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

+ ITA 407/2024

COMMISSIONER OF INCOME TAX INTERNATIONAL
TAXATION 2 NEW DELHIAppellant

Through: Mr. Sunil Agarwal, SSC with
Mr. Shivansh B Pandya, Mr.
Viplav Acharya, JSCs & Mr.
Utkarsh Tiwari, Adv.

versus

NETAPP BVRespondent

Through: Mr. Parth, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **01.08.2024**

CM APPL. 43646/2024 (Exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

CM APPL. 43645/2024 (519 Days Delay)

Bearing in mind the disclosures made, the delay of 519 days in filing the appeal is condoned.

The application shall stand disposed of.

ITA 407/2024

1. The Principal Commissioner seeks to impugn the judgment rendered by the Income Tax Appellate Tribunal [“**Tribunal**”] on 25 August 2022 and poses the following questions of law for our consideration.

“ Whether on the facts and circumstances of the case and in law, the ITAT erred in deleting the addition made on account of chargeability from sale of software and subscription as Royalty, by



considering recent judgment of Hon'ble Supreme Court in the case of M/s Engineering Analysis Centre of Excellence Pvt. Ltd. us, CIT (2021) 432 ITR 471 (SC).”

2. We note that dealing with an identical question, ITA 43/2023 preferred by the Department came to be dismissed by a Division Bench of the Court on 23 January 2023. The view expressed by the Tribunal in that appeal came to be affirmed with the Court noticing the judgment rendered by Supreme Court in **Engineering Analysis Centre of Excellence Pvt. Ltd. v. Commissioner of Income Tax** [(2022) 3 SCC 321].

3. We are further informed that the Special Leave Petition taken against the judgment rendered in ITA 43/2023 also came to be dismissed on 04 September 2023. While dismissing the said Special Leave Petition, the Supreme Court had taken note of the conceded legal position.

4. Bearing in mind, the judgment rendered in *Engineering Analysis*, and in view of the aforesaid, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 1, 2024/sk