



\$~39

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

+ **ITA 485/2023**

**THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3** Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Ms Priya Sarkar,
Standing Counsel.

versus

**SIEMENS INDUSTRY SOFTWARE LTD. (FORMERLY KNOWN
AS MENTOR GRAPHICS (IRELAND) LTD.** Respondent

Through: Mr Mayank Nagi, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

ORDER

25.08.2023

%

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

1. This Appeal concerns Assessment Year (AY) 2015-16.
2. Via this appeal, the appellant/revenue seeks to assail the order dated 26.12.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The sole issue which arises for consideration in this appeal is : whether the sale of software can be construed as royalty, in terms of Article 12 of the India-Ireland Double Tax Avoidance Agreement [in short, "DTAA"] ?
4. The respondent/assessee had shown the income earned from sale of software amounting to Rs.18,16,14,910/- as business income. Since there

ITA 485/2023

page 1 of 2



was no Permanent Establishment [in short, “PE] in India, respondent/assessee took recourse to Article 7 of the aforementioned DTAA.

5. The Tribunal has ruled in favour of the respondent/assessee, relying upon the decision rendered by it in the respondent/assessee’s case, concerning AY 2013-14 and AY 2014-15.

6. In our opinion, this is, clearly, a case involving sale of copyright material i.e., software and not transfer of copyright.

7. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, cannot but accept that this issue is covered against the revenue by the judgment of the Supreme Court, rendered in *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT*, [2021] 432 ITR 471.

8. Given the aforesaid circumstances, according to us, no substantial question of law arises for our consideration.

9. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 25, 2023 / tr

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