



§-30 & 31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 884/2017 & CM No.37757/2017

**THE COMMISSIONER OF INCOME TAX- INTERNATIONAL
TAXATION-2**

..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing
Counsel for IT Dept. with Mr. Gaurav Khetarpal,
Advocate

versus

NET APP BV

..... Respondent

Through: None.

+ ITA 885/2017

**THE COMMISSIONER OF INCOME TAX-INTERNATIONAL
TAXATION-2**

..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing
Counsel for IT Dept. with Mr. Gaurav Khetarpal,
Advocate

versus

NET APP BV

..... Respondent

Through: None.

CORAM:

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

ORDER

23.10.2017

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1. These two appeals urge two common questions of law, though for separate years i.e. A.Y. 2010-11 and 2008-09. The first question is with respect to the taxability of sale of software and subscription, and the amounts received therefor by the assessee/respondent. The Revenue urged that this income was royalty within the meaning of Section 9(1)(vii) read with Article 12 of the Indo-Dutch Double Taxation Avoidance Agreement.

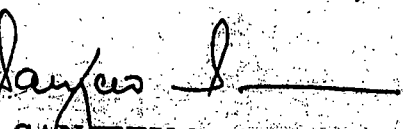


The Tribunal i.e. ITAT ruled against the Revenue holding that the amount received was not royalty. We notice that the issue is covered against the Revenue by the decision of this Court in *The Commissioner of Income Tax v. ZTE Corporation* (2017) 392 ITR 80.

2. The second question urged again for both years is with respect to interest chargeable under Section 234B. Here again, the ITAT ruled in favour of the assessee. The ITAT set aside the decision of the DRP and remitted the matter to the AO for fresh consideration. The Court again notices that the issue is covered against the Revenue, in the judgment reported as *Director of Income Tax v. GE Package Power Corporation Inc.* (2015) 370 3 ITR 65.

Since both questions of law are covered against the revenue, the appeals are to fail. They are accordingly dismissed.


S. RAVINDRA BHAT, J


SANJEEV SACHDEVA, J

OCTOBER 23, 2017

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