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

+ **ITA 239/2023**

COMMISSIONER OF INCOME TAX (INTERNATIONAL
TAXATION)-2

..... Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Hemlata Rawat &
Ms Easha Kadian, Advocates.

versus

MICRO FOCUS LTD.

..... Respondent

Through: Ms Rajnandini, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

24.04.2023

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[Physical Hearing/Hybrid Hearing (as per request)]

1. This appeal concerns Assessment Year (AY) 2017-18.
2. The appeal seeks to assail the order dated 14.12.2022 passed by the Income Tax Appellate Tribunal [in short "the Tribunal"].
3. Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant/revenue, has placed before us the order passed by the Court concerning the respondent/assessee for AY 2015-16. The order in ITA 94/2023, passed with respect to AY 2015-16 by the Court is dated 16.02.2023.
4. The issue in the AY under consideration in the above-captioned appeal and in the appeal i.e., ITA 94/2023, preferred by the appellant/revenue with regard to AY 2015-16 is, concededly, the same.

ITA 239/2023

Page 1 of 2



5. The issue which arises for consideration in the instant case is: whether income derived by the respondent/assessee from sale of software could be construed as royalty under the provisions of Indo-UK Double Taxation Avoidance Agreement (DTAA)?

6. Even according to Mr Sanjay Kumar, the issue is covered by the decision of the Supreme Court rendered in *Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT* 432 ITR 471 (SC).

6.1 We may note that the appellant/revenue, apparently, has filed a review petition against the said decision.

7. Accordingly, the appeal is closed as no substantial question of law arises for our consideration, *albeit*, with the caveat that in case the appellant/revenue was to succeed in the review petition, parties will abide by the decision rendered therein.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 24, 2023 / ha

[Click here to check corrigendum, if any](#)