

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1433/PUN/2014
निर्धारण वर्ष / Assessment Year : 2007-08

M/s. Tata Technologies Limited,
Plot No.25, Rajiv Gandhi Infotech Park,
Hingewadi, Pune – 411057

.... अपीलार्थी/Appellant

PAN: AAAC3092N

Vs.

The Dy. Director of Income Tax
(International Taxation)-II, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : S/Shri Dhanesh Bafna and
Arpitha Choudary
प्रत्यर्थी की ओर से / Respondent by : S/Shri Vivek Aggarwal and
Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 16.01.2018	घोषणा की तारीख / Date of Pronouncement: 05.04.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against order of CIT(A)-IT/TP, Pune, dated 20.05.2014 relating to assessment year 2007-08 against the order passed under sections 201(1) and 201(1A) of the Income Tax Act 1961 (in short the 'Act').

2. The assessee has filed the revised grounds of appeal, which read as under:-

1. *On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) - IT / TP [the learned CIT(A)] erred in treating the payments for software licenses fees as 'Royalty' as per Section 9(1)(vi) of the Income-tax Act, 1961 ('the Act')*
 - a. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that computer software can be considered as literary work under the Copyright Act, 1957.*
 - b. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that computer software can also be termed as scientific work.*
 - c. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the licensed software qualifies as secret formula or process.*
2. *On the facts and circumstances of the case and in law, the learned CIT(A) erred to appreciate that the software payment made by the appellant does not fall within the meaning of the term 'Royalty' as per respective Double Tax Avoidance Agreements ('DTAA').*
3. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in not providing relief under the beneficial provisions of India - USA and India - Singapore DTAA under section 90(2) of the Act for determining the scope of income chargeable under the head 'Royalties' and tax rate at which income is taxable in India.*
4. *On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate the difference between right to use a copyright in software and sale of copyrighted article (viz. software) and erred in concluding that payment made for purchase of software for trading purposes is 'right to use' and hence taxable as 'Royalty'.*
5. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in treating the retrospective amendment to Section 9(1)(vi) vide Finance Act 2012 as clarificatory in nature and that the amendment has not created a new charge of withholding tax with a retrospective effect.*
6. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding the appellant as 'assessee in default' under Section 201(1) of the Act for not deducting the tax under Section 195 of the Act on the payments made for purchase of software and determining the total tax liability of Rs.1,794,263 (including interest of Rs.746,385) under Section 201(1A) of the Act.*
7. *On the facts and circumstances of the case and in law, the learned Deputy Director of Income tax (International Taxation) - II, Pune [the learned AO] erred in initiating proceedings under section 201(1) read with section 201(1A) without issuing show cause notice under section 201(1) read with section 201(1A) on the Company for AY 2007-08 and hence the proceedings initiated and the order passed u/s.201(1) read with section 201(1A) is invalid and bad in law.*

8. *On the facts and circumstances of the case and in law, the learned AO erred in initiating proceedings under section 201(1) read with section 201(1A) beyond the reasonable period of four years.*
9. *On the facts and circumstances of the case and in law, the learned AO erred in applying the tax rate of 15% under India – USA Tax Treaty in respect of payment to USA entities and the tax rate of 20% (plus applicable surcharge and cess) under section 115A of the Act in respect of payment to Greece entities instead of the applicable beneficial tax rate 10% (plus applicable surcharge and cess) under the Act in the tax demand computation in the order passed under section 201(1) read with section 201(1A).*

The Appellant submits that each of the above grounds of appeal are independent of and without prejudice to one another.

3. The issue arising in the present appeal is the treatment of payment made for software licence fees as royalty as per section 9(1)(vi) of the Act or otherwise.

4. The assessee has filed the revised Memo of appeal along with grounds of appeal. The perusal of grounds of appeal reflect that originally the assessee had raised grounds of appeal upto grounds of appeal 6 but in the revised Memo of appeal, the assessee has raised grounds of appeal 1 to 9. The additional grounds of appeal raised by the assessee i.e. 7 to 9 are infructuous and are dismissed. The assessee has further filed separate application for additional grounds of appeal No.7 to 9, which read as under:-

- “7. *On the facts and circumstances of the case and in law, the learned Deputy Director of Income Tax (International Taxation) –II, Pune [‘the learned AO’] erred in initiating proceedings under section 201(1) read with section 201(1A) without issuing show cause notice under section 201(1) read with section 201(1A) on the Company for AY 2007-08 and hence the proceedings initiated and the order passed u/s.201(1) read with section 201(1A) is invalid and bad in law.*
8. *On the facts and circumstances of the case and in law, the learned AO erred in initiating proceedings under section 201(1) read with section 201(1A) beyond the reasonable period of four years.*
9. *On the facts and circumstances of the case and in law, the learned AO erred in applying the tax rate of 15% under India – USA Tax Treaty in respect of payment to USA entities and the tax rate of 20% (plus applicable surcharge and cess) under Section 115A of the Act in respect of payment to Greece entities instead of the applicable beneficial tax rate 10% (plus applicable surcharge and cess) under the Act in the tax demand computation in the order passed under section 201(1) read with section 201(1A).”*

5. The ground of appeal No.7 is not pressed and hence, the same is dismissed as not pressed.

6. Briefly, in the facts of the case, as per information available with the Assessing Officer, the assessee had not deducted tax at source while making payments to the Non-resident / foreign companies for purchase of software. The assessee was asked to explain the reasons for said non deduction of tax at source under section 195 of the Act in respect of all foreign payments including software purchases debited during the year along with copies of all relevant documentary evidence in support of his submissions. The said query was raised by the Assessing Officer during assessment proceedings under section 201(1) of the Act. In response thereto, the assessee furnished the information that it had paid the amounts to various Non-resident software suppliers without deduction of tax at source. The details of payments entity-wise along with nature of expenses is provided under para 2 at page 2 of assessment order. The assessee furnished the written submissions and pointed out that certain payments were with regard to the purchases and renewal of software licneces in respect of which sample invoices were raised. Software purchases were made from entities in USA, UK, Singapore, Germany, Italy, France, Japan and Australia. It was claimed by the assessee that software purchased were standard in nature and were purchased for its internal use. Further, most of software licenses were downloaded from internet. The plea of assessee in this regard was that the purchase of software was not taxable in India as they do not fall within the definition of 'royalty' as per relevant DTAA with India. The assessee also submitted legal proposition that as per section 5(2) of the Act, the scope of total income of person is defined and as per the said sub-section any income received/accrued / arising or due to be received / accrued / arising in India to a

Non-resident, is chargeable to tax in India. Further, the assessee referred to section 195 of the Act which provides for withholding of tax in relation to payments made to Non-resident or foreign company, taxable in India. Reference was made to the ratio laid down by the Hon'ble Supreme Court in GE India Technology Centre (P) Ltd. reported in 234 CTR 153 (SC), wherein it has been held that the words "chargeable under the provisions of the Act" used in section 195(1) of the Act clearly indicate that the payments made to Non-resident should partake the character of income chargeable to tax, in order to trigger withholding of tax. The assessee claimed that similar proposition was laid down by the Hon'ble Supreme Court in the case of Transmission Corporation of A.P. Ltd. reported in 155 CTR 489 (SC) / 239 ITR 587 (SC). Further, the assessee referred to section 90 of the Act and pointed out that where the DTAA has been entered into with a country, then the provisions of the Act or Treaty, whichever is more beneficial shall apply. He referred to the relevant extracts of provisions relating to the royalty as defined in different Treaties and pointed out that royalty would include payment for use of, or the right to use, any copyright. The assessee claimed that the payments made by it were not for use / right to use copyright but for the use of copy righted article i.e. software. Reference was made to different judicial precedents, wherein it was held that the payment for software would not qualify as royalty under the DTAA. The Assessing Officer after considering the submissions of assessee noted that the assessee had not contested the chargeability of licence fees under the provisions of Indian Income Tax Act, 1961 and hence, he was of the view that it could be presumed that the assessee agrees that the payment received for right to use software (licence fees) was taxable as royalty under section 9(1)(vi) of the Act. The Assessing Officer vide para 4.3 at page 13 observed as under:-

“4.3 The assessee has not provided the end user licence agreements with the software suppliers. Hence exact nature of software provided and the terms and conditions are not known. In case of payments for licence, the non-resident receives consideration for transfer of all or any right for use or right to use computer software and owns all right, title and interest in the softwares. Therefore, what the supplier parts with to the end-user is only a right to use the software for its applications. So, one of the rights embedded in the intellectual property, that is the software, being a right to copy and use, is transferred by the supplier to the assessee. Therefore, what was being transferred was a right to use the software.”

7. Referring to the definition of royalty given in the Act, the Assessing Officer observed that transfer of licence and sub-licence in respect of certain softwares to be used for the purpose of business is transferred and in case the payments are for licence, the non-residents receives consideration for transfer of all or any right for use or right to use computer software and owns all right, title and interest in the software, therefore, what the supplier parts with to the end-user is only a right to use the software for its application. Hence, one of the rights embedded in intellectual property, that is software, being a right to copy and use, is transferred by the supplier to the assessee. The Assessing Officer thus, held that therefore what was being transferred was a right to use the software. The Assessing Officer then, referred to the definition of ‘computer software’ provided in Explanation 3 under section 9(1)(vi) of the Act and held that the payment for right to use was therefore in the nature of royalty and taxable under clause (v) of Explanation 2 of section 9(1)(vi) of the Act. The Assessing Officer further referred to clarification issued by the Finance Act, 2012 which had vide Explanation 4 provided that the right to use computer software including granting of licence was royalty. The Assessing Officer referred to the Memorandum of Finance Bill, 2012 and held that in view of the above Explanation, the payment was in the nature of royalty and taxable as royalty under section 9(1)(vi) of the Act. He then, referred to the computer programmes and the copyright and was of the view that as the source code or object code of computer had been

protected and not available freely, these softwares could even qualify for secret formula or process, therefore, the payment received was royalty as per clause (i) & (iii) of Explanation 2 of section 9(1)(vi) of the Act i.e. payment received as consideration for the use or the right to use secret formula or process. The Assessing Officer thus, held that in view of the amendment to section 9(1)(vi) of the Act, payment received by the assessee was in the nature of royalty within the meaning of said section. The Assessing Officer further held that the character of above payments received for right to use software and for support services was clearly royalty as defined in Article 12 or Article VII of the respective DTAA as well as Explanation 2 to section 9(1)(vi) of the Act. Reference was made to the CBDT's Circular issued and also several decisions including the decision of the Hon'ble High Court of Karnataka in CIT Vs. Samsung Electronics Co. Ltd. in ITA No.2808 of 2005, judgment dated 15.10.2011 and the contentions of assessee were rejected and the payment received by the foreign company for supply of software and support services was held to constitute royalty under DTAA as well as under the Act. The case laws relied upon by the assessee were held to be distinguishable on facts and hence, not relatable. Consequently, the Assessing Officer held that the provisions of section 194(5) of the Act were squarely applicable for payment of licence fees and the assessee was bound by the law to deduct tax before remitting money to non-residents. The assessee was held to have committed default in terms of section 201(1) and 201(1A) of the Act by not deducting or withholding tax and thus, held the assessee in default as per section 201 of the Act. The Assessing Officer thereafter, computed the liability of tax to be deducted at source on the basis of rates of deduction as per DTAA and held the assessee liable to pay tax and interest of Rs.17,49,263/-.

8. The CIT(A) upheld the retrospective application of Explanation 4 to section 9(1)(vi) of the Act and held that the payments made by the assessee for acquiring software were taxable under the Income Tax Act. The CIT(A) further held that the payments made for purchase of software were taxable as royalty under DTAA in turn, relying on the ratio laid down by the Pune Bench of Tribunal in the case of Cummins Inc for assessment years 2004-05 and 2006-07 in ITA Nos.73 & 74/PN/2011, dated 08.08.2013 and the Mumbai Bench of Tribunal in the case of DDIT Vs. Reliance Infocom / Luscent Technologies (TS-433-ITAT-2013(Mum)). The CIT(A) further held that Explanation 4 to section 9(1)(vi) of the Act was clarificatory observing as under:-

“2.2.3 The appellant has raised the issue of the impossibility of performance regarding tax deduction in compliance with the retrospective legislations. In this connection, it may be mentioned that, in this case, the law has not created charge of the TDS by retrospective amendment but has clarified this legal position by way of inserting Explanation. The meaning of the Explanation for statutory interpretation explained in the case of CIT Vs. Voltas Ltd. (1994) 205 ITR 569 (Bom.) which held as under :

“An Explanation may be appended to a section to explain the meaning of the words used in the section. There is no presumption that an Explanation which is inserted subsequently introduces something new which was not present in the section before. Ordinarily, an Explanation is inserted to clear up any ambiguity in the section and it should be so read as to harmonize it with the section and to clear up any ambiguity in the main section.”

2.2.4. Therefore, the law always required the assesseees to make TDS on the payments made for acquiring software. The explanation has merely clarified this position. Accordingly, I do not find merit on the issue of the impossibility of performance deducting tax on payments made to acquire software.

2.2.5 Vide Ground NO. 8, the Appellant has stated with respect to the payment to the software supplier located in Greece that the learned AO has erred in applying the tax rate of 20% u/s. 115A, because the transactions are entered pursuant to the Agreement entered by the Company with the respective vendors prior to June 1, 2005. I find that the Appellant has not rebutted the learned AO's contention that there is no proof that there was no payment made before 01.06.2005. Therefore, I find no error in the learned AO's decision to tax payment made to the supplier located in Greece @ 20%. Accordingly, as stated, I confirm the AO's decision to tax royalty on payments made on the software suppliers situated in USA, Singapore and Greece.”

9. The assessee is in appeal against the order of CIT(A).

10. The learned Authorized Representative for the assessee pointed out that certain payments were made for purchase of software. The Assessing Officer was of view that the payments were in the nature of royalty both under the Act and the DTAA. He further pointed out that Explanation 4 to section 9(1)(vi) of the Act was introduced in 2012 with retrospective effect from 1976. The learned Authorized Representative for the assessee pointed out that in financial year 2006-07, there was no such liability to deduct tax in the year. He further pointed out that the said liability to deduct the tax cannot be applied retrospectively. He further referred to the order of Assessing Officer and pointed out that he relied on different case laws including the ratio laid down by the Hon'ble High Court of Karnataka in CIT Vs. Samsung Electronics Co. Ltd. (supra), which admittedly, does not deal with the amendment to section but otherwise holds it as royalty. He referred to the decisions of the Hon'ble High Court of Delhi in DIT Vs. Infrasoftware Ltd. reported in 220 taxman 273 (Del) and PCIT Vs. M. Technical Know-how India P. Ltd. reported in (2016) 381 ITR 31 (Del), which have held that when purchasing software it is not royalty. Further, reliance was placed on the decision of the Pune Bench of Tribunal in DDIT Vs. iGATE Computer Systems Ltd. in ITA Nos.1172 to 1174/PN/2013, relating to assessment years 2008-09 to 2010-11, order dated 10.04.2015. The learned Authorized Representative for the assessee further referred to the order of Assessing Officer, wherein he says that the payment was royalty but it does not talk of fees for technical services. He stressed that the assessee had purchased copy righted software from third parties except last one. The learned Authorized Representative for the assessee pointed out that grounds of appeal No.1 to 4 were against the issue of whether the payments made by the assessee were royalty or not. He further pointed out that the issue raised vide grounds of appeal No.5 and 6 was against the order of authorities below in putting the TDS obligation upon the assessee. He pointed

out that once it is held that no TDS obligation can be put upon the assessee by way of retrospective amendment being brought in and then all other issues would become academic in nature. The learned Authorized Representative for the assessee placed reliance on the ratio laid down by Pune Bench of Tribunal in DDIT Vs. iGATE Computer Systems Ltd. in ITA Nos.1172 to 1174/PN/2013, relating to assessment years 2008-09 to 2010-11, order dated 10.04.2015 and Mumbai Bench of Tribunal in Shinhan Bank Vs. DDIT in ITA No.1936/Mum/2014, relating to assessment year 2009-10, order dated 04.07.2016. The learned Authorized Representative for the assessee also pointed out that the additional grounds of appeal were infructuous.

11. The learned Departmental Representative for the Revenue on the other hand, pointed out that the findings of CIT(A) at page 10 were that Explanation introduced in 2012 was clarificatory in nature and hence, was applicable to earlier years. He placed reliance on the ratio laid down by the Hon'ble Supreme Court in the case of Transmission Corporation of A.P. Ltd. (supra) for the proposition that where the law was not clear, the assessee should have sought clarification. He also referred to the ratio laid down by the Hon'ble High Court of Madras in Verizon Communications Singapore Pte. Ltd. Vs. ITO (2014) 361 ITR 575 (Mad) to point out that the amendment was clarificatory in nature.

12. The learned Authorized Representative for the assessee pointed out that the Hon'ble Supreme Court in the case of Transmission Corporation of A.P. Ltd. (supra) had laid down that on any sum chargeable to tax in 2007 law as it stood then, ought to be applied. He further pointed out that on the basis of judicial precedents, no tax was deducted at source. He referred to the ratio laid down by the Special Bench of Delhi Tribunal in Motorola Inc. Vs. DCIT reported in 147

Taxman 39 (Del) (SB), which decided the issue of deductibility of software and intra-software. He fairly admitted that the decision which was against the assessee in DDIT Vs. Reliance Infocom Ltd. (2014) 64 SOT 137 (Mum) but the said decision has been recalled by the Tribunal vide Miscellaneous Application. The learned Authorized Representative for the assessee also filed small written note against reliance placed upon by the learned Departmental Representative for the Revenue on the ratio laid down in Verizon Communications Singapore Pte. Ltd. Vs. ITO (supra). He pointed out that the facts of said case were different, wherein the issue was the determination of taxability of consideration received by non-resident for providing integrated private lease circuit services within and outside India along with an Indian company to Indian customers. The Hon'ble High Court analyzed the applicability of Explanations 5 and 6 to section 9(1)(vi) of the Act. However, the applicability of Explanation 4 to section 9(1)(vi) of the Act was never under consideration before the Hon'ble High Court. He further pointed out that in the case before the Hon'ble High Court, clarificatory nature of amendments to section 9(1)(vi) of the Act were neither questioned nor adjudicated but were applied to assessment year predating the amendment. He stressed that so far as tax withholding liability was concerned, it was dependent on the law as it stood at the point of time when payments from which taxes ought to have been withheld, were made and the tax deductor could not be expected to envisage how the law would change in future. Reliance was placed on the decision of the Pune Bench of Tribunal in DDIT Vs. iGATE Computer Systems Ltd. (supra). He further relied on the ratio laid down by the Hon'ble High Court of Delhi in DIT Vs. New Skies Satellite BV (2016) 382 ITR 114 (Del) to hold that the amendment to section 9(1)(vi) of the Act by insertion of Explanation 4 would not have any effect to the interpretation of the term 'royalty' under the respective DTAAAs.

13. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is the treatment to payment made for software licence fees. During the year under consideration, the assessee had made the under-mentioned payments to various non-resident software suppliers for purchase of software. The details of such payments are as under:-

<i>Name of the entity</i>	<i>Amount (Rs)</i>	<i>Purpose of payment</i>	<i>Country</i>
<i>Altair Engineering Inc</i>	<i>19,68,423</i>	<i>AMC for software</i>	<i>USA</i>
<i>ANSYS Inc</i>	<i>8,38,536</i>	<i>Software license</i>	<i>USA</i>
<i>Beta Cae Systems S.A</i>	<i>10,53,360</i>	<i>Software license</i>	<i>Greece</i>
<i>Beta Cae Systems S.A</i>	<i>1,46,300</i>	<i>Software license</i>	<i>Greece</i>
<i>Parametric Technology Corporation</i>	<i>1,37,009</i>	<i>Software license</i>	<i>USA</i>
<i>Proforma Corporation</i>	<i>40,329</i>	<i>Software license</i>	<i>USA</i>
<i>Spicer Corporation</i>	<i>42,437</i>	<i>Software license</i>	<i>USA</i>
<i>Tata Technologies Pte Ltd</i>	<i>14,17,522</i>	<i>Software license</i>	<i>Singapore</i>
<i>Total</i>	<i>56,43,917</i>		

14. The first issue which is raised in the present appeal is the taxability of software under the provisions of Income Tax Act i.e. section 9(1)(vi) of the Act. The first plea raised by the assessee is that since the said payment had been for purchase of offshore software and the payment has been made to acquire license for the use of shrink wrap software, then the same cannot be treated as 'royalty' under the Income Tax Act under section 9(1)(vi) of the Act. The case of Revenue on the other hand, is that in view of retrospective amendment to section 9(1)(vi) of the Act by Finance Act, 2012, the amount paid for acquisition of software was 'royalty'. The assessee on the other hand, submitted that the said amendment which was brought into effect by the Finance Act, 2012 cannot be applied to payments made by assessee for purchase of software in the financial year 2006-07 as the assessee could not foresee the aforesaid amendment in the Act, which was brought by Finance Act, 2012. The assessee also pleads that at the time of payment for purchase of said software, there were decisions favouring the assessee, under which the assessee had no obligation to withhold

tax out of payments made to Non-resident entities, from whom the said software were purchased. Another plea raised by the assessee before the authorities below and before us is that as per Article 12 of Ind-US Treaty and Indo-Singapore Treaty, the 'royalty' would be taxable if it is for use of or right to use any copyright of the software which is conferred upon the purchaser on purchase of software. Hence, there was a difference between use of copyright of a work and use of copyrighted article. The assessee in this regard, pointed out that where the assessee had not acquired any copyright and it was only copyrighted article, then the impugned payment was not taxable as 'royalty'.

15. Another aspect which was pointed out was that where the DTAA existed between two countries and the terms of DTAA had not been amended, then retrospective amendment in the Income Tax Act would not alter the provisions of DTAA. Since the provisions of DTAA were beneficial, then the same were to be applied and in the absence of any amendment, there was no obligation to withhold tax out of payments made to Non-resident entities for purchase of software. The learned Authorized Representative for the assessee in this regard has relied on several judicial precedents on the issue. The learned Departmental Representative for the Revenue on the other hand, had relied on different propositions laid down by different High Courts.

16. Before proceeding further, we may point out that the CIT(A) had rejected the claim of assessee in turn, relying on the ratio laid down by Pune Bench of Tribunal in Cummins Inc Vs. DCIT (2014) 146 ITD 460 (Pune), order dated 08.08.2013 and also on the ratio laid down by Mumbai Bench of Tribunal in DDIT Vs. Reliance Infocom Ltd. (supra), order dated 06.09.2013. Vide order dated 06.12.2017 in MA Nos.28 & 29/PUN/2017, relating to assessment years 2004-05

& 2006-07, Tribunal has held that there was a mistake apparent from record in the order of Tribunal, which needs to be rectified, wherein the Tribunal in its order had failed to consider the decision of Co-ordinate Bench in the case of Allianz SE Vs. ADIT (2012) 51 SOT 399 (Pune) and also the decision of Hon'ble High Court of Delhi in DIT Vs. Ericsson A.B. & two others (2012) 343 ITR 470 (Del). Thus, the Tribunal vide order dated 06.12.2017 has recalled its order in Cummins Inc. (supra). It may also be noted that Mumbai Bench of Tribunal in bunch of Miscellaneous Applications had also recalled its order in DIT Vs. Reliance Infocom Ltd. / Lucent Technologies Hindustan Ltd., against which the Revenue filed Writ Petition before the Hon'ble Bombay High Court, which was also dismissed by the Hon'ble High Court vide order dated 08.08.2017 and approved the decision of Tribunal in recalling its earlier order in proceeding under section 254(2) of the Act. Once both the decisions on which the CIT(A) had relied on to dismiss the plea of assessee stands recalled, then we need to re-look at the issue.

17. Now, coming to the first aspect of the issue raised is whether the payment made by the assessee for purchase of software was in fact purchase of copyrighted article or thing or was purchase of copyright. The assessee has time and again pointed out that what it has purchased is copyrighted software from third parties and hence, the payment made by the assessee could not be held to 'royalty'. The perusal of order of Assessing Officer reflects that the assessee had not provided end-user license agreement with software suppliers, hence exact nature of software provided and terms and conditions were not known. The Assessing Officer after holding that there was transfer of all or any rights for use or right to use computer software and the payments for license to the Non-resident, in this regard and hold that in view of definition of 'royalty', what was

being transferred was right to use software, which was in the nature of 'royalty' as per clause 5 of Explanation 2 to section 9(1)(vi) of the Act. Further, the Assessing Officer made reference to the Finance Act, 2012, which has clarified that right to use of computer software including license is 'royalty'. Reference was made to Explanation 4 under section 9(1)(vi) of the Act inserted by Finance Act, 2012. In other words, Finance Act, 2012 has enlarged the meaning of term 'royalty'. The said amendment was issued with retrospective effect w.e.f. 01.06.1976.

18. The Pune Bench of Tribunal in Allianz SE Vs. ADIT (supra) relying on the decision of the Hon'ble High Court of Delhi in DIT Vs. Ericsson A.B. & two others (supra) held that payment made for purchase of software was not 'royalty'. Similar is the proposition laid down by the Hon'ble High Court of Delhi in DIT Vs. Infracsoft Ltd. reported in 220 taxman 273 (Del), judgment dated 22.11.2013 and also in PCIT Vs. M. Tech India Pvt. Ltd. (2016) 381 ITR 31 (Del), judgment dated 19.01.2016. In the facts of Allianz SE Vs. ADIT (supra), it was noted that copyright of software vested with the developer and what was transacted by it in the license agreement between the assessee and its India affiliate was only grant of user right in copyrighted software and not use of copyright itself and hence, it was held that license charges received by Non-resident entity could not be brought to tax as 'royalty'. In the case of DIT Vs. Infracsoft Ltd. (supra), the Hon'ble High Court of Delhi noted that the assessee was international software marketing and development company and its holding company based in USA namely Infra Corporation. The Non-resident entity was developing customized software to be used for different purposes. The said customized software was licensed to Indian customer. It was noted that in terms of license agreement, licensee was allowed to make only one copy of software and associated support

information for backup purposes with the condition that such copyright would include infrasoft copyright. It was also noted that software was to be used only for licensee's own purpose and without consent of assessee that software could not be lent, rented, sub-licensed or transferred to third parties. The Hon'ble High Court in such facts held that it was case of mere transfer of right of use copyrighted material i.e. software programme and therefore, amount received by the assessee from its Indian customers did not give rise to any royalty income in terms of Article 12(3) of Indo-US DTAA.

19. In the facts of the present case, the assessee has not explained the terms of agreement with different entities from whom the software has been purchased and in the absence of the same, it could not be found that whether the same is for the right to use of copyrighted article or the right to use copyright. Further, we find no merit in observations of Assessing Officer in this regard. The Assessing Officer himself says that the assessee had not filed copies of agreement, on one hand and on the other hand, holds the payment to use / right to use copyright, cannot stand. However, we do not come to a finding on this count in the absence of relevant data having not been made available. We proceed to decide the issue on connected aspects of the case.

20. Before parting, we may also refer to various reliances placed upon by the learned Departmental Representative for the Revenue, which we also hold to be misplaced in the absence of details being available as to the nature of agreement between the assessee and Non-resident parties from whom the assessee has purchased software as to whether it had acquired copyrighted article or right to use copyright.

21. The next aspect of the issue is whether the liability to withhold tax out of payments being made to Non-resident entity could be the responsibility upon the assessee on a date when the amendment to provisions of section 9(1)(vi) of the Act were not on record. The law cannot compel a person to do something which is impossible to perform. The amendment was brought into the Statute by the Finance Act, 2012 with retrospective effect, but such an amendment cannot create liability against the assessee. As on the date of payment, the assessee was not liable to withhold tax under section 195 of the Act. Accordingly, we hold that no liability can be fastened on the assessee to deduct tax at source on the basis of subsequent amendments made in the Act in relation to payments made to Non-resident, on a date anterior to the date of amendment, though retrospectively applied.

22. Similar ratio has been laid down by the Pune Bench of Tribunal in DCIT Vs. iGate Computer Systems Ltd. (supra). The Tribunal held as under:-

“14. We have heard the rival contentions and perused the record. The assessee for the year under consideration had made payments for the purchase of software and for other related costs as detailed as under:-

<i>Name of the company</i>	<i>Nature of payment</i>	<i>Date of payment</i>	<i>Amount (Rs)</i>
<i>Savvion Inc. USA</i>	<i>Purchase of general software</i>	<i>04.05.2007</i>	<i>1,23,80,564</i>
<i>NCC Services Ltd, UK</i>	<i>Annual fees for checking software</i>	<i>24.06,2007</i>	<i>1,14,044</i>
<i>Serena Software Pte Ltd</i>	<i>Purchase of general software</i>	<i>04.09.2007</i>	<i>66,990</i>
<i>Cipher Soft Inc, USA</i>	<i>Software License Fee-conversion of forms release 3.0 Java with XML Swing</i>	<i>08.11.2007</i>	<i>47,784</i>
<i>Ajira Technologies Inc, USA</i>	<i>Purchase of software License-internet use-pilot testing of BPO</i>	<i>14.11.2007</i>	<i>3,93,800</i>
<i>Ajira Technologies Inc, USA</i>	<i>Purchase of software License-internet use-pilot testing of BPO</i>	<i>07.02.2008</i>	<i>22,12,023</i>
		<i>Total</i>	<i>1,52,15,205</i>

15. The assessee was found to have defaulted in not deducting tax at source out of such payments and the Assessing Officer held the assessee to have defaulted under section 201(1) and further interest was charged under section 201(1A) of the Act. The plea of the assessee that it had purchased software which was akin to purchase goods and does not fall within the category of royalty or technical know-how, was rejected by the Assessing Officer. As per the Assessing Officer, the amounts paid fell within the definition of royalty or technical know-how and it was also held that these payments were taxable under DTAA. The case of the assessee before us was that when the payments were made for the under-mentioned purposes, there was no liability to deduct tax at source:-

- i) Purchase or license of computer software
- ii) Annual maintenance charges
- iii) Fees for accessing data base
- iv) Training and implementing charges
- v) Purchase of computer parts or hardware

16. The Finance Act, 2012 had amended the provisions of section 9 of the Act by way of Explanation 4, with retrospective effect from 01.06.1976 and the payments made for acquiring license of software has been made taxable under the Income-tax Act. The issue arising before us is limited to the aspect that in such circumstances, can the assessee be held to be in default for non-deduction of tax at source relying on the subsequent amendments made in the Act with retrospective effect?

17. We find that Mumbai Bench of the Tribunal in *New Bombay Park Hotel Pvt. Ltd. Vs. ITO (Intr. Taxation)* (supra) has held as under:-

*“If the entire services rendered by the foreign company to the assesses in respect of phase one and two outside India, then the same cannot become chargeable to tax in the hands of the foreign company in India. Unless the amount paid by the assessee company to the foreign company does not become chargeable to tax in India then the question of applicability of section 195 does not arise. Therefore, without considering the amendment brought into the statute by Finance Act 2012 with retrospective effect from 01.06.1976 it has to be held that there was no liability of the assessee to deduct tax at source on the payment made by it with respect to work relating to phase one and two. Further the assessee cannot be held to be liable to deduct tax at source relying on the subsequent amendments made in the Act with retrospective effect. The Tribunal based its decision on a legal Maxim *lex non cogit ad impossibilia* meaning thereby that the law cannot possibly compel a person to do something which is impossible to perform. Amendment brought into the statute by Finance Act 2012 with retrospective effect from 01.06.1976 amendment does not create any liability against the assessee as the legal position prevailing at the relevant time was to be considered. Assesses was not liable for deduction of tax under section 195 of the Act. *Channel Guide India Ltd. vs. ACIT, 139 ITD 49*, relied on.*

Assessee cannot be made liable to deduct TDS on basis of subsequent amendment in respect of payment made to non-resident for providing technical designs and drawings services outside India in relation to project in India.”

18. Following the ratio laid down by the Mumbai Bench of the Tribunal in *New Bombay Park Hotel Pvt. Ltd. Vs. ITO (Intr. Taxation)* (supra), we hold that no liability can be fastened on the assessee to deduct tax at source on the basis of subsequent amendments made in the Act, in relation to earlier payments made

to Non-residents, when the said amendment was not in force. We confirm the order of CIT(A) albeit on different grounds. The grounds of appeal raised by the Revenue are thus, dismissed.”

23. Similar proposition has been laid down by the Mumbai Bench of Tribunal in *Shinhan Bank Vs. DDIT (supra)*. It may be pointed out herein itself that on the date when the assessee was alleged to be liable to withhold tax out of payments made to Non-resident entities, the issue was covered in favour of assessee by different decisions of different Benches of Tribunal. Even the decision of the Hon'ble High Court of Karnataka applied by authorities below in *CIT Vs. Samsung Electronics Co. Ltd. (supra)* is rendered on 15.10.2011. Earlier, the Bangalore Bench of Tribunal had decided the issue in favour of assessee. In such scenario, the assessee cannot be held to be liable to withhold tax out of payments made to Non-resident. Accordingly, we hold that the amendment introduced by the Finance Act, 2012 though introduced retrospectively cannot fasten the liability upon the assessee in financial years 2006-07 and 2007-08 to withhold tax out of payments made to Non-resident entities.

24. The next aspect of the issue raised before us is whether where transactions between the assessee and Non-resident was governed by DTAA between the two countries and where there was no amendment to the definition of 'royalty' in the said DTAA, then can the assessee be held to be in default for not withholding tax out of payments made to the Non-resident entities. Before the Assessing Officer, the assessee had made elaborate submissions in this regard. The Assessing Officer vide para 5.1 has observed that Non-resident licensor i.e. suppliers of software were taxed residents of USA, Greece and Singapore. He further observed that definition of 'royalty' was common in DTAA with these countries. The Assessing Officer also held that literary or scientific

work has referred to in the definition of 'royalty' under DTAA, obviously includes software and he further observed that there was no requirement of transfer of copyright for treating the payment as 'royalty' under DTAA. The Assessing Officer further observed that the payment received for supply of software was taxable as 'royalty' and in turn, relied on different decisions including the decision of the Hon'ble High Court of Karnataka in CIT Vs. Samsung Electronics Co. Ltd. (supra). In the absence of agreement being available with the Assessing Officer, the findings of Assessing Officer that software was in nature of literary or scientific work, cannot stand. When going into the aspect of purchase of software being royalty or not, the issue which has to be seen is whether the assessee had purchased copyright or copyrighted articles. The purchase of software by a person cannot be held to be work of literary or scientific work. There is no merit in the observations of Assessing Officer in this regard and the same are dismissed.

25. Before us, the learned Authorized Representative for the assessee strongly stated that the Hon'ble High Court of Karnataka does not deal with the amendment to section but otherwise holds it be 'royalty'. He placed reliance on different decisions of the Hon'ble High Court of Delhi contrary to the same. The learned Departmental Representative for the Revenue on the other hand, pointed out that the amendment was clarificatory in nature as held by the Hon'ble High Court of Madras in Verizon Communications Singapore Pte. Ltd. Vs. ITO (supra). The learned Authorized Representative for the assessee in this regard, pointed out that the Hon'ble High Court of Madras analyzed the applicability of Explanations 5 and 6 to section 9(1)(vi) of the Act. However, the applicability of Explanation 4 to section 9(1)(vi) of the Act was not before the Hon'ble High Court of Madras. Further, the clarificatory nature of amendment to section 9(1)(vi) of

the Act was neither questioned nor decided, but was applied to assessment year pre-dating the amendment. However, reliance was placed on the decision of the Hon'ble High Court of Delhi in DIT Vs. New Skies Satellite BV (supra), wherein it was held that the amendment to section 9(1)(vi) of the Act by insertion of Explanation 4 would not have any effect on the interpretation of the term 'royalty' under the respective DTAA's.

26. We have already adjudicated similar issue in the case of M/s. T-3 Energy Services India Pvt. Ltd. Vs. JCIT in ITA No.826/PUN/2015, relating to assessment year 2010-11, order dated 02.02.2018 and held as under:-

"16. The second connected issue is whether such payments made to associated enterprise for the lease line charges are 'royalty' or 'FTS' and hence, liable to tax deduction at source within the meaning of DTAA with USA read with provisions of the Income-tax Act.

17. The Hon'ble High Court of Delhi in DIT Vs. (1) New Skies Satellite BV (2) Shin Satellite Public Co. Ltd. (2016) 382 ITR 114 (Del) has elaborated on the general principles relating to international transactions of DTAA vis-à-vis royalty and also the amendment in the Income-tax Act widening the scope of royalty. In the facts before the Hon'ble High Court, the assessee was a company incorporated in Thailand, which was engaged in the business of providing digital broadcasting services as well as consultancy services to its customers, who consist of both Residents and Non-residents. The services were provided through satellites and the assessee had derived income from lease of transponders of its satellites. The assessee therein was the service provider and the receipts were sought to be taxed under section 9(1)(vi) of the Act. The Hon'ble High Court considered the pre-amended and post-amended provisions of the said section and observed that though the Revenue authorities considered the income from data transmission services as taxable as royalty under section 9(1)(vi) of the Act; however, the Tribunal on the basis of ratio laid down in Asia Satellite Telecommunications Co. Ltd. Vs. DIT (supra) did not. The Hon'ble High Court in that case had held that receipts earned from providing data transmission services through provision of space segment capacity on satellites did not constitute royalty within the meaning of section 9(1)(vi) of the Act. It was further held that while providing transmission services to its customers, control of satellite always remained with satellite operator and the customers were only given access to transponder capacity and hence, the payment could not be termed as royalty for the use of a process or equipment. The said decision was in the context of section 9(1)(vi) of the Act and the provisions of DTAA were not considered therein. The Hon'ble High Court in the case of New Skies then took note of the amendment by the Finance Act, 2012, which inserted Explanations 4, 5 and 6 under section 9(1)(vi) of the Act. The Revenue before the Hon'ble High Court claimed that the said Explanations were clarificatory and it had settled the matter i.e. reasoning in Asia Satellite Telecommunications Co. Ltd. Vs. DIT (supra) could not stand because the basis of that ruling had been undone. The second proposition which was raised was whether DTAA applied and resulted

rendering activity non taxable was also argued by the Revenue would not arise, since the DTAA predated the amendment. The Counsel for the assessee therein however, contended that the matter was no longer *res integra*. It was argued that the Revenue could not contend that any change in the substantive law would automatically result any like change in respect of taxability of transaction or service which was otherwise taxed in terms of DTAA, or which was subject to lower rate of tax mandated by a treaty. Reliance in this regard was placed on the ratio laid down by the Hon'ble Bombay High Court in *CIT Vs. Seimens Aktiongesellschaft* (2009) 310 ITR 320 (Bom) and the Hon'ble High Court of Andhra Pradesh in *Sanofi Pasteur Holding SA Vs. Dept. of Revenue and Others* (2013) 354 ITR 316 (AP). Reliance was also placed on the ratio laid down by the Hon'ble High Court of Delhi in *DIT Vs. Nokia Networks OY* (2013) 358 ITR 259 (Del), wherein the context was the efficacy of interpretation given to Statute i.e. Explanation inserted to section 9(1)(vi) of the Act vis-à-vis DTAA. The Hon'ble High Court had rejected that any amendment could change the situation and render the service or activity taxable. The Hon'ble High Court thereafter took note of various decisions on the issue including that of Hon'ble High Court of Madras in *Verizon Communications Singapore Pte. Ltd. Vs. ITO* (supra) and declined to conclusively determine or record a finding as to whether amendment to section 9(1)(vi) of the Act indeed was clarificatory as the Revenue suggested or prospective, give what its nature may truly be. The Hon'ble High Court further commented that the issue of taxability of income of assessee may be resolved without redressal of above question purely because the assessee did not press the said line of argument and had instead stated that ultimate taxability of income shall rest on the interpretation of terms of DTAA. The Hon'ble High Court vide para 39 onwards then took note of Article 12 of the DTAA, under which the State of Residence had the primary right to tax royalty; the Source State shall concurrently have the right to tax the income, to the extent of 15% of total income. The Hon'ble High Court also observed that before the amendment brought about by the Finance Act, 2012, the definition of 'royalty' under the Act and DTAA were treated as *pari materia*. Again reference was made to the ratio laid down in *Asia Satellite Telecommunications Co. Ltd. Vs. DIT* (supra) and observed that the question was whether in an attempt to interpret the two definitions uniformly i.e. domestic definition and the treaty definition, the amendments will have to be read into the treaty as well. The Hon'ble High Court held as under:-

"41. This court is of the view that no amendment to the Act, whether retrospective or prospective can be read in a manner so as to extend in operation to the terms of an international treaty. In other words, a clarificatory or declaratory amendment, much less one which may seek to overcome an unwelcome judicial interpretation of law, cannot be allowed to have the same retroactive effect on an international instrument effected between two sovereign states prior to such amendment. In the context of international law, while not every attempt to subvert the obligations under the treaty is a breach, it is nevertheless a failure to give effect to the intended trajectory of the treaty. Employing interpretive amendments in domestic law as a means to imply contoured effects in the enforcement of treaties is one such attempt, which falls just short of a breach, but is nevertheless, in the opinion of this court, indefensible."

18. Referring to the decision of Apex Court in *Union of India Vs. Azadi Bachao Andolan & Arn.* (2003) 263 ITR 706 (SC) and *The Vienna Convention on the Law of Treaties, 1969*, the Hon'ble High Court held the amendments to a treaty must be brought about by an agreement between the parties. Unilateral amendments to treaties are therefore, categorically prohibited. The Hon'ble High Court held that the words in the treaty would be controlled by definition of those 'words' in the treaty, if they are so provided. In case they are not provided, then

the domestic law shall mandatorily supply the import to be given to the 'word' in question. The Hon'ble High Court concluded by holding that the amendments to domestic law cannot be read into treaty provisions without amending the treaty itself. It was thus, held that mere amendment to section 9(1)(vi) of the Act could not result in a change and it was imperative that such amendment was brought about in the agreement as well and hence, the amendments were not applicable to DTAA. The finding of the Hon'ble High Court was thus, as under:-

"60. Consequently, since we have held that the Finance Act, 2012 will not affect article 12 of the double taxation avoidance agreement, it would follow that the first determinative interpretation given to the word "royalty" in Asia Satellite, when the definitions were in fact pari materia (in the absence of any contouring explanations), will continue to hold the field for the purpose of assessment years preceding the Finance Act, 2012 and in all cases which involve a double taxation avoidance agreement, unless the said double taxation avoidance agreement are amended jointly by both parties to incorporate income from data transmission services as partaking of the nature of royalty, or amend the definition in a manner so that such income automatically becomes royalty. It is reiterated that the court has not returned a finding on whether the amendment is in fact retrospective and applicable to cases preceding the Finance Act of 2012 where there exists no double taxation avoidance agreement."

19. The above judgment was delivered by the Hon'ble High Court on 08.02.2016.

20. The learned Authorized Representative for the assessee relied on various decisions of the Hon'ble High Courts for the proposition that telecommunication services rendered by Non-residents outside were not taxable in India. The learned Departmental Representative for the Revenue on the other hand, pointed out that the payment to Non-residents on account of it being routed through holding or related company abroad, was taxable. Both learned Authorized Representatives have relied on series of decisions for the proposition as to whether the payments to Non-residents paid directly or routed through a third party on account of lease line charges falls within amended definition of 'royalty', which is to be applied retrospectively. In view of the ratio laid down by the Hon'ble High Court of Delhi in DIT Vs. New Skies Satellite BV (supra) and Delhi Bench of Tribunal in Shin Satellite Public Co. Ltd. Vs. DDIT (IT) (2011) 12 taxmann.com 6 (Del), we are not going into the aspect of the amendment to section 9(1)(vi) of the Act, under which Explanations 4, 5 and 6 have been added, which interalia, amends the definition of 'royalty' with retrospective effect. We hold that the same need not to be gone into since the issue otherwise stands decided in favour of assessee. The Hon'ble High Court of Delhi in DIT Vs. New Skies Satellite BV & Ors. (supra) have held that even though the term 'royalty' as used in section 9(1)(vi) of the Act has been amended by introducing Explanation retrospectively, but in view of no change in the definition of 'royalty' in DTAA, the beneficial provisions of DTAA would apply. The amendment made under the Act does not affect the terms of DTAA unless and until the same is amended by two Contracting States."

27. In the present case before us the Assessing Officer has held that the payment made by the assessee was 'royalty' as per definition of 'royalty' under the DTAA also. We find no merit in the said stand of Assessing Officer, in view

of the issue being so held in DIT Vs. Infracsoft Ltd. (supra). We further hold that payment made for purchase of software was not royalty as per definition of 'royalty' under the DTAA between India and USA, Germany and Singapore, since the term 'royalty' under the DTAA with these different countries had not been amended. Even if the definition of 'royalty' under the Act stands amended but the assessee was not liable to withhold tax on the payments made to Non-resident entities on account of purchase of software. We have already in paras above decided the applicability of provision brought in 2012, with retrospective effect, being not applicable to instant assessment year.

28. We are not going into different decisions of the Tribunal on this aspect, in view of the ratio laid down by the Hon'ble High Court of Delhi in DIT Vs. New Skies Satellite BV (supra), which though is not jurisdictional High Court but the issue decided in the said appeal is similar to the issue raised before us in the present appeal. We may also point out that the Hon'ble High Court of Delhi had also taken note of the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Seimens Aktiongesellschaft (supra), which in turn, has applied the ratio of the Hon'ble Supreme Court of Canada in R Vs. Melford Developments Inc., 82 DTC 6281 (1982) and observed as under:-

"The ratio of the judgment, in our opinion, would mean that by a unilateral amendment it is not possible for one nation which is party to an agreement to tax income which otherwise was not subject to tax. Such income would not be subject to tax under the expression 'laws in force'. . .

While considering the Double Tax Avoidance Agreement the expression 'laws in force' would not only include a tax already covered by the treaty but would also include any other tax as taxes of a substantially similar character subsequent to the date of the agreement as set out in article 1(2). Considering the express language of article 1(2) it is not possible to accept the broad proposition urged on behalf of the assessee that the law would be the law as applicable or as define when the double taxation avoidance agreement was entered into."

29. In the facts of the case before the Hon'ble Bombay High Court the word 'royalty' was not defined in German Treaty and in that context, the Hon'ble Bombay High Court held that they were unable to accept the assessee's contention that law applicable would be law which existed at the time the DTAA was entered into. In the facts of the case before us, the word 'royalty' is defined in Treaties entered into between USA and India, Greece and Singapore with India, and applying the ratio in CIT Vs. Seimens Aktiongesellschaft (supra), we hold that once a term has been defined in DTAA, then the said term is to be applied unless and until the parties to the DTAA amend the same. The Hon'ble High Court of Delhi in DIT Vs. Nokia Networks OY (supra) had applied the proposition laid down by the Hon'ble Bombay High Court in CIT Vs. Seimens Aktiongesellschaft (supra) and held that the amendments could not be read into the treaty. Unilateral amendment by the Indian Government to the term 'royalty' by way of amendment to section 9(1)(vi) of the Act cannot be extended to the meaning of the term 'royalty' defined under DTAA.

30. Applying the principle laid down by the Hon'ble High Court of Delhi in DIT Vs. New Skies Satellite BV (supra), we hold that where the provisions of DTAA overrides the provisions of Income-tax Act being beneficial and the definition of 'royalty' having not undergone any amendment in DTAA, the assessee was not liable to withhold tax on the payments made for purchase of software. The amended provisions of section 9(1)(vi) of the Act brought into force by the Finance Act, 2012 are applicable to domestic laws and the said amended definition cannot be extended to DTAA, where the term 'royalty' had been defined originally and not amended. As per the definition of 'royalty' under the DTAA, purchase of software does not fall in realm of 'royalty'. Accordingly, there was no liability on the assessee to withhold tax and the assessee cannot be held

to be in default. The demand created under section 201(1) and interest under section 201(1A) of the Act is thus, cancelled. The grounds of appeal No.1 to 6 are thus, partly allowed.

31. The additional ground of appeal No.7 being not pressed and the same is dismissed as not pressed and the other additional grounds of appeal No.8 and 9 become academic.

32. In the result, appeal of assessee is partly allowed.

Order pronounced on this 5th day of April, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 5th April, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-IT/TP, Pune;
4. The DIT(TP/IT), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune