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

+ **ITA 94/2023**

COMMISSIONER OF INCOME TAX (INTERNATIONAL
TAXATION)-2

..... Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel.

versus

MICRO FOCUS LTD.

..... Respondent

Through: Mr Vishal Kalra, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

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16.02.2023

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

**CM APPL. 7377/2023 [Application filed on behalf of the appellant
seeking condonation of delay of 40 days in re-filing the appeal]**

1. This is an application filed on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.
2. According to the appellant/revenue, there is delay of 40 days.
3. Counsel for the respondent/assessee, says that he has no objection if the delay in re-filing the appeal is condoned.
4. For the reasons given in the application, the delay in re-filing the appeal is condoned.
5. The application is disposed of in the aforesaid terms.

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6. This appeal concerns Assessment Year (AY) 2015-16.

7. In this appeal, challenge is laid to the order of the Income Tax Appellate Tribunal [in short, “Tribunal”] dated 20.05.2022 passed in ITA 6604/Del/2019.

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

9. Even according to Mr Sanjay Kumar, senior standing counsel, who appears on behalf of the appellant/revenue, 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).

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

10. 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

FEBRUARY 16, 2023/ tr

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