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

% *Decision delivered on: 21.12.2023*

\+ **ITA 802/2023 & CM APPL. 66682/2023**

THE COMMISSIONER OF INCOME TAX – INTERNATIONAL TAXATION -1 ..... Appellant

Through: Mr Ruchir Bhatia, Senior Standing Counsel.

versus

DXC TECHNOLOGY SERVICES SINGAPORE PTE. LTD. (FORMERELY KNOWN AS HP SERVICES (SINGAPORE) PVT. LTD. ..... Respondent

Through: Mr Satyen Sethi and Mr Arta Trana Panda, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal concerns Assessment Year (AY) 2009-10.

2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 31.03.2022 passed by the Income Tax Appellate Tribunal [in short "Tribunal"].

3. The appellant/revenue has proposed the following question of law for consideration by this court:

> *"2.1 Whether on the facts and in the circumstances of the case and in law, the ld. ITAT is correct in holding that the consideration received by the Assessee from various entities on account of sale/supply of software is not royalty within the meaning of Article 12(3) of the Indo-Singapore -DTAA?"*

4. The record shows that the respondent/assessee was subjected to scrutiny-assessment which resulted in the consideration received *qua* off-

the- shelf sale of the software being brought to tax.

4.1. The addition made by the Assessing Officer (AO), in this regard, amounted to Rs.1,14,09,24,658/-. The AO construed the said amount received by the respondent/assessee as royalty.

5. The finding of fact returned by the statutory authority is that the respondent/assessee had not transferred the copyright it had qua the subject software. The Tribunal, with regard to the said issue, in our opinion, ruled correctly, in favour of respondent/assessee and concluded that the amount could not be treated as royalty within the meaning Article 12(3) of the India-Singapore Double Taxation Avoidance Agreement.

5.1. The Tribunal relied upon the judgment of the Supreme Court rendered in the case of ***Engineering Analysis Centre of Excellence Pvt. Ltd. v CIT*** 432 ITR 471.

6. Having regard to the findings of fact and the enunciation of law by the Supreme Court in the aforementioned judgment, according to us, the impugned order does not require interference.

7. In our opinion, no substantial question of law arises for consideration. The appeal is, accordingly, closed.

8. Consequently, pending application is rendered infructuous.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

DECEMBER 21, 2023/*MS*