

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

**ITA No.2905/Del/2018  
Assessment Year: 2013-14**

ACIT (International Taxation) Circle 1 (2) (2) New Delhi	<b>Vs.</b>	Digital Route AB Gurgaon C/o PWC & Co. Building No.10, 17 <sup>th</sup> Floor, Tower-C, DLF Cyber, Gurgaon 122002
<b>PAN No. AAECD4628G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. E. V. Bhaskar, Sr. DR
Respondent by	Sh. K. M. Gupta, Advocate Sh. Mohit Jain, CA

Date of hearing	28.07.2021
Date of pronouncement	28.07.2021

**ORDER**

**PER O.P. KANT, AM**

This appeal by the revenue is directed against order dated 31/01/2018 passed by the Ld. Commissioner of

Income-Tax (Appeals)-44, New Delhi [in short the Ld CIT(A)]  
for assessment year 2013-14, raising following grounds:

- “1. On the facts and circumstances of the case, and in law, the Ld.CIT(A) erred in deleting the addition made by the A.O and in holding that the revenue received by the assessee from supply of software is not taxable in India as Royalty.*
- 2. On the facts and circumstances of the case the Ld.CIT(A) failed to appreciate that the assessee had transferred unlimited, assignable, enterprise wide, worldwide, perpetual right and license to use the software. Thus the payment in lieu of such transfer was fully covered u/s 9(l)(vi) of the Income-tax Act, 1961 explanation 2 and Article 12(3) of DTAA.*
- 3. The appellant craves to add, amend, modify or alter any grounds of appeal at the time or before the hearing of the appeal.”*

2. Briefly stated facts of the case are that the assessee is a tax resident of Sweden and filed its return of income for the assessment year under consideration on 31/03/2015 declaring total income of Rs.3,68,95,442/-. The return of income filed by the assessee was selected for scrutiny

assessment and statutory notices under the Income-Tax Act, 1961 (in short the 'Act') were issued and complied with. The Assessing Officer observed that during the year under consideration, the assessee entered into software license agreement with Reliance Corporate IT Park Ltd (i.e. customer) for supply of a standard software applications and provision of services thereof and pursuant to this agreement, the assessee received consideration toward supply of software amounting to Rs.8,04,15,000/-and towards technical services amounting to Rs.3,68,95,442/-. The assessee offered income from services to tax as "Fee for Technical Services", however income from supply of software was not offered to tax in India as according to the assessee, in absence of permanent establishment of the assessee such income was not taxable in India. The Assessing Officer however was of the view that receipt toward supply of software was in the nature of "royalty" under the Act (Indian Income-Tax) as well as under Double Tax Avoidance Agreement (DTAA) between India and Sweden.

3. The Ld. Assessing Officer rejected the submission of the assessee and held that supply of software was in the nature of royalty both under the Income-Tax Act as well as

under the India Sweden DTAA and raised tax at the rate of 10% under article 12 of India Sweden DTAA. On further appeal, the Ld. CIT(A) following the decision of the Hon'ble Delhi High Court, deleted the additions observing as under:

*“5.7 In the instant case, the customer only had a non-exclusive right and is not permitted to sublicense the software except for internal business purposes. The appellant continue to be the sole and exclusive owner of the rights to software and to its source code, and to all intellectual property rights thereto. In view of the above discussion, in accordance with the principle of consistency and respectfully following the order of the Hon'ble Delhi High Court in the cases referred to above, grounds No. 2-7 is decided in favour of the appellant. The addition made by the AO is deleted.”*

4. Before us the parties appeared through video conferencing facility and filed electronically decisions relied upon.

5. The Ld. Counsel of the assessee submitted that issue in dispute is covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of **Engineering Analysis Centre of Excellence (P) Ltd vs CIT reported in 432 ITR 471 (SC)**. The Ld. DR also

conceded that issue in dispute of supply of the software is covered in favour of the assessee by the decision of the Hon'ble Supreme Court.

6. We have heard rival submission of the parties on the issue in dispute. In the case, the issue in dispute is whether the supply of the software by the assessee company is taxable as royalty under the DTAA between the India and the Sweden or it should be a sale *Simpliciter*, which is taxable as business income if the assessee has a Permanent Establishment in India. In the case the Assessing Officer has treated the sale of the software as royalty taxable in India. We find that the Hon'ble Supreme Court in the case of ***Engineering Analysis Centre of Excellence (P) Ltd (supra)*** has held that ***the amounts paid by the resident Indian end-users/distributors to non-resident computer software manufacturer/suppliers as consideration for resale/use of the computer software to end-user license agreement (EULA)/distribution agreements is not for payment of the royalty for the use of copyright in the computer software and that same does not give rise to any income taxable in India.*** In the instant case before us also software license agreement between the assessee and the customer was for

use of the software and therefore corresponding supply of the software is not in the nature of the royalty taxable in India as per DTAA between India and the Sweden. We note that the Ld. DR has also fairly conceded that the dispute is covered by the decision of the Hon'ble Supreme Court in the case cited above. Accordingly, following the decision of the Hon'ble Supreme Court (supra), we uphold the finding of the Ld. CIT(A) on the issue in dispute. The grounds raised by the revenue are accordingly dismissed.

7. In the result, the appeal of the revenue is dismissed.

*Order pronounced in the open court.*

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 28<sup>th</sup> July, 2021

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation:	28.07.2021
2.	Date on which the draft of order is placed before the Dictating Member:	28.07.2021
3.	Date on which the draft of order is placed before the other Member:	28.07.2021
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	28.07.2021
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	28.07.2021
6.	Date on which the final order received after having been signed/pronounced by the Members:	28.07.2021
7.	Date on which the final order is uploaded on the website of ITAT:	28.07.2021
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	