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

+ ITA 149/2025

COMMISSIONER OF INCOME TAX, INTERNATIONAL
TAXATION-1, NEW DELHIAppellant

Through: Mr Puneet Rai, SSC with Mr Ashwini
Kumar, Mr Rishabh Nangia and Mr
Pratham, Advocates.

versus

GE PRECISION HEALTHCARE LLCRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

ORDER
14.05.2025

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CM APPL. 29312/2025

1. Exemption is allowed, subject to all just exceptions.
2. The application is disposed of.

CM APPL. 29313/2025

3. For the reasons stated in the application, the delay of 276 days in re-filing the appeal is condoned.
4. The application is disposed of.

ITA 149/2025

5. The Revenue has filed the present appeal under Section 260A of the



Income Tax Act, 1961 [**the Act**] impugning an order dated 17.01.2024 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No. 2623/Del/2023 in respect of Assessment Year [**AY**] 2021-22. The respondent [**Assessee**] had preferred the said appeal impugning an order dated 22.08.2023 passed by the Assessing Officer [**AO**] under Section 143(3) read with Section 144C(13) of the Act. The AO assessed the total income of the Assessee for AY 2021-22 at ₹19,94,49,604/, as against the returned income of ₹9,18,94,072/-. The AO made an addition of ₹10,75,55,532/- on account of income from other sources, which, according to the AO, was taxable at the rate of 20% in terms of Article 23(3) of the India-US Double Taxation Avoidance Agreement [**Indo-US DTAA**], under Section 56(1) of the Act.

6. During the year relevant to AY 2021-22, the Assessee had received an amount of ₹10,75,55,532/- from sublicensing of standardized software tools to its subsidiaries in India. In addition, the Assessee had also received a sum of ₹9,17,39,690/- as fees for technical services, which was concededly chargeable to tax under Section 9(1)(vii) of the Act.

7. The dispute, essentially, arose in respect of the amount of ₹10,75,55,532/-, which the Assessee claimed was not chargeable to tax. The AO had framed a draft assessment order dated 28.12.2022 under Section 144C(1) of the Act to the aforesaid effect. The Assessee objected to the said order by filing objection before the Dispute Resolution Panel [**DRP**]. The Assessee contended that the issue whether such income would be chargeable to tax was covered by the decision of the Supreme Court in *Engineering Analysis Centre of Excellence Pvt. Ltd. v. Commissioner of Income Tax & Anr.: (2022) 3 SCC 321*. Whilst one of the members of the DRP accepted



the Assessee's view, the other two members of the DRP rejected the said objections.

8. The learned ITAT, following its earlier decision of the Assessee on the subject, concluded that the income received by the Assessee from the sale or sublicensing of standardized products is not taxable in India in absence of the Assessee having a Permanent Establishment [PE] in India.

9. The AO had sought to tax the said receipts as income from other sources; however, we find the same to be unsustainable. Mr Rai, the learned counsel appearing for the Revenue has also not been able to advance any submission to support the said view. We also note that in the Assessee's earlier case, the question whether the such receipts could be treated as royalty under Article 12 of the Indo-US DTAA or business income under Article 7 of the Indo-US DTAA, was considered. The learned ITAT concluded that the said income would not be taxable as royalty, as it was in the nature of business income. However, such income was not chargeable to tax in India by virtue of Article 7 of the Indo-US DTAA, as the Assessee did not have a PE in India.

10. As noted above, the learned ITAT following its decision in the Assessee's case in ITA No.404/Del/2023 dated 14.08.2023 for AY 2020-21, allowed the Assessee's appeal. The Revenue had filed an appeal against the order dated 14.08.2023 passed by the Tribunal in ITA No. 404/Del/2023 in respect of AY 2020-21 being ITA 198 of 2024. However, this court dismissed the said appeal by an order dated 22.03.2024, concurring with the learned ITAT's view that its decision was in conformity with the law as laid down by the Supreme Court in *Engineering Analysis Centre of Excellence Pvt. Ltd. v. Commissioner of Income Tax & Anr.* (*supra*). Concededly, the



question involved in the present appeal is covered against the Revenue by the said decision.

11. In view of the above, we find no substantial question of law arises for consideration of this court in the present appeal, the same is accordingly dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 14, 2025/tr

Click here to check corrigendum, if any