

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A No.1851/DEL/2016  
Assessment Year: 2010-11

DCIT (International Taxation) Circle-1(1)(1), New Delhi.	vs.	Alcatel Lucent Enterprises, C/o price water house coopers, 11A, Vishnu Digamber Marg, Suchta Bhawan, New Delhi.
TAN/PAN: AAHCA 7398H		
(Appellant)		(Respondent)

I.T.A No.1853/DEL/2016  
Assessment Year: 2010-11

DCIT (International Taxation) Circle-1(1)(1), New Delhi.	vs.	Alcatel Lucent Bell NV, C/o price water house coopers, 11A, Vishnu Digamber Marg, Suchta Bhawan, New Delhi.
TAN/PAN: AAHCA 7652E		
(Appellant)		(Respondent)

I.T.A No.1854/DEL/2016  
Assessment Year: 2010-11

DCIT (International Taxation) Circle-1(1)(1), New Delhi.	vs.	Alcatel Lucent France Now known as Alcatel Lucent Intl., C/o price water house coopers, 11A, Vishnu Digamber Marg, Suchta Bhawan, New Delhi.
TAN/PAN: AABCC 4864E		
(Appellant)		(Respondent)

CO No.211/DEL/2016  
(Arising out of ITA No.1853/Del/2016)  
Assessment Year: 2010-11

Alcatel Lucent Bell NV, DLF Cyber Greens, 14 <sup>th</sup> and 15 <sup>th</sup> Floor, Tower C, Phase-III DLF City, Gurgaon.	vs.	DCIT (International Taxation) Circle-1(1)(1), New Delhi.
TAN/PAN: AAHCA 7652E		
(Appellant)		(Respondent)

CO No.212/DEL/2016  
(Arising out of ITA No.1854/Del/2016)  
Assessment Year: 2010-11

Alcatel Lucent France, DLF Cyber Greens, 14 <sup>th</sup> and 15 <sup>th</sup> Floor, Tower C, Phase-III DLF City, Gurgaon.	vs.	DCIT (International Taxation) Circle-1(1)(1), New Delhi.
TAN/PAN: AABCC4864E		
(Appellant)		(Respondent)

CO No.213/DEL/2016  
(Arising out of ITA No.1851/Del/2016)  
Assessment Year: 2010-11

Alcatel Lucent Enterprises, DLF Cyber Greens, 14 <sup>th</sup> and 15 <sup>th</sup> Floor, Tower C, Phase-III DLF City, Gurgaon.	vs.	DCIT (International Taxation) Circle-1(1)(1), New Delhi.
TAN/PAN: AAHCA 7398H		
(Appellant)		(Respondent)

Appellant by:	Shri G.K. Dhall, CIT-DR (Intl.)		
Respondent by:	S/Shri Shashi Mathews, Abhishek, Adv.		
Date of hearing:	06	08	2019
Date of pronouncement:	23	09	2019

**ORDER**

**PER AMIT SHUKLA, JUDICIAL MEMBER:**

The aforesaid appeals have been filed by the Revenue as well as the Cross Objection by the above named assessee

against the separate impugned orders of even date 27.01.2016, passed by Commissioner of Income Tax (Appeals)-XLII, New Delhi for the quantum of assessment passed u/s. 143(3) r.w.s. 144C for the Assessment Year 2010-11.

2. Since common issues are involved in all the appeals, arising out of identical set of facts and reasoning given by the authorities below, therefore, same were heard together and are being disposed of by way of this consolidated order. The common ground raised by the Revenue in all the appeals as under:

*“1. Whether the CIT(A) was not justified in law and on facts of the case by not treating embedded software as Royalty income of the assessee as per Explanation 4 to Section 9(i)(vi) of the Income Tax Act, 1961.”*

Whereas in the Cross objection in the case of all the assessee's reads as under:

*“1. That the Ld. CIT(A) erred in not concluding that interest under section 234B of the IT Act is not leviable in the facts of the present case ignoring the fact that the entire consideration in the hands of the assessee was subject to deduction of tax at source under section 195 of the Act and hence, the assessee was not liable to pay any advance tax.”*

3. At the outset, ld. counsel for the assessee submitted that this precise issue now stands covered by the decision of the Tribunal in assessee's own case for the Assessment Year

2006-07 in the case of Alcatel Lucent France vide order dated 27<sup>th</sup> February, 2015; and 14<sup>th</sup> April, 2014 in ITA No. 123/Del/2015; and 4855/Del/2014, respectively. The said judgment of the Tribunal now stands approved in group cases of Alcatel including those of the assessee, by the Hon'ble Delhi High Court vide judgment and order dated 27<sup>th</sup> February, 2015.

4. The facts in brief are that Alcatel Lucent Group is a leading telecommunication group and infrastructure supplier. All these companies are incorporated under the laws of France and Belgium. These companies in the return of income filed in India had offered income from fees for technical services (FTS) and the ld. Assessing Officer based on finding given in the earlier assessment orders held that, assessee had a PE in India. However, no income was held to be attributable as it was found that it was fully compensated for the functions performed. However, Assessing Officer held that software supplies were taxable as 'Royalty' on the gross bases as per Section 9(1)(vi) of the Income Tax Act read with Article 12 of India-France DTAA. The Assessing Officer's case was that equipment supplies by the assessee included both hardware and software and the basis of attribution can be only be applied to hardware supplies and not to the software supplies. He held that consideration towards software is liable to be taxed as 'royalty' based on earlier year assessment orders and has given a very detailed finding precisely on similar lines that of the earlier years and held that royalty

income from the software is to be taxed @ 10% and he also levied interest income u/s.234B along with other interest.

5. Ld. CIT(A) held that this issue has been adjudicated in favour of the assessee by the Ld. CIT(A) in the earlier years which has been upheld by the Tribunal and also confirmed by the Hon'ble Delhi High Court, wherein it was held that consideration received by the assessee for the supply of embedded software is to be treated as consideration received for supply of goods and not as royalty under the Income Tax Act or India-France DTAA. Even going by the retrospective amendment made by the Finance Act, 2012 in Section 9(1)(vi), there is no corresponding change introduced in the definition of 'royalty' under the DTAA. Thus, he decided the issue in favour of the assessee.

6. We find that now this issue stands decided by the Hon'ble Delhi High Court. Following the judgment of Hon'ble Delhi High Court in the case of **DIT vs. Nokia Networks, (2013) 385 ITR 259 and also DIT vs. Ericsson AB, (2012) 343 ITR 470**. Accordingly, consistent with the view taken in the earlier years by the Hon'ble Jurisdictional High Court in the case of the assessee itself, we decide this issue in favour of the assessee. Accordingly, ground raised by the Revenue is dismissed.

7. Similarly, the issue on charging of interest u/s.234B has also been decided in favour of the assessee by the Tribunal and also affirmed by the Hon'ble Delhi High Court. Moreover

this issue now stands covered by the judgment of Hon'ble Delhi High Court in the case of **DIT vs. GE Packaged Power Inc., (2015) 373 ITR 65**, wherein the Hon'ble High Court has held that, since assessee was a non-resident company and the entire tax was to be deducted at source on payments made by the payee to it, therefore, there was no question of payment of advance tax by the assessee, hence Revenue could not charge any interest u/s.234B. Moreover, on the issue of software royalty already the additions made by the Assessing Officer stands to be deleted. Accordingly, all the appeals of the Revenue are dismissed and the Cross Objections by the assessee are allowed.

8. In the result, all the appeals of the Revenue are dismissed and the Cross Objections by the assessee are allowed.

**Order pronounced in the open Court on 23<sup>rd</sup> September, 2019.**

Sd/-

**[B.R.R. KUMAR]**

**[ACCOUNTANT MEMBER]**

DATED: 23<sup>rd</sup> September, 2019

PKK:

Sd/-

**[AMIT SHUKLA]**

**JUDICIAL MEMBER**