005, 1022/BANG/2005 & 1020/BANG/2005 AND ETC.,

In ITA Nos. 1246 of 2006 & 543-548 of 2009, 1247 of 2006 & 605-610 of 2009, 1248 of 2006 & 580-584 of 2009, 1250 of 2006 & 576-579 of 2009 and 1251 of 2006

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

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2 THE JOINT COMMISSIONER
OF INCOME-TAX
INTERNATIONAL TAXATION,
RANGE-19,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... COMMON APPELLANTS

[By Sri. M.V. Seshachala, Sr. Standing Counsel]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO. 193, 1ST FLOOR,
R.V. ROAD,
BASAVANGUDI,
BANGALORE - 560 004. ... COMMON RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for
Smt. H. Vani, Adv.]

THESE APPEALS ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 07.04.2006 PASSED IN ITA NOS. 135-141/BANG/2005, 236-242/BANG/2005, 262-267/BANG/2005, 88-92/BANG/2005 & 498/BANG/2005 AND ETC.,

In ITA Nos. 77 of 2007 & 549-551 of 2009 and 94 of 2007 & 650-656 of 2009

Between:

1 THE COMMISSIONER OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE.

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2 THE ADDITIONAL COMMISSIONER
OF INCOME-TAX
INTERNATIONAL TAXATION,
RANGE-19,
RASTROTHANA BUILDING,
NRUPATHUNGA ROAD,
BANGALORE. ... COMMON APPELLANTS

[By Sri. M.V. Seshachala, Sr. Standing Counsel]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO. 193, 1ST FLOOR,
R.V. ROAD,
BASAVANGUDI,
BANGALORE - 560 004. ... COMMON RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for
Smt. H. Vani, Adv.]

ITA NOS. 77 OF 2007 & 549-551 OF 2009 ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 07.04.2006 PASSED IN ITA NO. 436-439/BANG/2005 AND ETC.,

ITA NOS. 94 OF 2007 & 650-656 OF 2009 ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 06.07.2006 PASSED IN ITA NO. 754-761/BANG/2005 AND ETC.,

In ITA Nos. 919 of 2007 & 533-542 of 2009 and 921 of 2007 & 503-532 of 2009

Between:

1 THE DIRECTOR (COMMISSIONER)
OF INCOME-TAX,
INTERNATIONAL TAXATION,
RASHTROTHANA BHAVAN,

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NRUPATHUNGA ROAD,
BANGALORE – 560 001.

2 THE INCOME-TAX OFFICER
INTERNATIONAL TAXATION,
WARD 2(1),
RASHTROTHANA BHAVAN,
NO. 14/3,
6TH FLOOR,
NRUPATHUNGA ROAD,
BANGALORE. ... COMMON APPELLANTS

[By Sri. M.V. Seshachala, Sr. Standing Counsel]

And :

M/S. SONATA INFORMATION
TECHNOLOGY LIMITED,
NO. 193, 1ST FLOOR,
R.V. ROAD,
BASAVANAGUDI,
BANGALORE - 04. ... COMMON RESPONDENT

[By Sri. G. Sarangan, Sr. Counsel for
Smt. H. Vani, Adv.]

ITA NOS. 919 OF 2007 & 533-542 OF 2009 AND 921 OF 2007 & 503-532 OF 2009 ARE FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO SET ASIDE ORDER DATED 18.07.2007 PASSED IN ITA NOS. 931-941/BANG/2006 & 672-702/BANG/2007 AND ETC.,

THESE APPEALS, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 14-08-2009, 17-08-2009 & 20-08-2009, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ***SHYLENDRA KUMAR J.,*** DELIVERED THE FOLLOWING:

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JUDGMENT

The above appeals are all by the revenue directed against the orders passed by the Income Tax Appellate Tribunal, Bangalore Bench, where under the Tribunal had allowed the appeals filed by different resident – assessees in respect of different assessment years by holding that the resident – assessees were not liable for deduction of any part of the payments made by them to non-resident suppliers as price (for consideration) for the software which the resident – assessees had acquired/purchased from the non-residents for the purposes of the activities/business of the resident – assessees in the background of the nature of their liability/obligation under the provisions of section 195 of the Income Tax Act, 1961 [for short 'the Act'] by holding that the subject payments were not in the nature of royalty payments within the meaning of section 9[1][vi] of the Act and if it is not royalty it is not income and if it was not income in the hands of the non-resident assessees it

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is not chargeable to tax even as per section 4 of the Act and if so there is no obligation on the part of the respondents – resident – assessees to deduct any amount in terms of section 195 of the Act and therefore the orders passed under section 201 of the Act calling upon the respondents – assessees to pay the amount by treating them as an assessee in default in respect of the amount as has been contemplated for deduction under section 195 of the Act are all not sustainable.

2. The Income Tax Appellate Tribunal acting as the second appellate authority under the Act having passed the leading Judgment in the case of M/s. Samsung Electronics Co., Ltd., India Software Operations, No. 67, Infantry Road, Bangalore – 560 001 as per its Judgment dated 18.02.2005 passed in ITA Nos.264 to 266/Bang/2002 relating to assessment years 1999-00, 2000-01 and 2001-02 in the case of M/s. Samsung Electronics Co., Ltd., India Software Operations, No. 67, Infantry Road, Bangalore – 560 001 holding that the

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Income Tax Officer as well as the first appellate authority were both wrong in taking the view that the payments made by the resident payer for purchase of computer programme which is also called software in commercial parlance is in the nature of a royalty payment and therefore obligation to deduct and remit the amount under section 195 of the Act had not been cast on the remitter.

3. The Income Tax Appellate Tribunal has by and large followed the ruling rendered in Samsung Electronics Co., Ltd., case in respect of all other assessees for different assessment years.

4. It will be productive to know the facts at least in the leading case to appreciate the legal contentions that have been raised in all these appeals and for such purpose it is useful to borrow the facts as noticed by the Tribunal itself in the present case and that is as under:

> *"The fact involved in the present case is that the assessee is a branch of Samsung Electronics*

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Company Limited, Korea, engaged in the development, manufacture and export of software for use by its parent company, i.e., Samsung Electronics Co., Ltd., Korea. The assessee develops various kinds of software for telecommunication system, for office appliances, for computer systems and for mobile devices etc.,. The software developed by the assessee is for in-house use by the parent company.

In the assessment year 1999-00, the assessee imported software products of Rs.2,28,960/- from Tektronix inc., USA. Similarly, during the other two years, it imported software product, namely, Telelogic Tau TTCN Suite, are readily available software in the market. Hence, payment made to the foreign companies cannot be treated as Royalty, as per the provision of Sec.9[1][vi] read with Double Taxation Avoidance Agreements [DTAA for short] between India and USA, India and France respectively. The contention of the assessee was not accepted by the ITO [TDS]. It was held by the Assessing Officer that the assessee was a defaulter by not deducting tax from the remittance made by the assessee for purchase of these softwares. The reply of the assessee was not accepted by the Assessing Officer and it was held that as per the provision of Sec.9[1][vi] of the Act, the payment made by the assessee is Royalty. Hence, the assessee was bound to deduct the tax. The ITO also placed reliance on the definition of the term 'Royalty', as mentioned in DTAA[supra]. Accordingly, it was held by the ITO that the assessee was a defaulter within the meaning of Sec.201[1] of the Act, for non-deduction of tax. Further, the interest u/s.201[1A] was also levied for the three years, as follows:

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Asst. years	201[1]	201[1A]
1999-00	Rs. 25,440	Rs.12,211
2000-01	Rs. 1,202	Rs. 216
2001-02	Rs. 16,87,270	Rs.58,447
Total	Rs.17,13,912	Rs.70,874

Against the said orders, the assessee moved appeals before the Commissioner of Income Tax[A]. However, by the impugned common order dt.29.11.01, the appeals were dismissed by the Commissioner of Income Tax [A]. Against the said finding, the assessee is in appeal before the Tribunal."

5. The Tribunal for the purpose of allowing the appeals of the assessee though has concluded in all the cases that it was not incumbent on the assessees to deduct any amount under section 195 of the Act and if so the consequence under section 201 of the Act also does not follow, has examined the character of payment in the hands of the non-resident recipient and has held that it is not payment in the nature of royalty for the reason that the payment does not partake the character of royalty in terms of the relevant articles of the Double Taxation

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Avoidance Agreements [for short 'DTAA'] entered into with several countries and relevant for the purpose of each payment.

6. While the nature of payment is tested on the touchstone of a royalty payment as defined in respect of DTAA and the present payment of the assessee not qualifying for description 'royalty' and therefore goes out of the purview of 'royalty' as defined in terms of section 9[1][vi] of the Act on the principle that when there is an inconsistency between the provisions of an International Agreement and the provisions of the Act, it is the provisions of the agreement that has to prevail and therefore the conclusion of the original authority and the first appellate authority that it is royalty and therefore income is fallacious and not sustainable.

7. Learned counsel for the assessees have contended in these appeals that the nature of payment is not 'royalty' even within the meaning and scope of section

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9[1][vi] of the Act for the reason that the non-resident supplier has sold only a copyrighted article and not the copyright itself and on the authority of the decision of the Supreme Court in the case of ***'TATA CONSULTANCY SERVICES vs. STATE OF ANDHRA PRADESH'*** reported in ***[2004] 271 ITR 401***, the payment being in respect of goods, it is not payment in the nature of 'royalty' and at the best the payment can have the character of a payment made to a non-resident by resident-assessee for purchase of some articles/goods in connection with the carrying on of the business of the resident - assessee and again the relevant articles of the DTAA are to be looked into and they providing for assessment of income attributable to such a receipt being taxable only in the country of the non-resident, unless the non-resident has a business establishment in the country of the payer and on facts it is contended that the non-resident receivers in none of the cases having any permanent business establishment in India, the entire income of the non-

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resident assessee attributable to the payment being not at all taxable in India for the very reason of the provisions of the agreement prevailing over the provisions of the Act, non-resident has no income assessable to tax in India and therefore no obligation on the part of the resident payer to deduct any amount.

8. The Tribunal now has applied its ruling and conclusion in the above referred ***SAMSUNG's*** case [supra] to all other subsequent cases and on such premise has allowed the appeals of other assessees also.

9. There are certain variations in the purpose for which the resident – assessees have purchased/acquired the software, also known as 'shrink wrapped ready to sell, off the shelf software' having regard to the purpose for which the different assessees might have acquired the software and the manner of its use/application such as the assessee in the case of some of these appeals like M/s. Sonata Corporation being traders of the software

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which they acquired/purchased from the non-resident supplier acting as a distributor for non-resident supplier but other assessees as in the case of **SAMSUNG** itself have acquired the software for producing the end product in which the software is employed or utilized or even wherein software can find applications in the manufacturing/production activity of the assessee itself such as in the case of GE India Technologies Private Limited etc...

10. The questions that have arisen for examination in the different appeals by the revenue are framed with corresponding variations depending upon the facts and circumstances of the particular assessee, but the basic question as to whether there was an obligation to deduct and remit the amount in terms of section 195 of the Act in respect of remittances made to the non-resident is sought to be made as a common question for determination in all these appeals as the assessees right from the stage of receipt of section 201 notices /orders,

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have objected to the legality of raising and enforcing such a demand on the premise that ultimately the payment/remittance by the payer in India did not result in transforming itself into a receipt bearing the character of income chargeable to tax under the provisions of the Act, under the heads of income other than the head "salaries".

11. A few other variations are, such assessees contend that, there had been no obligation on their part to deduct any amount in the payments as they were fully and bonafide satisfied that the amount was not at all taxable in the hands of the non-resident in India and therefore had not chosen to apply for any relief or concession in terms of the provisions of section 195[2] and [3] of the Act and in such cases, nevertheless, being called upon to pay the amount by issue of a notice under section 201 of the Act by treating the assessee as a defaulter and in such cases the assessee having filed an appeal against the order of demand issued under section 201 of the Act by

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invoking the provisions of section 246[1][i] of the Act and a further appeal to the Tribunal under section 253 of the Act wherein they succeeded; have all defended these appeals by supporting the orders passed by the tribunal holding that on the examination of the merits of the contentions put forth by the resident payers in their appeals before the tribunal, the tribunal was fully satisfied to conclude that such receipts in the hands of the non-resident recipients did not result in the non-residents earning some income, from the transaction in question, which income was taxable in India under the Act, as an income chargeable to tax either because of the fiction created by the legislation under section 9 of the Act, providing for an artificial manner of attributing a taxable income in the hands of a non-resident in India even though in reality no income had either actually accrued or arisen in India in favour of a non-resident or even otherwise i.e. to say even when there was some income which had accrued or arisen to the non-resident in India

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as a consequence of the payment/ remittance by the resident payer, and it was in the normal course and in the absence of any DTAA would have been taxable under the Act.

12. In the background of such variations, the questions of law representative/illustrative of each category that have been raised in these appeals and for examination of which questions, these appeals have been admitted are noticed as under:

1. *"Whether the Tribunal was correct in holding that an appeal was maintainable u/s.248 of the Act, even though there was no adjudication by the Authorities under the Act in accordance with Section 195(3), (4) & (5) read with Section 200 of the Act?*

2. *Whether the Tribunal was correct in holding that the payments made by the Assessee Company for purchase of software from Aaymetrix Asia Pacific, Singapore; Peritus Software Service Inc., USA and Astral Computers Pvt. Ltd., Singapore for the amounts of Rs.3,43,095/-, Rs.47,89,419/- and Rs.8,89,611/- was not liable to income tax in India and consequently no TDS*

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as held by the Assessing Officer and confirmed by the Appellate Commissioner needs to have been deducted?

3. *Whether the Tribunal was correct in merely following the judgment passed by its in the case of Samsung Electronics Co. Ltd. Which has not been accepted by the Revenue and appealed against before this Hon'ble Court where the facts were not entirely identical to one subsisting in the present case and therefore the Tribunal was bound to have recorded an independent finding and therefore the impugned order is perverse?*

4. *Whether the Tribunal based on the fact that the Assessee has imported software from Aaymetrix Asia Pacific, Singapore; Peritus Software Service Inc., USA and Astral Computers Pvt. Ltd., Singapore on payment of Rs.3,43,095/-, Rs.47,89,419/- and Rs.8,89,611/- was bound to have taken into consideration the Ruling of the Advance Ruling Authority (238 ITR 296); the Double Taxation Agreement between India and USA and India and Singapore, provisions of Section 9(1)(VI) of the Income Tax Act; Indian Copyright Act, 1957, the Revised entry on Article 12 of OECD; the Internal Revenue Service Regulation of USA; the Views of the High Powered Committee on E-Commerce and other facts and circumstances of the present case which*

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could have clearly shown that the payments made by the Assessee was liable to tax in India and consequently the Assessee was bound to deduct tax at source?

5. *Whether the Tribunal should have recorded a finding that it is under section 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 239 ITR 587.*

6. *Whether the assessee can question the taxability of the recipient in section 201(1) and 201(1A) 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.*

7. *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 under section 9 of the Act read with Double Taxation Avoidance Agreements and treaties.*

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8. *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.*

9. *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."*

13. It is in the background of such developments and the questions having arisen for examination in these appeals, arguments are advanced.

14. While Sri. Seshachala, learned senior standing counsel appears for the appellant – revenue along with Sri. K V Aravind, learned junior standing counsel, in all these cases, many learned senior counsel instructed by their counsel on record have appeared and made

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submissions for the assessees as mentioned below and we have examined all such submissions.

15. Sri. K P Kumar, learned senior counsel appears for M/s. Universal Legal, counsel for the respondents – assessees in ITA Nos.2808 of 2005, 2809 of 2005, 2810 of 2005 and for M/s. King & Partridge, learned counsel for the respondents – assessees in ITA Nos.1062 of 2006, 1264 of 2006, 1265 of 2006, Sri. G Sarangan, learned senior counsel appears for Smt. Vani, learned counsel for the respondents – assessees in ITA Nos.2988 of 2005, 2989 of 2005 connected with ITA No.2991 of 2005, ITA No.3075 of 2005 connected with ITA Nos.3076 of 2005, 3077 of 2005, 3078 of 2005, 3079 of 2005 & 3080 of 2005, ITA No.266 of 2006 connected with ITA No.265 of 2006, ITA No.610 of 2006, ITA No.611 of 2006 connected with ITA No.609 of 2006, ITA No.612 of 2006, ITA No.1055 of 2006 connected with ITA Nos.1056 of 2006, 1067 of 2006, 1053 of 2006, Sri. R B Krishna, learned counsel appears for respondents – assessees in ITA

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No.2911 of 2005, Sri. S Ganesh, learned senior counsel appearing for M/s. Universal Legal, counsel for the respondents – assessee in ITA No.1258 of 2006, ITA No.1268 of 2006 connected with ITA No.1269 of 2006, 1270 of 2006, Sri. S Parthasarathi, learned counsel appears for the respondents – assessees in ITA Nos.268 of 2006, 269 of 2006, 270 of 2006.

16. Sri.Seshachala contends that the conclusion arrived at by the Assessing Officer that payment made by the Indian Company to the suppliers of the software from abroad is in the nature of a royalty payment and as such the respondent was required to deduct tax at source as per Section 195 and thus the Assessing Officer was justified in calling upon the assessee to make the payment of this amount with interest. Sri.Seshachala contends that the appellant being in the business of software development had imported software from countries such as USA, France and Sweden and as such Section 9 of the Act which provides that the income

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referred therein is deemed to accrue or arise in India squarely applies to the facts of the present case. Accordingly, Sri.Seshachala brings to our notice the assessment order wherein the Assessing Officer has examined these issues which is at Annexure-'C' and supports the view of the Assessing Officer which is to the effect that the transaction when read with the clauses of agreement reflects that it is a licence and the amount paid thereunder would be licence fee and thus is royalty within the definition of Section 9(1)(vi) of the I.T.Act and hence Section 195 is attracted. It is noticed in the assessment order that the Assessing Officer had held that though rate of tax on royalty as per Section 115A is as per DTAA and different percentage is fixed for different categories, has come to the conclusion that the entire payment is to be taxed at 10% as giving the maximum benefit to the assessee is just and proper.

17. Per contra Sri.K.P.Kumar, learned senior counsel appearing for the respondent would pose the following

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question for being answered namely whether the NRI is chargeable to tax in India and attempts to answer the question by contending that the Tribunal in paragraph 5.1 at page 35 has held that the Assessee was not correct in law in contending that this case is not covered by Section 9(1)(vi) of the Act.

18. Sri. Seshachala would contend that the first Appellate Authority at page 93 has examined the effect of DTAA, the definition assigned thereunder and also the meaning to be assigned to them. He contends that the royalty as defined under section 9(1)(vi) of the Act and the same defined under Article 12 and 13 of the DTAA agreement of USA and Sweden respectively are one and the same and hence the payment made by the respondent company is in the nature of royalty and not out right sale, since software remains with the transferor.

19. Sri.Seshachala would further contend that the advance ruling reported in 238 ITR 296 which has been

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considered by the Appellate Authority at page 94 of the paper book wherein it is considered by the Advance Ruling Authority with reference to the functioning process etc and concluded that such payment amounts to royalty (vide page 99 and 100). It is contended that it is only deemed income under Section 9 of the Act irrespective of the fact whether it is 'shrink-wrapped' or 'off the shelf/branded software' which requires to be considered and gone into. Sri.Seshachala refers to clauses 12 and 13 of DTAA pertaining to USA, France, Sweden and points out that the contention of the respondent in this regard is of two fold:

(i) software is '**goods**' and it does not find a place in DTAA agreement.

(ii) Even otherwise definition under Section 12 DTAA for royalty the word software is not mentioned.

20. Sri. Seshachala, learned senior standing counsel appearing for the revenue further contends that in the

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case of Tata Consultancy, the Hon'ble Supreme Court has held software is **'goods'** as defined in A.P.General Sales Tax Act, 1957 and not in any other context and thus the interpretation therein as relied upon by the respondent is of no relevance at all. On the contrary he relies upon the decision in the case of ACC where the issue was whether the Customs Duty is leviable or not with reference to the entry in Customs Tariff Act, 1975 and contends that its examination in this case is to be with reference to the definition of the word royalty as occurring in Section 9(1)(vi) and to give full effect to it.

21. Sri.Seshachala would contend that the finding of the Tribunal at paragraph 19 is erroneous wherein the Tribunal has held that there is no transfer of copy right and hence no right to utilise the copy right and the definition of royalty does not apply to the facts of the case and submits that the judgment relied upon by the revenue has not at all been examined by the Tribunal.

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Sri.Seshachala has formulated the following points for addressing the arguments.

(i) the assessee was bound to deduct tax under Section 195 of the Act and he cannot contend that it is not the income of the recipient.

(ii) The payment is covered by Section 9(1)(vi) of the Act.

(iii) The Tribunal did not consider whether the assessee can question the taxability of recipient under Section 201(1) and 201(1A).

(iv) Software is a scientific work and liable to tax under Section 9 read with DTAA and relies upon the decision in the case of Transmission Corporation Limited Vs. CIT (1999) 239 ITR 587 (SC) at paragraph 8.

22. Sri. K P Kumar, learned senior counsel appearing for the respondent would contend that the words used in section 195 is 'chargeable to tax'. Hence a person deducting tax under Section 195 would have to necessarily first see whether the same is chargeable to tax and then only if it is so he has to deduct and if it is not

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deemed income within the scope of Section 9(1)(vi) of the Act, then if it is to be taken to be a trading receipt, it will be chargeable to tax as business profit and if other conditions of the DTAA are satisfied then it can become income accruing in India and not otherwise. Sri.K.P.Kumar relies upon the very decision relied upon by Sri.Seshachala and brings to our notice paragraph 8 wherein it is held 'application to deduct tax' would arise only in the event of chargeable to tax'. Sri Kumar contends that sale of software is goods and it is a trading receipt thus not chargeable to tax in India. Sri Kumar submits that if trading receipt arises in India then only it is chargeable to tax and if the payment is made outside India as has been done in the instant case, it will not be liable to be tax and as such the respondent company would not be required to deduct the same. Sri Kumar contends if a person is not liable to be charged to tax then the assessee being construed as a person in default under Section 200 does not arise. This position the respondent

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can contend in an appeal before the authorities or the Tribunal as respondent would step into the shoes of the assessee, submits that by reading the entire judgment in transmission Corporation case it does not restrict the right of the respondent to challenge the liability/demand based on chargeability. Sri Kumar contends that chargeablity (to pay advance tax) is referable to Section 4(2) read with Sections 190-196 of the Act and contends that admittedly in the instant case payment is not made in India and it is open to the respondents to urge that the recipient is not chargeable to tax. In this regard Sections 4, 5(2b), 9(1)(vi) and 195 are pressed into service. The decision in the case of CIT Vs. Eli Lilly (2009) 312 ITR 225(SC) at paragraph 29 page 247 is relied upon to contend that charging provision under Section 4 will have to be borne in mind while reading Section 195 and a person liable to deduct can look into as to whether income of the recipient is chargeable to tax in India and on such examination if it is found by the respondent that

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it is not royalty and even otherwise it is not chargeable to tax under section 4(1), there is no necessity to deduct any amount from the payment made to foreign suppliers. By relying on Tata Consultancy case Sri. Kumar contends that shrink-wrapped software is **'goods'** and it is not "intellectual property" and does not by sale, transfer any right in the copy right itself but it is only the sale of a copy of the copy righted material, that no intellectual property is embedded in the disc and thus it amounts to goods.

23. Elaborating the submission Sri.Kumar contends that by reading Article 366 (12) of the constitution with Section 2(7) of the Sale of Goods Act, software is to be held as goods and the ratio in TCS case is squarely applicable and thus software mark and seal becomes goods which aspect has been looked into and considered in the TCS case. Sri.Kumar contends that prior to amendment to Section 201 of the Act, and it contained a qualifying words **'no such person'**; this means it refers to

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Section 200 and thus the respondent does not come within the ambit of deemed defaulter, as the payment was not in the nature of a royalty payment.

24. It is contended by the learned counsel for the assessee that once they do not come under the charging provisions namely Section 4, the question of deducting the tax does not arise as required under Section 195 inasmuch as Section 195 contemplates the deduction of tax only in respect of such income which becomes chargeable under the provisions of this Act namely Section 4. Hence, it is contended that once they are outside the purview of chargeability there is absolutely no liability to deduct tax and hence the consequential order passed under Section 201 is bad in law. It is contended that the consequences of non-payment is not attracted, if the person has no duty to deduct, as urged.

25. Sri.G. Sarangan, Senior counsel by relying upon to 239 (1999) ITR 587 and with reference to Paragraph 8 of

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the Judgement of the Tribunal which refers to Section 195(1)(2)(3) of the Income Tax Act, submits that "any other sum chargeable under the provisions of this Act" would mean that 'sum' is chargeable to tax, which could be assessed to tax under the Act; that the consideration would be whether the payment of the 'sum' to the non-resident is chargeable to tax under the provisions of the Act or not, submits that if it is taken that the sum is not at all chargeable, what are the consequences is not a question answered in ***TRANSMISSION CORPORATION*** case, because that was not the question that arose for consideration before the Court. Sri Sarangan submitted that Section 195 applies only to pure income receipts like interest, rent etc., and not to something in which the income is embedded and that the Supreme Court was not required to consider a case of the present nature in Transmission Corporation Case, and therefore the decision is not an authority for the present case, submits that consideration in these appeals is as to whether the

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payment of a 'sum' to the non-resident is chargeable to tax under the Act or not? that sum may be income, pure income or income hidden or embedded therein. If so, then tax is required to be imposed on the said sum. Elaborating Sri Sarangan submits that what would be the income is to be computed on the basis of various provisions of the Act including provisions for computation of the business income, if the payment is a Trade receipt. Trade receipt they are not referred to sale proceeds of some property or what they say is receipt in the course of further expenditure. However, what is to be deducted is income tax payable thereon at the rate under the Act . Under the Act, total income of previous year is chargeable under Section 4(2). Section 4 provides that in respect of income chargeable under sub-section (1), income tax shall be deducted at source where it is so deductible under any provision of the Act. If the sum that to be paid to the non-resident is chargeable to tax, tax is required to be deducted. Emphasises the word "if"; that

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If $ 5000 is carried from this country then obviously it is not income, there is no question of deducting the money at source; that if a gift is made there is no element of income in the payment and draws attention to Board's Circular which says that if a commission is paid to the person who carries on a commission business abroad and services are rendered in the other country that is not to be subject to tax; that if goods are bought in the foreign country and brought to this country then there is no liability of tax in this country.

26. Submissions by learned counsel for the assessees is as under, the sum which is to be paid may be income out of different heads of income provided under Section 14 of the Act, that is to say income from salaries, income from house property; profits and gains of business or profession; capital gains and income from other sources.

27. The scheme of tax deduction at source applies not only to the amount paid which wholly bears "income"

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character such as salaries, dividends, interest on securities, etc., but also to gross sums, the whole of which may not be income or profits of the recipient such as payments to contractors and sub-contractors and the payment of insurance commission. It has been contended that the sum which may be required to be paid to the non-resident may only be a trading receipt, and, may contain a fraction of the sum as taxable income. It is true that in some cases a trading receipt may contain a fraction of the sum as taxable income, but in other cases such a interest commission, transfer of rights of patents, goodwill or drawings for plant and machinery and such other transactions, it may contain a large part as taxable income under the provisions of the Act. Whatever may be the position, if the income is from profits and gains of business, it would be computed under the Act as provided at the time of regular assessment.

28. The purpose of sub-section (1) of section 195 is to see that the sum which is chargeable under Section 4 of

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the Act for levy and collection of income-tax, the payer should deduct income-tax thereon at the rates in force, if the amount is to be paid to a non-resident. The said provision is for tentative deduction of income-tax thereon subject to regular assessment and by the deduction of income-tax, the rights of the parties are not, in any manner, adversely affected. Further, the rights of the payee or recipient are fully safeguarded under Sections 195(2), 195(3) and 197. Sub Section (2) of Section 195 refers to payee and Sub-Section (3) refers to a recipient.

29. It is contended by the learned counsel appearing for the assessees that the only thing which is required to be done by them is to file an application for determination by the Assessing Officer that such sum would not be chargeable to tax in the case of the recipient, or for determination of the appropriate proportion of such sum so chargeable, or for grant of certificate authorising the recipient to receive the amount without deduction of tax, or deduction of income-tax at any lower rates or no

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deduction. On such determination, tax at the appropriate rate could be deducted at the source. If no such application is filed, income-tax on such sum is to be deducted and it is the statutory obligation of the person responsible for paying such "sum" to deduct tax thereon before making payment. He has to discharge the obligation of tax deduction at source; that the intention of the legislature is gross sum with reference whatever, then the provisions of the Act could have been omitted.

30. Sri Ganesh, learned Senior Counsel appearing for the assessee would contend that the assessee was able to demonstrate that the payment made to a non-resident was not at all chargeable to tax and therefore no obligation on the resident payer to deduct on payment. Sri Ganesh submits that 'Transmission Corporation Case' is not an authority to hold that even when there is no chargeability there is an obligation to deduct under Section 195(1) of the Act, unless one has gone through the process of Sec. 195(2) of the Act.

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31. Sri Ganesh submits that the judgment of the Supreme Court fully supports the case of the assessee, that the entire payment is not chargeable to levy in terms of the charge under Section 4 of the Act, then no obligation to deduct at all under Section 195 of the Act.

32. Learned counsel for the assessees have put forth several contentions based on a good number of authorities, both of the Supreme Court and several High Courts, to drive home the points (1) that the payment is not a payment in the nature of a royalty payment; (2) that it is more a payment in the nature of a payment made to acquire a copy-righted article partaking the character of a payment made to some goods or some merchandize; (3) that even assuming for argument's sake, the payment is to be accepted as a royalty payment under the Income Tax Act, without conceding, even then, in terms of the double taxation avoidance agreements, it does not retain the character of a royalty payment and as it is an accepted proposition of law that the provisions of double

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taxation avoidance agreements prevail over the provisions of the local laws viz., the Income Tax Act and a deemed definition of royalty in terms of the provisions of the Income Tax Act, particularly as in Section 9(1)(vi) of the Income Tax Act, are of no consequence and the receipt is not at all an income receipt in the hands of a non-resident recipient; (4) if the payment should acquire the character of a payment for buying merchandize or a product, in the sense, it is a price paid to a copy-righted article, which is sold in general and in a packaged form, available on the shelves of every seller, then, even assuming that it is a receipt in the nature of business receipt in the hands of a non-resident, the non-resident recipient not having a permanent establishment or not carrying a regular activity in India, the payment even if it is business receipt and consequently the income receipt in the hands of the non-resident recipient, then also, it cannot be taxed under the Act, but can be subjected to tax only in the country of the non-resident recipient and

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therefore have contended that viewed from any angle, the payment by residents does not ultimately result in a receipt, any part of which is taxable under the provisions of the Income Tax Act and if so, the obligations under sub-section (1) of Section 195 of the Act on the resident buyer never arises. It is on such premise, further arguments are built to contend that the consequential demand notices under Section 201 of the Act, on the premises that there was failure to comply with the obligations under sub-section (1) of Section 195 of the Act is also equally bad in law and if the tribunal has ultimately allowed the appeals of the assessees to arrive at this result, there is absolutely no need for the High court to interfere in the appeals filed by the revenue under Section 260A of the Act.

33. Learned counsel for the assessees, in support of their contentions, have relied on the following judgments:

- ***COMMISSIONER OF INCOME-TAX, AP-III v. SUPERINTENDING ENGINEER, UPPER SILERU (152 ITR 753)***

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- *COMMISSIONER OF INCOME-TAX, v. VIJAY SHIP BREAKING CORPORATION (261 ITR 113)*

- *VIJAY SHIP BREAKING CORPORATION AND OTHERS v. COMMISSIONER OF INCOME-TAX [(2009) 314 ITR 309]*

- *CIT v. COOPER ENGINEERING LTD. (68 ITR 457 BOM)*

- *CIT v. VASAVI PRATAP CHAND AND OTHERS (255 ITR 517 DEL)*

- *CIT v. SUPERINTENDING ENGINEER, UPPER SILERU (152 ITR 753 AP)*

- *ITO v. SHRIRAM BEARING LTD. (164 ITR 419 CAL)*

- *CIT v. WESMAN ENGG. CO. LTD. (188 ITR 327 SC)*

- *ITO v. SRIRAM BEARINGS LTD. (224 ITR 724 SC)*

- *CIT v. TATA ENGG. & LOCOMOTIVE CO. LTD. (245 ITR 823 BOM)*

- *CIT v. P.V.A.L. KULANDAGAN CHETTIAR (267 ITR 654 SC)*

- *DCIT v. TORQUISE INVESTMENT & FINANCE LTD. (300 ITR 1 SC)*

- *ANJALEEM ENTERPRISES (P) LTD. V. CCE [(2006) 2 SCC 336)]*

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- *CCE v. H P INDIA SALES (P) LTD. [(2007) 8 SCC 404)]*

- *SPRINT R P G INDIA LTD. v. COMMR. OF CUSTOMS [2000 (116) ELT 6 SC]*

- *PUNJAB NATIONAL BANK v. R L VAID [2004 (172) ELT 24 SC]*

- *STATE OF KARNATAKA v. C LALITHA [(2006) 2 SCC 747]*

- *RAJENDRA SINGH v. STATE OF U P [(2007) 7 SCC 378]*

- *CCE v. SRIKUMAR AGENCIES [2008 (232) ELT 577 SC]*

- *SAMSUNG ELECTRONICS CO. LTD. INDIA SOFTWARE OPERATIONS v. ITO (TDS)-I, BANGALORE*

- *TATA CONSULTANCY SERVICE v. STATE OF AP [(2004) 271 ITR 404 (SC)]*

- *TRANSMISSION CORPORATION OF INDIA OF AP LTD. v. CIT [(1999) 239 ITR 587 (SC)]*

- *UNION OF INDIA v. AJADI BACHAO ANDOLAN & ANOTHER [(2003) 263 ITR 706 (SC)]*

- *CIT v. VIJAY SHIP BREAKING CORPORATION [(2003) 261 ITR 113]*

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- ***CIT v. INTERNATIONAL DATA MANAGEMENT LTD. [(2003) 314 ITR 177]***

- ***CIT v. ENGINEERING ANALYSIS CENTRE OF EXCELLENCE PVT. LTD. [ITA 2158 AND 1270 OF 2006]***

- ***CIT v. ELI LILLY AND CO. (INDIA) P. LTD. [(2009) 312 ITR 225 SC]***

- ***DIRECTOR OF INCOME-TAX v. PAPER PRODUCTS LTD. [(2002) 257 ITR 1]***

- ***CIT, PANJAB v. R D AGARWAL & CO. [(1965) 56 ITR 20]***

- ***CIT v. SUPERINTENDING ENGINEER, AP [(1985) 152 ITR 753]***

34. These are all appeals under section 260-A of the Act. The Income Tax Act is a piece of legislation enacted by the Parliament mainly for the purpose of raising revenue to the central government and the aim and object is to levy and collect tax on all incomes which come within the meaning and scope of the provisions of the Act and quantifying the liability created on such income.

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35. Under the scheme of the Act such appeals have to be heard by a Division Bench of the High Court. The Act being a piece of fiscal legislation, on a settled and accepted principle of interpretation, all provisions of the Act should be read only with the object of giving effect to the intention of the legislature i.e., to raise revenue to the State by levying tax on income until and unless a particular income is expressly excluded from the total/taxable income, or by a fiction of law is nevertheless deemed to be not in the nature of income but something else.

36. While it is also a settled principle that the charging section of the Act i.e., section 4 of the Act is to be strictly construed, not to allow any enlargement of the scope of the charging section, it is an equally settled principle that an exemption or exclusion from the purview of the total income i.e., any income permitted as a deduction or by way of exemption, should also be construed strictly i.e., a provision for exemption or exception which is a provision

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which is not for the main purpose of levying tax on the income of the resident or non-resident; i.e., where under certain circumstances certain types of incomes are exempted from the net of taxation, which means that the assessee though has received the amount which otherwise definitely could have been treated as income will not become income for the purpose of computation of the liability to tax under the Act in view of the exemption.

37. It is therefore clear that both the charging section and the exemption provisions should always be construed strictly and there is no scope for unduly expanding the scope of levy, by a process of interpretation.

38. Having regard to the scheme of the Income Tax Act, namely, that income of the previous year is brought to tax in the following year, known as assessment year and for the assessing officer to finalize the assessment and to determine the specific tax liability of the assessee, it necessarily involves an exercise of gathering information,

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seeking for further explanation and then passing orders etc., there is bound to be a time gap between the actual earning of the income and the date of determination of the tax liability and as it was the experience of the revenue that realization of tax becomes much more difficult when once the income earned has been spent by the assessee, even before the finalization of the tax liability for the assessment year and by the time a demand notice is served following the assessment order, the assessee either may not be left with much funds or may not even be available (in India) for enforcing the tax liability and to get over such situations framers of the Act have envisaged the scheme of advance payment of tax as indicated in chapters – XV and XVI of the Act providing for an accelerated method of collecting tax, where under, some part of the tax liability is recovered in advance at source and remitted to the Income Tax Department which can ensure avoidance of the later lamentation by the revenue, due to the non-availability of the assessee or

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even due to the non-availability of the assets of the assessee against which the revenue could have proceeded for recovery of the amount.

39. Under the scheme of the Act and in the wake of the main charging section, i.e. section 4 of the Act in so far as the resident is concerned, all his income i.e., his global income is taxable in India under the Act. So far as non-resident is concerned, as the tax liability is directly linked to the total income of an assessee, it is only such income which is either received or deemed to have been received in India or accrues or arises or deemed to have been accrued or arisen to a non-resident in India in the year during which the subject matter arises and even here the income which is deemed to accrue or arise in India in respect of a non-resident, also coming within the scope of the computation of the total income of the non-resident and therefore so far as non-resident is concerned, there is considerable significance as to whether any income had arisen or accrued to the non-resident in India or has even

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been deemed to have accrued or arisen in India. This is to be found in section 5 of the Act providing for the scope of total income, while section 6 of the Act provides for the concept of residence; section 9 of the Act provides a fiction, an artificial way of understanding whether income has accrued or arisen in India by calling in aid the fiction and the significance being in the case of a non-resident assessee, even by the employment of fiction under section 9 of the Act, if some income is deemed to have accrued or deemed to have arisen to the non-resident in India, such income, is income which is taxable in India.

40. In all the above appeals, the discussion proceeds on the premise that the payments have all been made to foreign suppliers who are all non-residents within the meaning of sections 4, 5, 6 and 9 of the Act and by the conjunctive reading of these provisions if it is to be held that the payment in the hands of non-resident is in the nature of payment which can be otherwise be called as income, the significance for present purpose is that the

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resident payers such as the appellants are definitely under an obligation to make deductions in terms of section 195 of the Act and to remit the same within the stipulated period to the account of the revenue. A failure may result in the defaulting resident (assessee) payer being treated as a defaulter or even being, proceeded against, for recovery of the amount which the resident payer should have deducted and remitted to the credit of the Income Tax Department.

41. It is in this background, considerable effort has been put in by the learned senior counsel appearing for the assessees to impress upon us that in the first instance the receipts in the hands of the non-resident supplier/recipient is not at all in the nature of income in the hands of the non-resident suppliers and therefore there is no tax liability and that the view taken by the tribunal is the proper view and no need for interference.

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42. A further extension of this argument is to contend that the view taken by the assessing authority and first appellate authority to the effect that payment is in the nature of a royalty payment to the supplier and therefore liability for payment of tax in itself is not available if the receipt in the hands of the non-resident or any part of the amount does not partakes the character of income in the hands of the non-resident in the country of the residence of the non-resident, but if the payment or any part of the payment effected by the resident to a non-resident assessee is not in the nature of income which has either been deemed to accrue or arise in India, in terms of section 9 of the Act and if there is no actual income earned in India by the non-resident, then also there is no liability on the part of the non-resident for payment of any tax under the Indian Income Tax Act in respect of consideration received by the non-resident for the value of the 'shrink wrapped software packages' and as a consequence, no liability under the charging section.

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43. The net result even here is that there is no income to the non-resident which can be taxed under the provisions of the Indian Income Tax Act and therefore as a natural corollary there is no obligation on the part of the payer to deduct requisite percentage of the amount by way of deduction of tax at source and remit it to the account of the revenue.

44. It is in this background several contentions have been urged to demonstrate that payment as made by the residents and amount received by the non-resident company in respect of sale of 'shrink wrapped software packages' a software having its application in office equipment and in computers and generally sold by the Indian counterpart cannot in any way rope in the non-residents for payment of any tax under the Indian Income Tax Act, 1961.

45. The contentions urged on behalf of the assessee are more in the context of the determination of the tax

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liability of the non-resident recipient of the price/payment for the supply or sale of shrink wrapped software packages as though it is an exercise of passing an assessment order for determining the tax liability of the non-resident assessee receiving the payment; although the respondents in all these appeals are quite aware that it is not actually an exercise for determination of the tax liability of the non-resident but is only in the context of the obligation of a resident assessee making payments to the non-resident as contemplated under section 195 of the Act.

46. It is precisely because the payers i.e., the resident assessees are aware that in terms of section 195 of the Act they are under an obligation to so deduct a percentage of the payment while making payment to the non-resident and also to remit that amount to the revenue within the stipulated time and as this is an obligation which cannot be otherwise got rid of or can be wriggled out, learned counsel for the assessees have

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resorted to the above noticed arguments and a good number of authorities are cited in support of such contentions.

47. However, on the part of the revenue, submission of Sri. Seshachala, learned senior standing counsel is straight and simple and to point out that the nature of the obligation on the part of the resident payer and consequence of non-deduction of the requisite percentage of the payment at source and not adhering to the requirements of section 195 of the Act is not a matter which is *res integra* anymore but is fully and squarely covered by the Judgment of the Supreme Court in the case of ***'TRANSMISSION CORPORATION OF A.P. LTD., vs. THE COMMISSIONER OF INCOME TAX'*** reported in ***[1999] 239 ITR 587 [SC]***.

48. Section 195 of the Act for non-compliance with which obligations as provided in this section, the revenue had proceeded against the respondents – assessees for

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recovery in terms of section 201 of the Act. Section 195 of the Act reads as under:

> ***195. Other sums.*** *– (1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries" shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rates in force:*
>
> ***Provided*** *that in the case of interest payable by the Government or a public sector bank within the meaning of clause (23-D) of Section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode:*
>
> *Provided further that no such deduction shall be made in respect of any dividends referred to in Section 115-O.*
>
> *Explanation. – For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called "interest payable account" or "Suspense account" or by any other name, in the books of account*

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of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(2) Where the person responsible for paying any such sum chargeable under this Act, (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable:

(3) Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

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(4) A certificate granted under sub-section (3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the Assessing Officer before the expiry of such period, till such cancellation.

(5) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (3) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith."

49. The background to various submissions made by the learned senior counsel appearing for the assessees and as noticed above is to counter the argument of Sri. Seshachala, learned senior standing counsel appearing for the revenue that not only the Judgment of the Supreme Court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] covers the question and against the assessee but also in the wake of the reliance placed by the learned standing counsel for the revenue on the advance ruling rendered by the authority for advance

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ruling in the case of ***'ABC, IN RE*** as per its order dated 28.4.1999 passed in Advance ruling P.No.30/1999 which is also reported in ***238 ITR 296 [AAR]*** in holding that payments of the present nature made to the non-resident recipients who are American companies is fully and squarely covered by this ruling of the advance committee and to get over these two authorities, learned counsel for the assessees have gone to great lengths to contend and demonstrate that in the first instance the payment does not produce any income at all in the hands of the non-resident recipient within the meaning of the phrase 'income' which in turn can enable the assessing officer to arrive at the total taxable income and when once the total taxable income is determined with reference to which the rate of tax can be borrowed from the corresponding finance Act and the tax liability determined by the concerted effort of demonstrating that the payment does not partake the character of income at all within the meaning of section 9 of the Act.

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50. In so far as the Judgment of the Supreme Court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] is concerned, though valiant attempts have been made on the part of the learned counsel appearing for the assessee, particularly, Mr. K P Kumar, Mr. Ganesh, Mr. G Sarangan, Mr. R B Krishna, learned senior counsel etc., to either distinguish this authority or even to contend that the Judgment can only be an authority only to the limited extent of being applicable to a situation where a dispute may arise as to whether the provisions of section 195 of the Act are attracted even when the entire payment to a foreign non-resident does not partake the character of income but only some part of that payment partakes the character of income and even then the deduction is obligatory on the part of the payer if the entire payment does not necessarily become income and that the present situations and appeals are not appeals involving such questions but only appeals involving the question as to whether the payment or any part of the payment has a

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character of income within the meaning of section 9 of the Act read with charging section and that the contention being that no part of the payment made to the non-resident can become income either under the Income Tax Act or enjoys an exemption under the DTAA, and if so then no part of such payment being taxable in India and therefore in the absence of fulfillment of requirement of section 195[1] of the Act, the further non-compliance with the requirements of sub-sections [2], [3], [4], [5] of section 195 of the Act may not even arise for examination, such argument cannot be accepted for the simple reason that in the first instance there is no exercise for determination of the tax liability of the non-resident recipient of the payment. Secondly, the binding nature of the Judgment of the Supreme Court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] cannot in any way be diluted or diminished as the Supreme Court being directly involved in the exercise of interpreting the provisions of section 195 of the Act in that case and having interpreted

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the provisions of section 195 of the Act in the manner in which they have done, such interpretation is the law declared by the Supreme Court and cannot be avoided or wished away by any assessee but at any rate by any other court in this country including the High Court functioning as an appellate authority under section 260-A of the Act, and even if learned senior counsel appearing for the assessees contend to that effect and also that it was not within the knowledge of the assessee, about the so called advance ruling rendered in ***ABC, IN RE's*** case [supra] answering the questions such as,

> *"(1) Whether payment due to the applicant under the transaction mentioned in Annexure B is liable to tax in India?*
>
> *(2) If the answer to the question No. 1 is in the affirmative, whether the payment due to the applicant under the transaction mentioned in Annexure B is covered under art. 12(3)(a) or art. 12(3)(b) of the DTAA between India and USA?"*

is in the affirmative, we are afraid the argument does not hold water, for both purposes, namely, that the ruling of

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the Supreme Court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] is not an authority for the purpose of understanding the scope of sub-sections [2], [3], [4] of section 195 of the Act or even for examining the scope and extent of operation of section 195[1] of the Act.

51. We find it difficult to accept the submissions made on behalf of the assessees' for the reason that the supreme court was directly involved in the exercise of understanding, interpreting and explaining the scope of the provisions of section 195 of the Act and the scheme of this provision and the manner in which the section works and has to be applied while deciding the appeal of the assessee in the case of ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] and having explained the same in the following manner in paras 8, 9, 10 & 11 quoted as under:

> *8. "The scheme of sub-ss. (1), (2) and (3) of s. 195 and s. 197 leaves no doubt that the expression "any other sum chargeable under the provisions of this*

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Act" would mean 'sum' on which income-tax is leviable. In other words, the said sum is chargeable to tax and could be assessed to tax under the Act. Consideration would be – whether payment of sum to non-resident is chargeable to tax under the provisions of the Act or not? That sum may be income or income hidden or otherwise embedded therein. If so, tax is required to be deducted on the said sum – what would be the income is to be computed on the basis of various provisions of the Act including provisions for computation of the business income, if the payment is trade receipt. However, what is to be deducted is income-tax payable thereon at the rates in force. Under the Act, total income for the previous year would become chargeable to tax under s. 4. Sub-s. (2) of s. 4 inter alia, provides that in respect of income chargeable under sub-s. (1), income-tax shall be deducted at source where it is so deductible under any provision of the Act. If the sum that is to be paid to the non-resident is chargeable to tax, tax is required to be deducted. The sum which is to be paid may be income out of different heads of income provided under s. 14 of the Act, that is to say, income from salaries, income from house property, profits and gains of business or profession, capital gains and income from other sources. The scheme of tax deduction at source applies not only to the amount paid which wholly bears "income" character

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such as salaries, dividends, interest on securities, etc., but also to gross sums, the whole of which may not be income or profit of the recipient, such as payments to contractors and sub-contractors and the payment of insurance commission. It has been contended that the sum which may be required to be paid to the non-resident may only be a trading receipt, and, may contain a fraction of sum as taxable income. It is true that in some cases, a trading receipt may contain a fraction of sum as taxable income, but in other cases such as interest, commission, transfer of rights of patents, goodwill or drawings for plant and machinery and such other transactions, it may contain large sum as taxable income under the provisions of the Act. Whatever may be the positions, if the income is from profits and gains of business, it would be computed under the Act as provided at the time of regular assessment. The purpose of sub-s. (1) of s. 195 is to see that the sum which is chargeable under s. 4 of the Act for levy and collection of income-tax, the payee should deduct income-tax thereon at the rates in force, if the amount is to be paid to a non-resident. The said provision is for tentative deduction of income-tax thereon subject to regular assessment and by the deduction of income-tax, rights of the parties are not, in any manner, adversely affected. Further, the rights of payee or recipient are fully safeguarded under ss. 195(2), 195(3)

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and 197. Only thing which is required to be done by them is to file an application for determination by the AO that such sum would not be chargeable to tax in the case of recipient, or for determination of appropriate proportion of such so chargeable, or for grant of certificate authorising recipient to receive the amount without deduction of tax, or deduction of income-tax at any lower rates or no deduction. On such determination, tax at appropriate rate would be deducted at the source. If no such application is filed income-tax on such sum is to be deducted and it is the statutory obligation of the person responsible for paying such 'sum' to deduct tax thereon before making payment. He has to discharge the obligation of tax deduction at source.

9. *The High Court of Calcutta considered and interpreted similar provision of s. 18 (3B) of the IT Act, 1922, in the case of P.C. Ray & Co. (India) (P) Ltd. vs. A.C. Mukherjee, ITO (1959) 36 ITR 365 (Cal) : TC 5R.355, and rightly held:*

"if 'chargeable under the provisions of this Act' means actually liable to be assessed to tax, in other words, if the sum contemplated is taxable income, a difficulty is undoubtedly created as to complying with the provisions of the section".

The High Court further held that s. 18(3B) contemplated not merely

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amounts, the whole of which was taxable without deduction, but amounts of a mixed composition, a part of which only might turn out to be taxable income, as well; and the disbursements, which were of the nature of gross revenue receipts, were yet sums chargeable under the provisions of the IT Act and came within the ambit of s. 18(3B) of the Act.

10. *Hence, in our view there is no substance in the contention of the learned counsel for the appellant that the expression "any other sum chargeable under the provisions of this Act" would not include cases where any sum payable to the non-resident is a trading receipt which may or may not include 'pure income'. The language of s. 195(1) for deduction of income-tax by the payee is clear and unambiguous and casts an obligation to deduct appropriate tax at the rates in force. We makes it clear that the learned counsel for the parties have not advanced any submissions with regard to other findings given by the High Court.*

11. *In this view of the matter, the answer given by the High Court that (i) the assessee who made the payments to the three non-residents was under obligation to deduct tax at source under s. 195 of the Act in respect of the sums paid to them under the contracts entered into; and (ii) the obligation of the respondent-assessee to deduct tax*

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under s. 195 is limited only to appropriate proportion of income chargeable under the Act, are correct."

52. The interpretation by the Supreme Court being in respect of a statutory provision, namely, section 195 of the Act that interpretation becomes the law declared by the supreme court within the meaning of Article 141 of the Constitution of India and such law will have to be necessarily applied to all cases and situations wherein arises the question of applying section 195 of the Act and the manner in which section 195 of the Act operates in any given case, notwithstanding the fact that an answer given by the supreme court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] was an answer in respect of a question that had actually not arisen in the case or even if the interpretation so placed does not necessarily partake the character of the ratio of the case, in the sense, that the Judgment does not necessarily become an authority for a particular proposition and therefore cannot be cited as a precedent,

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on applying the tests as are relevant for determining the question as to whether a Judgment is an authority and a binding precedent for a particular proposition when the ratio if any has not even been applied to the facts of the case and decision of the case is not based on such ratio, all such tests are irrelevant and does not in any way detract from the constitutional mandate of Article 141 wherein it is emphatically made clear that the law declared by the supreme court shall be binding on all courts within the territory of India and the interpretation of the supreme court having clarified the legal position of section 195 of the Act, that interpretation is the law declared and binding on all courts in this country and whether the assessees likes it or not it has to be necessarily, applied to the cases on hand and the Judgment rendered in each case, on such application of the law declared by the Supreme Court, to the facts of the particular case.

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53. In this background, the picture that emerges is that while under section 195[1] of the Act, there is an obligation on the part of the person responsible for paying to a non-resident does arise if and only if the payment partakes the character of income payment, in the sense that, if an amount is not in the nature of income payment at all then section 195[1] of the Act does not operate, we cannot lose sight of the fact that section 195[1] of the Act is not a provision for assessing the tax liability of a non-resident nor as to whether under section 9 of the Act, any income is deemed to have resulted in the accrual or arisal of income to the non-resident in India, but by simply accepting the operation of the mandate under section 195(1) on every resident payer making a payment to a non-resident recipient in respect of any goods/service supplied by the non-resident, which the resident payer is making use of in the running of its business or any other activity indulged in as part of the business/professional activity of the resident assessee as in such a situation,

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the payment to the resident recipient prima-facie bears the character of an income recipient and therefore the obligation under sub-section (1) of section 195 springs up.

54. The Judgment of the Supreme Court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] is a binding authority for this proposition and there is absolutely no scope for the High Courts even to examine an alternative argument either on the premise that the ruling of the supreme court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] is not a binding precedent or on the premise that the said Judgment is distinguishable for any other reason for the purpose of applying the ruling in that Judgment to the fact situation as they prevail in the present appeals.

55. There are certain appeals wherein the very argument is raised by the respondents – assessees before the appellate authority in their appeals filed under section

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246 of the Act as against an order passed under section 201 of the Act which is a provision providing for the consequential action that can be taken by the assessing authority against an assessee who has failed to comply with the requirement of deduction of tax at source i.e., at the time of payment and not remitting the amount to the revenue after such deduction etc.,.

56. As we have already indicated that a question of the nature involving exercise of determining the liability of the non-resident assessee in respect of the payment received by the non-resident from a resident assessee cannot be an exercise that can be resorted to even for the purpose of determining the extent of obligation on the part of the resident payer and to ascertain as to whether there is any scope for relieving the resident payer totally from the obligation of deduction or even partially, as an answer for that can be obtained only by going through the procedure envisaged under section 195[2] of the Act and on making an application in this regard and for the said purpose to

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the assessing officer and in the absence of such an application by the resident payer, assuming that an appeal is filed by the resident payer against the consequential order passed by the assessing officer under section 201 of the Act, for the very reason, we have indicated earlier that question cannot be raised even in the appeal filed under section 246 of the Act against the order under section 201 of the Act and the bar as we have indicated earlier in the wake of the requirement of section 195[2] of the Act for such purpose and in the wake of the binding Judgment of the supreme court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] even the appellate authority in the appeal of the assessee under section 246 of the Act as against the order of the assessing officer passed under section 201 of the Act is precluded from going into such question and if so it is not open even to the appellate Tribunal to venture on finding an answer to the very question in the assessee's further appeal to the Tribunal and opinion rendered by

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the Tribunal on the question answering it in favour of the assessee is of no consequence in law, is not a proper exercise of its appellate powers; an answer of this nature is not binding in law and is necessarily liable to be set aside and the question answered in favour of the revenue.

57. In this context, an incidental argument was raised though feebly, to the effect that a recovery of the nature as attempted by the assessing officer purporting to be for the reason of failure on the part of the assessee to comply with the requirement of section 195[1] of the Act and therefore the consequential order under section 201 of the Act cannot sustain the order for the reason that section 201 of the Act does not cover consequential action on the failure of an assessee on non-compliance of the requirements of section 195 of the Act and the provision in turn being linked to section 200 of the Act and section 200 of the Act providing for consequential action only in a situation where any person who has actually deducted the amount in accordance with the preceding statutory

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provisions enabling for deduction of tax at source and for remittance of the amount to the revenue as they occur in chapter – XVII of the Act and therefore the very demand is a consequential order in terms of section 201 of the Act is bad in law and not tenable and not enforceable and perhaps a question of this nature could be a question which can be examined in an appeal under section 246 of the Act and within the scope of appellate jurisdiction under section 246 of the Act in respect of an order passed and demand issued under section 201 of the Act, only if it relates to the correctness of the order vis-à-vis this aspect and all questions incidental to the aspect being excluded as indicated above because of the express provisions of section 195[2] of the Act, the answer to this question is again, against the assessee in favour of the revenue for the simple reason that the relevant statutory provisions, namely, sections 200 and 201 of the Act at the relevant point of time were as under:

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200. "Duty of person deducting tax. *– (1) Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.*

(2) Any person being an employer, referred to in sub-section (1-A) of Section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.

W.E.F. 1.4.2005, *in Section 200, after sub-section (2), the following sub-section shall be inserted, namely:-*

(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1-A) of Section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare quarterly statements for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver or cause to be delivered to the prescribed income tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

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201. Consequences of failure to deduct or pay. – *(1) If any such person referred to in Section 200 and I the cases referred to in Section 194, the principal officer and the company of which he is the principal officer does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax:*

Provided *that no penalty shall be charged under Section 221 from such person, principal officer or company unless the Assessing Officer is satisfied that such person or principal officer or company, as the case may be, has without good and sufficient reasons failed to deduct and pay the tax.*

(1-A) With prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at twelve per cent per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.

(2) Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the

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amount of simple interest thereon referred to in sub-section (1-A) shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1)."

and a sequential reading of section 195 of the Act which is a provision obviously preceding section 200 of the Act because of which it does get into section 200 of the Act and at the relevant time section 200 also covering the case of the total failure of deduction and not only a situation of deduction and thereafter a failure to remit the amount and in fact the heading of section 201 clearly indicating that it is a provision which springs into action as a consequential measure in situations of the assessee failing either to deduct or to pay, the order passed under section 201 of the Act is bad and is a relevant order even in situations of failure on the part of the assessee for not deducting the amount at source at the time of remittance of the amount to a non-resident and consequential non-payment however bona fide the assessee might have entertained the thought and the belief that in fact no part

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of the payment to the non-resident was not chargeable to tax under the Income Tax Act, 1961, either for the reason that it was income at all within the meaning of this expression and does not get into the total income or for the reason that even when it is income under the provisions of the Act, it becomes not taxable in India in view of the provisions of DTAA having provided that such income of the non-resident assessee as they are all virtually exercises to be embarked only at the time of determination of the actual tax liability of the non-resident assessee and in the absence of a return being field by the non-resident assessee, examination of such questions does not arise while the assessing officer is in the exercise of taking consequential action on an assessee who has failed to fulfill his obligation under section 195[1] of the Act, and therefore goes against the assessees and are answered accordingly.

58. While examining the scope and the extent of applicability of the provisions of section 195 of the Act, we

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cannot lose sight of the fact that this section in the first instance is not a charging section nor a section providing for determination of the tax liability of the non-resident who is in receipt of payments from a resident.

59. The section itself occurs in chapter – XVII of the Act providing for collection and recovery by way of a deduction effected at source of payment and the deduction is in advance i.e., even before the determination of the actual tax liability of the non-resident foreign company.

60. The amount deducted by the resident who is responsible for making payments to the non-resident is only a provisional or tentative amount which is kept as a buffer for adjusting this amount against the possible tax liability of the non-resident assessee. The amount deducted under section 195 of the Act is not the same as determining the liability of the non-resident assessee for payment of tax under the Income Tax Act, 1961. A non-

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resident may be or may not be liable to pay any tax. The amount which is deducted by making payment and which is at a fixed percentage of the amount may be even much more than the actual tax liability of the non-resident company and even may be less than the actual tax liability of the non-resident company in a given case. But these aspects are all not determinative of the actual deduction in terms of section 195[1] of the Act and the rate of deduction is the rates as in force and as given in advance by the Finance Act of each year with reference to the current year [unlike the rate of income tax which is provided in the Finance Act with reference to an assessment year]. The exercise of determination of the tax liability of a resident payer or the tax liability of the non-resident recipient do not happen and are not carried out under the provisions of section 195 of the Act.

61. However, section 195[2] of the Act provides for a limited extent of a possible reduction in the actual amount to be deducted at source by the resident payer if

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the resident payer is able to demonstrate before the assessing officer that the entire payment does not bear the character of income, but only a part of the payment bears the character of income and the payment in respect of goods purchased by the resident and paid to the non-resident is a very good illustration where the cost of the goods i.e., the entire cost of the goods by itself does not constitute income even in the hands of the non-resident recipient but only the profit part of the payment which has to be ascertained in the manner as provided for under the Act, particularly, under the head 'profits and gains of business or profession' and even here the scope for such reduction through the application at the instance of a resident payer is only to the extent of demonstrating as to what percentage of the payment bears the character of income and seek for permission to deduct only such proportionate sum from out of the actual payment which is chargeable to tax as income of the non-resident recipient.

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62. Even here, one should bear in mind that it is not actually either an exercise for the assessment of the income of the non-resident nor the actual tax determination of the non-resident.

63. As we are of the opinion that section 195 of the Act is not at all a provision wherein the assessing officer is required to indulge in an exercise of determination of the income of a non-resident and that can be done only on the basis of a return of income filed by the non-resident who can definitely put forth the various contentions as have been urged in the present appeal by the learned senior counsel appearing on behalf of the respondents, i.e., the resident payers and even much more on the authority of the law declared by the supreme court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra], the only scope and the manner of reducing the obligation for deduction imposed on a resident payer in terms of section 195[1] of the Act is by the method of

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invoking the procedure contemplated under sub-section [2] of section 195 of the Act i.e., only when the person responsible for paying any such sum chargeable under this Act on a non-resident, considers that the whole of such sum would not be income chargeable in the case of the recipient, by making an application to the assessing officer to determine by general or special order the appropriate proportion of such sum so chargeable and upon such determination alone, being allowed the liberty of deducting the proportionate sum so chargeable to tax to fulfil the obligation cast under sub-section [1] of section 195 of the Act.

64. In so far as a resident payer who has not admittedly taken any steps nor had made any efforts to have the proportionate amounts so deductible in terms of the determination by the assessing officer i.e., the resident payer who has not filed an application under sub-section [2] of section 195 of the Act cannot, later, after having failed to deduct and remit the amount turn around and

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contend that no part of the payment had resulted in any taxable income in the hands of the non-resident recipient and therefore it cannot be said that there was any failure on the part of the resident payer in fulfilling its obligation under section 195[1] of the Act and consequently the demand raised in terms of section 201 of the Act is not sustainable as the demand proceeds on the premise that there was a failure on the part of the payer.

65. We further clarify this legal position and if it is to be put in other words, we hold that while it is not open to a resident payer to invite the assessing officer to embark upon the exercise of determining the tax liability of the non-resident recipient on a mere filing of objections to a demand under section 201 of the Act by merely contending that the payment did not result in any taxable income in the hands of the non-resident and this can be an exercise undertaken by the assessing officer only in an actual return of income filed by the non-resident recipient

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for such determination of the non-resident's tax liability, in so far as the resident payer is concerned, the limited option was to have applied to the assessing officer in terms of sub-section [2] of section 195 of the Act and admittedly in all these appeals the respondents – resident assessees having not made any such application under sub-section [2] of section 195 of the Act, no further question arises for examination in so far as the liability of the resident payer in terms of section 195[1] of the Act is concerned and all such contentions urged on behalf of the respondent - assessees on the merits of the question of actual taxability or otherwise of the income in the hands of the non-resident recipient are all to be ignored as irrelevant, as such contentions are not productive for the purpose of the persons who are required to effect deduction and remit it to the account of the revenue as a mandatory obligation in terms of section 195[1] of the Act and the provision being a part of the scheme for advance remittance of tax and the legislature having found ways

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and means of recovering the tax in advance even before the actual crystallization of the tax liability of an assessee in terms of the provisions contained in chapter-XVII of the Act and section 195 of the Act being one such provision and an exercise of this nature and even before the determination of the actual tax liability non-resident assessee at the time of the resident payer like the respondents in the present appeals being a premature one for the purpose of actual determination of the tax liability of the non-resident recipient.

66. If one is allowed the liberty of giving a rough and crude comparison to the manner in which the provisions of section 195 of the Act operates on a resident payer who makes payment to a non-resident recipient and if the payment bears the character of a semblance of an income receipt in the hands of the non-resident recipient, then the obligation on the part of the resident payer who makes such a payment to the non-resident recipient is

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like a guided missile which gets itself attached to the target, the moment the resident assessee makes payment to the non-resident recipient and there is no way of the resident payer avoiding the guided missile zeroing on the resident payer whether by way of contending that the amount does not necessarily result in the receipt of an amount taxable as income in the hands of the non-resident recipient under the Act or even by contending that the non-resident recipient could have possibly avoided any liability for payment of tax under the Act by the over all operation of different provisions of the Act or even by the combined operation of the provisions of a double taxation avoidance agreement and the Act as is sought to be contended by the respondents in the present appeals.

67. The only limited way of either avoiding or warding off the guided missile is by the resident payer invoking the provisions of section 195[2] of the Act and even here

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to the very limited extent of correcting an incorrect identification, an incorrect computation or to call in aid the actual determination of the tax liability of the non-resident which in fact had been determined as part of the process of assessing the income of the non-resident and by using that as the basis for claiming a proportionate reduction in the rate at which the deduction is required to be made on the payment to the non-resident. Except for this method, there is no other way of the resident payer avoiding the obligations cast on it by the provisions of section 195[1] of the Act and as a consequence of such default when is served with a demand notice in terms of section 201 of the Act.

68. This position is the clear legal position that emerges on analyzing the full effect of the provisions of section 195 of the Act in the light of the law declared by the supreme court in ***'TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra].

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69. The assessing authority and the first appellate authority while are correct to the extent of holding that there was an obligation on the part of the resident payers in effecting a deduction from out of the payments made by them in favour of the non-resident recipients even as consideration for acquiring what is known as 'shrink wrapped software' or what is sought to be described as 'ready to sell, off the shelf' packaged software product and even assuming it had partaken the character of goods for the purpose of determination of the tax liability under the provisions of Andhra Pradesh General Sales Tax Act, 1957 as held by the supreme court in ***'TATA CONSULTANCY SERVICES*** case [supra], all such questions recede to the background while examining the question of the obligation of a resident payer in terms of section 195[1] of the Act and as arguments not relevant for the purpose of answering this question.

70. The Tribunal has clearly committed an error in law in embarking upon to answer the question of the actual

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tax liability of a non-resident recipient in respect of an amount received by it from a resident payer while examining an appeal at the instance of an assessee complaining of the correctness or otherwise of enforcement of a demand raised in terms of section 201 of the Act even when admittedly the resident payers were not in any way enabled not to deduct any amount or to deduct an amount which is a part of the amount actually liable to be deducted by the resident payer which is the amount to be arrived at, by working out the amount in terms of the provisions of the Finance Act, relevant and applicable to the case, providing for the rate/percentage at which the resident payer was required to be deducted from the payment and remit the same to the account of the revenue as part of the obligation of the resident payer in terms of section 195[1] of the Act.

71. On the lines of reasoning and logic that we have indicated above and on the proper understanding and application of the provisions of section 195 of the Act, as

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interpreted and declared by the Supreme Court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra], while there was absolutely no scope for the assessing authority or the first appellate authority or even the second appellate authority to embark on an exercise for determination of the tax liability of the non-resident recipient of the payments, in a proceeding under section 195 of the Act and afortiari so in a case where the resident payer had not even invoked the enabling provisions of section 195[2] of the Act and is the case of all the assessees figuring in the above appeals as respondents and as we have already noticed such developments of requirements of law in terms of section 195[1] of the Act had never filed any application under section 195[2] of the Act and for the very reasoning the assessing officer should not have embarked upon the exercise of determination of the tax liability of the non-resident assessee on the premise that the payment by the resident payer to the non-resident recipient partakes the

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character of a royalty payment and therefore applying the relevant provisions of the DTAA and even the exercise of holding that the actual percentage of deduction at source was at 10% or 12% or 15% as the case may be depending upon the country in which the non-resident recipient is assessed and having regard to the terms of the DTAA with that country and even such determination has to be declared to be incorrect, not permitted in law and therefore illegal, we have to accept the determination by the assessing authority and affirmed by the first appellate authority and we do so only for the reason that on this aspect of the matter, the revenue has not joined issue at all and while the revenue from the very beginning had taken this stand of the payment in the hands of the non-resident recipient being in the nature of a royalty payment and was also affirmed by the appellate authority, that was not made an issue or question for determination before the tribunal by the revenue and therefore we do not propose to disturb this factual emergence of facts,

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particularly, in ascertaining the extent of deduction that was required to be made by the resident payer and therefore we are not disturbing the orders of the assessing authority as affirmed by the first appellate authority and second appellate authority on this aspect of the matter.

72. One another reason for our holding that the assessing officer, even in a situation where an application is made by the resident payer, under section 195[2] of the Act, for the determination of the proportion of the actual amount being remitted to the non-resident recipient so that the resident payer can deduct only the reduced amount and remit it to the credit of the account of the revenue and while doing so i.e., while examining an application under section 195[2] of the Act, the assessing officer cannot embark on an exercise as though it is meant to determine the actual tax liability of the non-resident assessee is that if such a situation is permitted to take place and if the income of the non-resident is sought to be assessed in advance, even in the hands of a

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resident payer, there can arise conflicting decisions and versions, in so far as the tax liability of the non-resident is concerned as even after a determination under section 195[2] of the Act, where under the tax liability of the non-resident is determined in the hands of the resident payer and that too prematurely, then the exercise may not be productive as it will be always open to the non-resident to contend that no part of the receipt was taxable in India and is able to make good this position, on the basis of a return of income filed later by the non-resident assessee, it will result in there being two versions of the actual tax liability of the non-resident recipient of a payment from this country, one version when the liability is determined even in advance and that too in the hands of the resident payer and the second version of the liability when the precise tax liability of the non-resident recipient of a payment from this country is actually determined resulting in a different determination of the tax liability of the non-resident recipient.

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73. A situation of this nature should necessarily be avoided and it can be avoided if we should bear in mind that the exercise under section 195[2] of the Act is only for extending a limited concession in favour of the resident payer when things are very clear or does not involve any doubt or ambiguity such as in a situation where the non-resident recipient of the amount, has filed a return of his income as one arising from such a transaction with the resident payer and the assessing officer has actually examined the nature of payment and has indicated in an assessment order passed on the return of income filed by the non-resident that no part of the receipt is taxable under the provisions of the Act [for whatever reason] and if so based on this settled/undisputed factual/legal position, the resident payer by quoting the assessment order passed by the assessing officer on the return of income filed by the non-resident for any earlier year seek for granting the commensurate relief from the obligation for deduction of

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the percentage of payment to the non-resident. Also an erroneous order and demand being raised by the assessing officer under section 201 of the Act, such as an incorrect description of the resident payer or incorrect computation of the amount to be deducted from out of the payment made by the resident payer either by employing a wrong percentage for deduction, at variance with the rate as indicated in the Finance Act or such arithmetical or factual errors committed by the assessing officer, without involving the question of actual determination of the tax liability of the non-resident etc., alone can constitute the subject matter for appeal under section 246-A of the Act [clause [h-a] of sub-section 1 of section 246-A of the Act].

74. An appeal under section 246-A[1][h-a] of the Act to the first appellate authority against a demand notice/order under section 201 of the Act cannot serve the purpose of seeking correction of the demand/order on the premise that the receipt in the hands of the non-

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recipient was getting out of the net of taxation under Income Tax Act, 1961 due to one or the other reason.

75. In all these appeals, there being no dispute nor can there be any dispute regarding the payments made by the resident payers, bearing the character of an income receipt in the hands of the non-residents as the payments whether are in respect of a merchandise i.e., a payment for buying/purchasing/acquiring a packaged software product and is a commercial transaction or even be in the nature of a royalty payment, as was opined by the assessing officers and affirmed in appeals by the first appellate authorities, nevertheless, the payment definitely being in the nature of a payment resulting in some possible income in the hands of the non-resident recipient, the obligation imposed on the resident payers in terms of section 195[1] of the Act springs into action, the moment, there is to be a payment to the non-resident and admittedly in all these appeals, the payers who are the respondents in all these appeals, having not taken any

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steps or not having invoked the relieving provisions of sub-section [2] of section 195 of the Act, such obligation on the resident payer remaining in tact and having regard to the limited scope for examination in an appeal under section 246-A[1][h-a] of the Act as discussed above, there was absolutely no way in law, for the Income Tax Appellate Tribunal, while exercising its appellate powers under section 253 of the Act, to have modified or varied the order passed by the Commissioner [Appeals] exercising his appellate powers under section 250 of the Act and therefore all orders passed by the appellate tribunal for allowing the appeals of the assessees filed under section 253 of the Act, have to be declared as illegal, not sustainable in law and are hereby set aside.

76. The Tribunal is clearly in error in enabling a resident payer to seek for determination as to the extent of the tax liability of the non-resident recipient, even in a situation wherein an application is made obligation under section 195[1] of the Act not by recourse to the provisions

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of section 195[2] of the Act but as though the exercise was one of determining the tax liability of the non-resident recipient which in our opinion is clearly in the teeth of the law declared by the supreme court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra] and therefore all the orders passed by the tribunal are not sustainable.

77. The orders passed by the assessing authorities and affirmed by the first appellate authorities to sustain the demands raised in terms of section 201 of the Act are not orders suffering from any illegality or irregularity and are valid orders though not necessarily for the reasons assigned and discussions made by the authorities in their orders but by the proper application of the law to the fact situation and following and applying the law declared by the supreme court in ***TRANSMISSION CORPORATION OF A.P. LTD.,'s*** case [supra].

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78. For the reasons stated above, while we refrain from answering the questions raised in these appeals relating to the actual determination of the tax liability of the non-resident assessees in respect of the payments that they had received from the resident payers figuring as respondents in all these appeals, we answer all other questions relating to the correctness or otherwise of the orders passed by the tribunal in the negative in favour of the revenue and against the assessee, allow the appeals, set aside the orders passed by the Tribunal and restore the orders passed by the assessing authorities and affirming orders passed by the first appellate authorities, so far as it relates to confirming the demand raised on all these respondents – assessees in terms of the provisions of section 201 of the Act for the failure of the respondents – assessees to comply with the requirement of section 195[1] of the Act.

79. Accordingly, these appeals are **allowed**.

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IN ITA Nos. 919/2007 & 921/2007:

80. While these two batches of appeals had also been heard along with the above appeals, it is noticed that they strike a slightly different note, in the sense, though ultimately the question may be one of the extent and the manner of obligation of a resident payer to deduct an amount at a percentage of the payment made to a non-resident recipient, these matters have reached this court under section 260-A of the Act even before the stage had reached wherein either the first appellate authority or the second appellate authority had opined on merits about the correctness or otherwise of the order passed by the original/assessing authority in respect of 11 remittances [corresponding to ITA Nos.931 to 941/Bang/2006] and another 31 remittances [corresponding to ITA Nos.672 to 702/Bang/2007] made during the accounting period relevant for the assessment year 2006-07 and wherein the first appellate authority had declined to examine the merits of the orders passed by the assessing authority

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relating to these 42 remittances where under the original authority had concluded that the remittances being in the nature of a royalty payment, the amount to be deducted while making the remittance is at such percentage of the amount as had been indicated in the Double Taxation Avoidance Agreement between India and the United States of America, particularly, as per Article XII [2] of the agreement.

81. The first appellate authority had dismissed the appeal which had been filed by the assessee under section 248 of the Act at the threshold, only for the reason that the assessee/resident remitter had not availed the procedure of making an application under section 195[2] of the Act, seeking for determination of the proportionate amount in the payment to the non-resident constituting the taxable part of the payment or to put in other words income part of the payment.

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82. The first appellate authority having dismissed such appeals filed under section 248/249 of the Act as not tenable, the assessee had preferred further appeals to the Income Tax Appellate Tribunal in appeals as indicated above.

83. The Income Tax Appellate Tribunal, Bangalore Bench 'A' passed the common order dated 18.07.2007 allowing all the appeals and remanding the matter to the Commissioner of Income Tax [Appeals] for fresh disposal of the appeals on its merits opining that the Commissioner of Income Tax [Appeals] was wrong in dismissing the first appeals at the threshold as being not maintainable.

84. It is against such common remand order dated 18.07.2007 passed by the Income Tax Appellate Tribunal in these appeals, i.e., ITA No.931-941/Bang/2006 and ITA Nos.672-702/Bang/2007, the revenue has come up

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with an appeal each i.e., ITA Nos.919 of 2007 & 921 of 2007 respectively.

85. We notice that though the registry has assigned one appeal number before this court and the appellants -- revenue has only paid one set of court fee both in ITA Nos.919 of 2007 and 921 of 2007 i.e., a sum of Rs.12/- on the memorandum of appeal, in reality, these two appeals are batch of appeals against the common order of the Tribunal passed on 18.07.2007 disposing of all the 43 appeals before it and therefore the registry should have necessarily assigned 11 numbers of appeals instead of one appeal in ITA No.919 of 2007 and 31 numbers of appeals instead of ITA No.921 of 2007 and should have also recovered commensurate court fee from the appellants. Registry is also hereby directed to take such corrective measures in all other appeals, wherein also such situations arise and act for correcting the number of appeals and also for recovering the deficit court fees, which was payable by the appellants.

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86. Insofar the question of law raised in these appeals are concerned it is one of maintainability of an appeal under Section 248 of the Act, by a resident payer/assessee who had in fact deducted the amount in terms of sub-section (1) of Section 195 and remitted the amount to the account of the Revenue, but is nevertheless disputing such liability.

87. This question has to be necessarily answered in the 'affirmative' holding that the Tribunal was correct in reversing the order passed by the Commissioner of Income Tax (Appeals), who had rejected the appeal under Section 248/249 at the threshold as not maintainable. The assessee who has in fact deducted and remitted the amount in terms of sub-section (1) of Section 195 is definitely entitled to maintain an appeal before the First Appellate Authority.

88. The statutory provisions in the Section is very clear on this aspect and the Tribunal is correct in holding that

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the appeals were maintainable and could not have been disposed of at the threshold and the Commissioner of Income Tax (Appeals) could not have disposed of the appeals at the threshold, as not maintainable.

89. However, insofar as the scope of examination of an appeal under Section 248 is concerned and in the light of the view, that we have expressed in the other appeals, that view equally applies to the present appeals also and while the remand order passed by the Tribunal is left undisturbed and the appeals of the Revenue are dismissed, the observations and the interpretation of law that we have placed on the provisions of Section 195 of the Act, as above necessarily governs the examination of the appeal under Section 248 of the Act, when the Commissioner of Income Tax (Appeals), takes up the appeals for disposal on the merits of the matter. For statistical purposes, these appeals are **dismissed**.

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90. To sum up, the substantial questions raised in all these appeals are answered as under:

Sl.No.	Substantial questions raised	Answer
1	*"Whether the Tribunal was correct in holding that an appeal was maintainable u/s.248 of the Act, even though there was no adjudication by the Authorities under the Act in accordance with Section 195(3), (4) & (5) read with Section 200 of the Act?*	As answered in ITA Nos. 919 of 2007, 921 of 2007
2	*Whether the Tribunal was correct in holding that the payments made by the Assessee Company for purchase of software from Aaymetrix Asia Pacific, Singapore; Peritus Software Service Inc., USA and Astral Computers Pvt. Ltd., Singapore for the amounts of Rs.3,43,095/-, Rs.47,89,419/- and Rs.8,89,611/- was not liable to income tax in India and consequently no TDS as held by the Assessing Officer and confirmed by the Appellate Commissioner needs to have been deducted?*	Not correct, In the negative, against the assessee and in favour of the revenue
3	*Whether the Tribunal was correct in merely following the judgment passed by its in the case of Samsung Electronics Co. Ltd. Which has not been accepted by the Revenue and appealed against before this Hon'ble Court where the facts were not entirely*	Definitely wrong, answered in the negative, against the assessee and in favour of the revenue

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	identical to one subsisting in the present case and therefore the Tribunal was bound to have recorded an independent finding and therefore the impugned order is perverse?	
4	*Whether the Tribunal based on the fact that the Assessee has imported software from Aaymetrix Asia Pacific, Singapore; Peritus Software Service Inc., USA and Astral Computers Pvt. Ltd., Singapore on payment of Rs.3,43,095/-, Rs.47,89,419/- and Rs.8,89,611/- was bound to have taken into consideration the Ruling of the Advance Ruling Authority (238 ITR 296); the Double Taxation Agreement between India and USA and India and Singapore, provisions of Section 9(1)(VI) of the Income Tax Act; Indian Copyright Act, 1957, the Revised entry on Article 12 of OECD; the Internal Revenue Service Regulation of USA; the Views of the High Powered Committee on E-Commerce and other facts and circumstances of the present case which could have clearly shown that the payments made by the Assessee was liable to tax in India and consequently the Assessee was bound to deduct tax at source?*	In the negative, against the assessee and in favour of the revenue
5	*Whether the Tribunal should have recorded a finding that it is under section 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*	In the affirmative, in favour of the revenue and against the assessee

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	decision the assessee was bound to deduct tax at source as held by the Apex Court in 239 ITR 587.	
6	*Whether the assessee can question the taxability of the recipient in section 201(1) and 201(1A) 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.*	In the negative, against the assessee and in favour of the revenue
7	*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 under section 9 of the Act read with Double Taxation Avoidance Agreements and treaties.*	In the negative, against the assessee and in favour of the revenue
8	*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*	In the negative, against the assessee and in favour of the revenue

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	and Treaties which is beneficial to the assessee and consequently section 9 of the Act should not take into consideration.	
9	*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.*	Not correct. Question could not have been answered as done by the tribunal as the question does not even arise in the light of the elucidation of the law as above and therefore answered in the negative, against the assessee and in favour of the revenue

Sd/-
JUDGE

Sd/-
JUDGE

AN/-, sbb, pjk*

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