

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,  
NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5539/DEL/2019  
[Assessment Year: 2015-16]**

M/s Comptel Oyz, C/o-Ernst & Young LLP, Golf View Corporate Tower-B, Sector-42, Gurgaon, Haryana-122002	DCIT, Circle-1(2)(1), International Taxation, Room No.410, E-2 Block, 4 <sup>th</sup> Floor, Civic Centre, New Delhi-110002
<b>PAN-AAQCS7326E</b>	
Appellant	Respondent

Appellant by	Sh. Sparsh Bharghav, Adv.
Respondent by	Sh. Rajesh Kumar, Sr. DR

<b>Date of Hearing</b>	<b>19.05.2021</b>
<b>Date of Pronouncement</b>	<b>19.05.2021</b>

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order dated 27.05.2019, framed u/s 144C(13) r.w.s. 143(3) of the Act for Assessment Year 2015-16.

2. The substantive grievance relates to the treatment of receipt from sale of standard software as royalties under Article 12(3) of the Indo-Finland tax treaty. The AO has discussed with this issue at para 5 on page 2 of his order and at para 7.1 and 7.2 of page-

3 of his order. He has referred to the treatment given by his predecessors in AY 2008-09 to AY 2014-15. This shows that the issue is not coming up for the first time but has been considered by the Revenue authorities in earlier assessment years also.

3. We find that this quarrel has been resolved by the order of the Coordinate Bench of the Tribunal in earlier assessment years also, the last being ITA No.6443/Del/2016 and ITA No.7649/Del/2017 for AY 2013 and 2014-15. The relevant finding of the order reads as under:-

*"4.4. We have heard the rival submission and perused the relevant material on record. There is no dispute between the parties that facts and business model of the assessee remained the same as was in the preceding years from assessment years 2008-09 to 2012-13. This fact has been admitted by the Assessing Officer in para 6 of his assessment order, which reads as under:*

*"6. I have carefully considered the assessee's replies and have examined the records. I have also examined the facts of the various cases cited by the assessee. It is observed that not only the facts and the business model during the subject AY remains the same as in AYs 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13, but the assessee's contentions are also same as those raised in the assessment proceedings for the earlier AYs. As such, I am unable to come to any different conclusion other than that arrived at by the AO for AYs 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. The reasons for the coming to conclusion are explained in the following paras."*

*4.5. We note that the Tribunal and the Hon'ble Delhi High Court in earlier years has adjudicated the present controversy, whether the consideration received from sale of softwares would amount to royalty or not. The Tribunal in the assessee's own case for assessment years 2007-08, 2008-09 and 2009-10 held that sale of software by the assessee is standard software which is chargeable to tax under Article 7 of the DTAA as business income of the assessee and not under Article 12 as royalty. On further challenge by the Revenue, the Hon'ble Delhi High Court in order dated 19/12/2016 in ITA Nos. 898/2016, 899/2016 & 900/2016 has decided the controversy in favour of the assessee observing as under:*

*“The questions which the Revenue seeks to urge in these appeals under Section 260A of the Income Tax Act, 1961 (‘the Act’) are common, i.e., whether the amounts paid by the assessee to its licensors, amounted to royalty within the meaning of the expression under Section 9(l)(vi) and Article 12 of the Indo- Finland Double Taxation Avoidance Agreement (DTAA). The Income Tax Appellate Tribunal (ITAT) followed the previous judgments of this Court including the judgment in DTT v. Infrasoftware Ltd. 264 CTR 329 and also the judgment - DIT (International Taxation) vs. Nokia Networks OY 25 Taxman.com 255 (Delhi). The later decision had an occasion to interpret the same provision in the context of the very same treaty.*

*Since the ITA T has followed the previous binding judgments of this Court, the present appeals do not raise a substantial question of law. The Court is also satisfied that the application of law by the IT AT was sound and proper. The appeals are therefore dismissed. ”*

*4.6. In the assessment years 2011-12 and 2012-13 also, the Tribunal has decided the issue in favour of the assessee vide order dated 03/10/2016 in ITA No.726/Del/2015 and 1686/Del/2016 following the earlier decision of the Tribunal for assessment years 2007-08 to 2009-10.*

*4.7. Therefore, respectfully following the decision of the coordinate Bench of the Tribunal in assessee’s own case for assessment years 2007-08 to 2012-13 and the decision of the Hon’ble jurisdictional High Court (Supra), we hold that sale of the software by the assessee is sale of standard software, which is chargeable to tax under Article 12 as royalty in the year under consideration.”*

4. As no distinguishing decision has been brought to our notice by the learned DR in favour of the Revenue. Respectfully following the decision of the Co-ordinate Bench (supra) and the decision of the Hon’ble jurisdictional High Court mentioned therein, we hold that sale of the software by the assessee is sale of standard software which is chargeable to tax under Article-7 of the DTAA as business income of the assessee and not under Article 12 as royalty in the year under consideration.

5. Ground of appeal no.2 with its sub-ground is allowed.

6. The next grievance relates to short credit of TDS.
7. We direct the AO to grant the credit of TDS after due verification after giving a reasonable opportunity of being heard to the assessee. This grievance of the assessee is allowed for statistical purpose.
8. The next grievance relates to the chargeability of interest u/s 234B of the Act. The levy of interest though mandatory but consequential to this order. We direct accordingly.
9. The issue relating to the recovery of interest paid to the assessee u/s 244A of the Act needs re-verification, we accordingly direct the AO to examine the issue afresh as per provisions of law.
10. In the result, the appeal filed by the assessee is allowed.

Decision announced in the open court in the presence of representatives of both the sides on 19 /05/2021.

**Sd/-**

**Sd/-**

**[KULDIP SINGH]  
JUDICIAL MEMBER**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

**Delhi;** Dated: 19/05/2021.

*Shekhar, Sr. P.S*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi