IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

IT(IT)A No. 173/Bang/2021
Assessment Year : 2017-18

M/s. QlikTech International AB, C/o. QlikTech India Pvt. Ltd., No.1 and 2, The Millennia Tower A, 4th Floor, Murphy Road, Ulsoor, Bengaluru – 560 008. **PAN: AAACQ 2234 R**	Vs.	The Deputy Commissioner of Income Tax, International Taxation, Circle – 2(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sharath Rao, CA
Revenue by	:	Shri. Pradeep Kumar, CIT(DR), ITAT, Bangalore.

Date of hearing	:	01.07.2021
Date of Pronouncement	:	06.07.2021

O R D E R

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee is directed against the order dated 25.2.2021of CIT(A)-12, Bangalore, relating to assessment year 2017-18.

2. The assessee is a company incorporated in Sweden and is engaged in the business of sale of software products and rendering information technology services. The business of the assesseee includes software materialization, marketing and support of the software material Qlikview for which it enjoys all intellectual property rights such as patent, trademark and

copy rights. The assessee has entered into an agreement with its subsidiary QlikTech India Private Ltd. for onward sale of shrink wrapped software to the end users/ customers in India as per the distribution / license agreement. As per the said agreement QlikTech India Private Ltd., will promote and resell assessee's products to the end users within the prescribed territory in accordance with the terms and conditions set forth in the agreement. A copy of the distributor agreement dated 16.11.2011 and End users Licence Agreement (EULA) which forms Appendix 1 to the Distribution Agreement are at pages 106 to 112 of the assessee's paper book. The following features in the said agreement are material for a decision in deciding the 1st issue in this appeal and the same are that (i) the distributor gets only a non-exclusive and non-transferable license to resell computer software. (ii) No copyright in the computer program is transferred to either the distributor or to the ultimate end-user. (iii) The end-user can use the computer program itself, but there is no further right to sub-license or transfer or reverse-engineer, modify, reproduce in any manner otherwise than permitted by the license to the end-user; (iv) The distributor pays the computer program's price as goods, in a medium that either stores the software or embeds it in the hardware;(v) The distributor does not get the right to use the product; and (vi) The end-user can only use the computer program by installing it in the computer hardware owned by the end-user and cannot in any manner reproduce it for sale or transfer.

3. The assessee filed its return of income for the AY 2017-18 declaring NIL income. The AO in the draft assessment order passed on 12th December 2019 held that the entire receipts of Rs.24,45,50,141/- from sale of software products is taxable as royalty under Article 12(3) of the India-Sweden Double Taxation Avoidance Agreement (DTAA) and u/s 9(1)(vi) of

the Income Tax Act, 1961 (Act) which defines the term “Royalty”. The relevant provisions of the DTAA and the Act reads thus:

ARTICLE 12 of Indo-Sweden DTAA

ROYALTIES AND FEES FOR TECHNICAL SERVICES

1. ...…..

2. ...….

3. (*a*) The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

(*b*) The term 'fees for technical services' means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provisions of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

The provisions of Sec.9(1)(vi) (b) read with Expln.-2 of the Act reads thus:

Income deemed to accrue or arise in India.

9. (1) The following incomes shall be deemed to accrue or arise in India :—

(*vi*) income by way of royalty payable by—

(*a*) the Government ; or

(*b*) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(*c*) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

…….

Explanation 2.—For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any

consideration which would be the income of the recipient chargeable under the head "Capital gains") for—

(*i*) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*ii*) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*iii*) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*iv*) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;

(*iva*) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;

(*v*) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films ; or

(*vi*) the rendering of any services in connection with the activities referred to in sub-clauses (*i*) to (*iv*), (*iva*) and(*v*).

Explanation 3.—For the purposes of this clause, "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data.

Explanation 4.—For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

3.1. The assessee did not file any objection before the DRP but communicated that it would prefer an appeal before the CIT(A). The AO accordingly passed the final assessment order on 11.2.2020. On appeal by the assessee, the CIT(A) upheld the action of the AO holding the receipts of royalty income being in nature of payment for use of copyright in a

process and transfer of information of commercial or industrial nature. In coming to the aforesaid conclusion, the CIT(A) relied on the decision of the jurisdictional Karnataka High Court in the case of IBM India Limited (ITA No. 540/08) dated 21 October 2011 and Samsung Electronics (345 ITR 494).

4. Aggrieved by the order of the CIT(A) the assessee is in appeal before the Tribunal raising the following grounds :-

2. Grounds in relation to treatment of receipts from sale of off-the-shelf software in India to be in the nature of 'royalty' and therefore liable to tax in India

2.1. On the facts and in the circumstances of the case, the learned AO and the learned CIT(A) have erred in law and on facts in holding that the sum of Rs 24,45,50,141 received by Appellant from its subsidiary company, QlikTech India Private Limited ("QlikTech India"), against the sale of off-the-shelf software are in the nature of transfer of "copyright" and therefore taxable as "royalty" both under the provisions of section 9(1)(vi) of the Act and under the India-Sweden Double Taxation Avoidance Agreement ("DTAA" or "Tax Treaty").

2.2. The learned CIT(A) has erred in law in not following the decision of the Hon'ble Delhi Income-tax Appellate Tribunal ("ITAT") in the Appellant's own case for the past years (AY 2012-13, AY 2013-14 and AY 2014-15), wherein the ITAT has decided the issue in favour of the Appellant and held that receipts from sale of software products are not liable to tax as 'royalty' in India.

2.3. The learned CIT(A) erred in not appreciating the fact that sale of software by the Appellant under the buy-sell model are in the nature of sale of "copyrighted article" and not in nature of transfer of "copyright" and further failed to appreciate that fact that a mere transfer of a copyrighted article, without transferring the right in the copyright, shall not be held as payment towards "royalty" and consequently, cannot be taxed in the hands of the Appellant.

2.4. The learned CIT(A) has erred in law and on facts in failing to appreciate that the rights described in section 14(b) of the Indian Copyright Act, 1957 in the case of "computer programme", are the rights vested only in the author of the "computer programme" (i.e, the original works) and that selling or giving on rental a "copy of

the computer programme" is with reference to the copyright holder himself generating a copy [allowed under section 14(a)(i)] and then selling/renting such a generated copy and not with reference to any other person.

2.5. Without prejudice to the above grounds, the learned CIT(A) has erred in law and on facts in failing to appreciate the fact that the unilateral amendments made to section 9(1)(vi) of the Act vide Finance Act 2012 would be rendered inapplicable considering the beneficial provisions under the India Sweden DTAA which have not been amended.

2.6. The learned CIT(A) has erred in law and on facts in failing to appreciate that under the India-Sweden DTAA, only payments made that allow a payer to use/ acquire a right to use a copyright ***of*** *a literary, artistic, or scientific work or a right to use a patent, secret formula or process is covered within the definition of royalty. Payments made for acquiring the right to use the* ***product*** *itself without allowing any right to use the copyright in the product, are not covered within the scope of royalty.*

2.7. Without prejudice to the above grounds, the learned CIT(A) has erred in following the decision of the jurisdictional Karnataka High Court in the case of IBM India Limited (ITA No. 540/08) dated 21 October 2011 and Samsung Electronics (345 ITR 494) as the same have been reversed by the Honourable Supreme Court in a recent decision in the case of Engineering Analysis Centre of Excellence [2021] 125 taxmann.com 42 (SC).

5. The Ld. Counsel for the assessee submitted that assessee is a tax resident of Sweden, therefore, in view of Section 90(2) of the Act or the DTAA whichever is more beneficial to the assessee shall apply. He submitted that since the definition of royalty provided under Article 12 of the India-Sweden DTAA is more beneficial as compared to the provisions of Section 9(1)(vi) of the Act, therefore, the provisions of DTAA shall apply. He submitted that the Tribunal in assessee's own case for the immediately preceding Assessment Year i.e., Assessment Year 2012-13 and 2013-14 had held that what is being provided by Qlik India to end users is neither the copyright in the software nor the use of the copyright in the software but

right to use the copyrighted material or article which is clearly distinct from the rights in a copyright. It has held that the right that is being transferred is not a right to use the copyright but is only limited to the right to use the copyrighted material and the same does not give rise to any royalty income. He submitted that the QlikTech Software product in question in the current year and also in the preceding assessment year is the same, He further submitted that the sale of software in the instant case cannot be held to be "use of process" or "information concerning Industrial, commercial or scientific experience" because the end users do not have any access to the source code and what is available merely for their use is software product as such and not the process embedded in it and all intellectual property rights and other rights relating to the QlikTech products at all times is the exclusive property of the assessee. He submitted that assessee in the instant case has merely transferred the right to use the copyrighted article. He submitted that AO and the Ld. CIT(A) relying on the decision of Hon'ble Karnataka High Court in the case of CIT vs. Samsung Electronics Ltd. 345 ITR 494 and CIT vs Lucent Technologies vide ITA No. 168/2004 and that those decisions now stand overruled by the decision of the Hon’ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P) Ltd. (2021) 125 Taxmann.com 42 (SC).

6. The Ld. DR on the other hand strongly relied on the order of the Ld. CIT(A).

7. We have heard the rival submissions made by both the sides, perused the order of the AO and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the issue to be decided in the grounds raised by the assessee is in relation to taxability of income of the assessee M/s. Qliktech

International AB on account of delivery of software to its clients in India through its resellers. We find the AO in the instant case following his order for earlier years held that receipts from the sale of software are taxable in India u/s 9(1)(vi) of the Act and Article 12 of the India Sweden DTAA. We find the Ld. CIT(A) upheld the action of the AO on the ground that the product or the application being delivered by the asessee has a scope which is far wider than an off the shelf software product. According to him the assessee is certainly offering a business solution which involves the implementation of a process and also transfer of information of commercial or industrial nature and the consideration received is precisely for this purpose. According to him the definition of Royalty within the DTAA with Sweden and also in Section 9 of the Income Tax Act clearly provide the consideration for use of process or consideration for Industrial or commercial knowledge.

8. We find an identical issue had come up before the Tribunal in assessee's own case in the immediately preceding assessment years 2013-14 and 2012-13 in ITA No.391/Del/2017 and ITA No.6668/Del/2016 and the Delhi Bench of the Tribunal in its common order dated 17.10.2018 decided the issue. We find in those two years the revenue had come up before the Tribunal challenging the order of the Ld. CIT(A) wherein he had held that receipts of the assessee from sale of software are not taxable as royalty although by selling software assessee has transferred the rights to use to software. Ld. CIT(A) in those two years have held that receipts of the assessee from sale of software are not taxable as royalty even when explanation 4 to section 9(1)(vi) of the Act clearly states that consideration in respect of transfer of all or any rights for use or right to use a computer software irrespective of the medium through which such right is taxable as royalty. We find the Tribunal after considering various decisions including

the decision of Hon'ble Delhi High Court in the case of DCIT Vs Infrasoft Ltd. 264 CTR 329 and in the case of DIT Vs M/s Nokia Networks (358 ITR 259) has decided the issue as under :-

> "6. In this background the points to be adjudicated would be
>
> a) Whether the receipts from sale of software be treated as royalty or not.
>
> b) Whether the effect of amendment in Section 9(1)(vi) brought about by the Finance Act, 2012 can be read into the treaty or not.
>
> 7. We have heard the arguments of both the parties and perused the material on record.
>
> 8. We find from the judgment of the Jurisdictional High Court, in the case of DCIT Vs Infrasoft Ltd. 264 CTR 329 has elaborately explained as to what constitutes licensing agreement, its exclusivity, non-transferability, as to what constitutes a copyright and how the amounts paid for transfer of copyright and amounts paid for royalty defer in connection with the Article 7 and Article 12 of the DTAA. The judgments also dealt with the licenses, copyrights, loan rent sale, sublicense,transfer of copy of software as well as royalties. The judgments also considered the decision of the Hon'ble Karnataka High Court in the case of Samsung Electronics Co. Ltd. with regard to copyright and royalty. The operative portion of the said judgment of the Hon'ble High Court of Delhi is as under:
>
> > "85. The Licensing Agreement shows that the license is non-exclusive, non-transferable and the software has to be uses in accordance with the Agreement.Only one copy of the software is being supplied for ITA No. 1185/Del/2019 Qliktech International AB vs. DCIT each site. The licensee is permitted to make only one copy of the software and associated support information and that also for backup purposes. It is also stipulated that the copy so made shall include Infrasoft's copyright and other proprietary notices. All copies of the Software are the exclusive property of Infrasoft. The Software includes a licence authorisation device, which restricts the use of the Software.The software is to be used only for Licensee"s own business as defined within the Infrasoft Licence Schedule. Without the consent of the Assessee the software cannot be loaned, rented,sold, sublicensed or

transferred to any third party or used by any parent, subsidiary or affiliated entity of Licensee or used for the operation of a service bureau or for data processing. The Licensee is further restricted from making copies, decompile, disassemble or reverse-engineer the Software without Infrasoft's written consent. The Software contains a mechanism which Infrasoft may activate to deny the Licensee use of the Software in the event that the Licensee is in breach of payment terms or any other provisions of this Agreement. All copyrights and intellectual property rights in and to the Software,and copies made by Licensee, are owned by or duly licensed to Infrasoft.

86. The Licensing Agreement shows that the license is non-exclusive, non-transferable and the software has to be uses in accordance with the agreement. Only one copy of the software is being supplied for each site. The licensee is permitted to make only one copy of the ITA No. 1185/Del/2019 Qliktech International AB vs. DCIT software and associated support information and that also for backup purposes. It is also stipulated that the copy so made shall include Infrasoft's copyright and other proprietary notices. All copies of the Software are the exclusive property of Infrasoft. The Software includes a licence authorisation device, which restricts the use of the Software. The software is to be used only for Licensee's own business as defined within the Infrasoft Licence Schedule. Without the consent of the Assessee the software cannot be loaned, rented, sold, sublicensed or transferred to any third party or used by any parent, subsidiary or affiliated entity of Licensee or used for the operation of a service bureau or for data processing. The Licensee is further restricted from making copies, decompile, disassemble or reverse- engineer the Software without Infrasoft's written consent. The Software contains a mechanism which Infrasoft may activate to deny the Licensee use of the Software in the event that the Licensee is in breach of payment terms or any other provisions of this Agreement. All copyrights and intellectual property rights in and to the Software, and copies made by Licensee, are owned by or duly licensed to Infrasoft.

87. In order to qualify as royalty payment, it is necessary to establish that there is transfer of all or any rights (including the granting of any licence) in respect of copyright of a literary, artistic or scientific work. In order to treat the consideration paid

by the Licensee as royalty, it is to be established that the licensee, by making such payment, obtains all or any of the copyright rights of such literary work. Distinction has to be ITA No. 1185/Del/2019 Qliktech International AB vs. DCIT made between the acquisition ofa "copyright right" and a "copyrighted article". Copyright is distinct from the material object, copyrighted. Copyright is an intangible incorporeal right in the nature of a privilege, quite independent of any material substance, such as a manuscript. Just because one has the copyrighted article, it does not follow that one has also the copyright in it. It does not amount to transfer of all or any right including licence in respect of copyright. Copyright or even right to use copyright is distinguishable from sale consideration paid for "copyrighted" article. This sale consideration is for purchase of goods and is not royalty.

88. The license granted by the Assessee is limited to those necessary to enable the licensee to operate the program. The rights transferred are specific to the nature of computer programs. Copying the program onto the computer's hard drive or random access memory or making an archival copy is an essential step in utilizing the program. Therefore, rights in relation to these acts of copying, where they do no more than enable the effective operation of the program by the user, should be disregarded in analyzing the character of the transaction for tax purposes. Payments in these types of transactions would be dealt with as business income in accordance with Article 7.

89. There is a clear distinction between royalty paid on transfer of copyright rights and consideration for transfer of copyrighted articles. Right to use a copyrighted article or product with the owner retaining ITA No. 1185/Del/2019 Qliktech International AB vs. DCIT his copyright, is not the same thing as transferring or assigning rights in relation to the copyright. The enjoyment of some or all the rights which the copyright owner has, is necessary to invoke the royalty definition. Viewed from this angle, a nonexclusive and non-transferable licence enabling the use of a copyrighted product cannot be construed as an authority to enjoy any or all of the enumerated rights ingrained in Article 12 of DTAA. Where the purpose of the licence or the transaction is only to restrict use of the copyrighted product for internal business purpose, it would not be legally correct to state that the copyright itself or right to use copyright has been

transferred to any extent. The parting of intellectual property rights inherent in and attached to the software product in favour of the licensee/customer is what is contemplated by the Treaty. Merely authorizing or enabling a customer to have the benefit of data or instructions contained therein without any further right to deal with them independently does not, amount to transfer of rights in relation to copyright or conferment of the right of using the copyright. The transfer of rights in or over copyright or the conferment of the right of use of copyright implies that the transferee/licensee should acquire rights either in entirety or partially coextensive with the owner/transferor who divests himself of the rights he possesses pro tanto.

90. The license granted to the licensee permitting him to download the computer programme and storing it in the computer for his own use is only incidental to the facility extended to the licensee to make use of the copyrighted product for his internal business purpose. The said ITA No. 1185/Del/2019 Qliktech International AB vs. DCIT process is necessary to make the programme functional and to have access to it and is qualitatively different from the right contemplated by the said paragraph because it is only integral to the use of copyrighted product. Apart from such incidental facility, the licensee has no right to deal with the product just as the owner would be in a position to do.

91. There is no transfer of any right in respect of copyright by the Assessee and it is a case of mere transfer of a copyrighted article. The payment is for a copyrighted article and represents the purchase price of an article and cannot be considered as royalty either under the Income Tax Act or under the DTAA.

92. The licensees are not allowed to exploit the computer software commercially, they have acquired under licence agreement, only the copy righted software which by itself is an article and they have not acquired any copyright in the software. In the case of the Assessee company, the licensee to whom the Assessee company has sold/licensed the software were allowed to make only one copy of the software and associated support information for backup purposes with a condition that such copyright shall include Infrasoft copyright and all copies of the software shall be exclusive properties of Infrasoft. Licensee was allowed to use the software only for its own business as

specifically identified and was not permitted to loan/rent/sale/sub- licence or transfer the copy of software to any third party without the consent of Infrasoft.

93. The licensee has been prohibited from copying, decompiling, de- assembling, or reverse engineering the software without the written consent of Infrasoft.The licence agreement between the Assessee company and its customers stipulates that all copyrights and intellectual property rights in the software and copies made by the licensee were owned by Infrasoft and only Infrasoft has the power to grant licence rights for use of the software. The licence agreement stipulates that upon termination of the agreement for any reason, the licencee shall return the software including supporting information and licence authorization device to Infrasoft.

94. The incorporeal right to the software i.e. copyright remains with the owner and the same was not transferred by the Assessee. The right to use a copyright in a programme is totally different from the right to use a programme embedded in a cassette or a CD which may be a software and the payment made for the same cannot be said to be received as consideration for the use of or right to use of any copyright to bring it within the definition of royalty as given in the DTAA. What the licensee has acquired is only a copy of the copyright article whereas the copyright remains with the owner and the Licensees have acquired a computer programme for being used in their business and no right is granted to them to utilize the copyright of a computer programme and thus the payment for the same is not in the nature of royalty.

95. We have not examined the effect of the subsequent amendment to section 9 (1)(vi) of the Act and also whether the amount received for use of software would be royalty in terms thereof for the reason that the Assessee is covered by the DTAA, the provisions of which are more beneficial.

96. The amount received by the Assessee under the licence agreement for allowing the use of the software is not royalty under the DTAA.

97. What is transferred is neither the copyright in the software nor the use of the copyright in the software, but what is

transferred is the right to use the copyrighted material or article which is clearly distinct from the rights in a copyright. The right that is transferred is not a right to use the copyright but is only limited to the right to use the copyrighted material and the same does not give rise to any royalty income and would be business income.

98. We are not in agreement with the decision of the Andhra Pradesh High Court in the case of SAMSUNG ELECTRONICS CO. LTD (SUPRA) that right to make a copy of the software and storing the same in the hard disk of the designated computer and taking backup copy would amount to copyright work under section 14(1) of the Copyright Act and the payment made for the grant of the licence for the said purpose would constitute royalty. The license granted to the ITA No. 1185/Del/2019 Qliktech International AB vs. DCIT licensee permitting him to download the computer programme and storing it in the computer for his own use was only incidental to the facility extended to the licensee to make use of the copyrighted product for his internal business purpose. The said process was necessary to make the programme functional and to have access to it and is qualitatively different from the right contemplated by the said provision because it is only integral to the use of copyrighted product. The right to make a backup copy purely as a temporary protection against loss, destruction or damage has been held by the Delhi High Court in DIT v. M/s Nokia Networks OY (Supra) as not amounting to acquiring a copyright in the software.

99. In view of the above we accordingly hold that what has been transferred is not copyright or the right to use copyright but a limited right to use the copyrighted material and does not give rise to any royalty income."

9. Since, the matter stands settled by the order of the Hon'ble High Court, we hereby uphold the ld. CIT (A) observation that the right to use granted through licensing of a software does riot fall within the meaning of "Royalty" as provided for in the domestic law or the DTAA. Any consideration for the same is not taxable as Royally under section 9(1)(vi) or the relevant DTAA. Thus what has been transferred by the appellant is neither the copyright in the software ITA No. 1185/Del/2019 Qliktech International AB vs. DCIT nor the use of the copyright in the software, but what is

transferred is the right to use the copyrighted material or article which is clearly distinct from the rights in a copyright. The right that is transferred is not a right to use the copyright but is only limited, to the right to use the copyrighted material and the same does not give rise to any royalty income.

10. Regarding the applicability of amendment in Section 9(1)(vi) brought out by Finance Act, 2012, we find that this issue of applicability has been examined in the case of DIT Vs New Skies Satellite BV by the Hon'ble Delhi High Court in ITA 473/2012. The Hon'ble Court observed that the only manner in which change in position of the provisions of the treaty can be relevant only if such change is incorporated into the agreement itself and not otherwise. A change in executive position cannot bring about a unilateral legislative amendment into a treaty concluded between two sovereign states. It is fallacious to assume that any change made to domestic law to rectify a situation of mistaken interpretation can spontaneously further their case in an international treaty. Therefore, mere amendment to Section 9(1)(vi) cannot result in a change. It is imperative that such amendment is brought about in the agreement as well. The Hon'ble High Court's observation is relevant to the instant case with regard to the amendment to the Act even though the judgment was given in the case of ITA No. 1185/Del/2019 Qliktech International AB vs. DCIT determination of royalty of payment of transponder fee, it adequately dealt with the issue of Section 9(1)(vi). The relevant extract of the said order read as under:

> "74. Even when we look into the matter from the standpoint of Double Taxation Avoidance Agreement (DTAA), the case of the appellant gets boost. The Organization of Economic Cooperation and Development (OECD) has framed a model of Double Taxation Avoidance Agreement (DTAA) entered into by India are based. Article 12 of the said model DTAA contains a definition of royalty which is in all material respects virtually the same as the definition of royalty contained in clause (iii) of Explanation 2 to Section 9(1)
>
> (vi) of the Act. This fact is also not in dispute. .....
>
> 77. The Tribunal has discarded the aforesaid commentary of OECD as well as Klaus Vogel only on the ground that it is not safe to rely upon the same. However, what is ignored is that when the technical terms used in the DTAA are the same which appear in Section 9(1)(vi), for better understanding all these very

terms, OECD commentary can always be relied upon. The Apex Court has emphasized so in number of judgments clearly holding that the well-settled internationally accepted meaning and interpretation placed on identical or similar terms employed in various DTAAs should be followed by the Courts in India when it comes to construing similar terms occurring in the Indian Income Tax Act.....

59. On a final note, India's change in position to the OECD Commentary cannot be a fact that influences the interpretation of the words defining royalty as they stand today. The only manner in which such change in position can ITA No. 1185/Del/2019 Qliktech International AB vs. DCIT be relevant is if such change is incorporated into the agreement itself and not otherwise. A change in executive position cannot bring about a unilaterall legislative amendment into a treaty concluded between two sovereign states. It is fallacious to assume that any change made to domestic law to rectify a situation of mistaken interpretation can spontaneously further their case in an international treaty. Therefore, mere amendment to Section 9(1)(vi) cannot result in a change. It is imperative that such amendment is brought about in the agreement as well. Any attempt short of this, even if it is evidence of the State's discomfort at letting data broadcast revenues slip by, will be insufficient to persuade this Court to hold that such amendments are applicable to the DTAAs."

11. From the above judgment, it can be concluded that the amendment in the DTAA unilaterally cannot be enforced, hence, the provisions of Section 9(1)(vi) are not applicable to the instant case. The contention of the Assessing Officer cannot be upheld.

12. In the result, both the appeals of the revenue are dismissed."

9. Since the facts of the instant assessment year are identical to the facts of the two preceding assessment years decided by the Tribunal in assessee's own case, therefore, respectfully following the decision of the coordinate bench of the Tribunal we set aside the order of the Ld. CIT(A) and hold that consideration received by the assessee for sale of software cannot be treated as royalty under the provision of section 9(1)(vi) of the Act as well as Article 12 of the India-Sweden DTAA and that the sale of

software products by the assessee to its Indian distributors for further sale to end users is not in the nature of transfer of "copyright" and therefore not taxable in the hands of the assessee as "royalty" under the provision of section 9 (1)(vi) of the Act as well as Article 12 of the India-Sweden DTAA. The material difference between the earlier Assessment year and the present Assessment year is that due to change of jurisdiction of the assessee from Delhi to Bangalore, the jurisdictional High Court would be Karnataka High Court and the decision of Hon'ble Karnataka High Court in the case of CIT vs. Samsung Electronics Ltd. 345 ITR 494 and CIT vs Lucent Technologies vide ITA No. 168/2004 is in favour of the revenue and against the assessee. But as rightly pointed out by the learned counsel for the assessee, those decisions of the Hon'ble Karnataka High Court, now stand overruled by the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P) Ltd. (2021) 125 Taxmann.com 42 (SC). The Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P) Ltd. (2021) 125 Taxmann.com 42 (SC) held that A copyright is an exclusive right that restricts others from doing certain acts. A copyright is an intangible right, in the nature of a privilege, entirely independent of any material substance. Owning copyright in a work is different from owning the physical material in which the copyrighted work may be embodied. Computer programs are categorised as literary work under the Copyright Act. Section 14 of the Copyright Act states that a copyright is an exclusive right to do or authorise the doing of certain acts in respect of a work, including literary work. The Hon'ble Court took the view that a transfer of copyright would occur only when the owner of the copyright parts with the right to do any of the acts mentioned in section 14 of the Copyright Act, 1957(Copyright Act). In the case of a computer program, section 14(b) of the Copyright Act, speaks explicitly of two sets of acts:

1. The seven acts enumerated in sub-clause (a); and
2. The eighth act of selling or giving of commercial rental or offering for sale or commercial rental any copy of the computer program.

The seven acts as enumerated in section 14(a) of the Copyright Act, in respect of literary works are:

1. To reproduce the work in any material form, including the storing of it in any medium electronically;
2. To issue copies of the work to the public, provided they are not copies already in circulation;
3. To perform the work in public, or communicate it to the public;
4. To make any cinematographic film or sound recording in respect of the work;
5. To make any translation of the work;
6. To make any adaptation of the work; and
7. To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (1) to (6).

The court held that a licence from a copyright owner, conferring no proprietary interest on the licensee, does not involve parting with any copyright. It said this is different from a licence issued under section 30 of the Copyright Act, which grants the licensee an interest in the rights mentioned in section 14(a) and 14(b) of the Copyright Act. What is 'licensed' by the foreign, non-resident supplier to the distributor and resold to the resident end-user, or directly supplied to the resident end-user, is the sale of a physical object which contains an embedded computer program. Therefore, it was a case of sale of goods. The payments made by end-users and distributors are akin to a payment for the sale of goods and not for a copyright license under the Copyright Act. The decision of the Hon'ble Karnataka High Cour in the case of CIT Vs. Samsung Electronics Co. Ltd. (2011) 16 taxmann.com 141 (Karn.), on which the revenue authorities placed reliance in making the impugned addition stood overruled by the Hon'ble Supreme Court. We have already set out the

terms of the Agreement under which software in question was sold by the Assessee to its distributions and the terms of the EULA. The same are identical to the case decided by the Hon'ble Supreme Court and hence the ratio laid down therein would squarely apply to the present case also.

10. On the question whether the provisions of the Act can override the provisions of the DTAA, the Hon'ble Court held that Explanation 4 was inserted in section 9(1)(vi) of the ITA in 2012 to clarify that the "transfer of all or any rights" in respect of any right, property, or information included and had always included the "transfer of all or any right for use or right to use a computer software". The court ruled that Explanation 4 to section 9(1)(vi) expanded the scope of royalty under Explanation 2 to section 9(1)(vi). Prior to the aforesaid amendment, a payment could only be treated as royalty if it involved a transfer of all or any rights in copyright by way of license or other similar arrangements under the Copyright Act. The court held that once a DTAA applies, the provisions of the Act can only apply to the extent they are more beneficial to the taxpayer and therefore the definition of 'royalties' will have the meaning assigned to it by the DTAA which was more beneficial. It was held that the term 'copyright' has to be understood in the context of the Copyright Act. The court said that by virtue of Article 12(3) of the DTAA, royalties are payments of any kind received as a consideration for "the use of, or the right to use, any copyright "of a literary work includes a computer program or software. It was held that regarding the expression "use of or the right to use", the position would be the same under explanation 2(v) of section 9(1)(vi) because there must be, under the licence granted or sales made, a transfer of any rights contained in sections 14(a) or 14(b) of the Copyright Act. Since the end-user only gets the right to use computer software under a non-exclusive licence, ensuring the owner continues to retain ownership under section 14(b) of the

Copyright Act read with sub-section 14(a) (i)-(vii), payments for computer software sold/licenced on a CD/other physical media cannot be classed as a royalty.

11. In the light of the aforesaid discussion, the grounds raised by the assessee with regard to taxing receipts on sale of off-the-shelf software are allowed.

12. Ground Nos.3 to 3.8 raised by the assessee reads as follows:

3. Grounds in relation to treatment of receipts from shared services in India to be in the nature of 'fess for technical services' and therefore liable to tax in India

3.1. The learned CIT(A) has erred in law and on facts in holding that the sum of Rs 98,93,448 received by the Appellant from QlikTech India on account of shared service centre cost recharge, to be in the nature of Fees for Technical Services ("FTS") and therefore taxable in hands of the Appellant both under the provisions of section 9(i)(vii) of the Act and under the provisions of the India Sweden DTAA.

3.2. The learned CIT(A) has erred in law and on facts in failing to appreciate that Appellant only provides corporate back office services and such services do not qualify to be "managerial" or "technical" or "consultancy" service and hence not liable to tax in India under the provision of section 9(1)(vii) of the Act.

3.3. Without prejudice to the other grounds taken above, the learned CIT(A) has erred in law and on facts in failing to appreciate that the services do not 'make available' technical knowledge, experience and skill to the Indian entity and hence is not taxable in India as the Appellant is entitled to the benefit of the Most Favoured Nation ("MFN") clause as contained in the Protocol to the India-Sweden DTAA by virtue of which, it can claim the benefit of the "make available" condition imposed under the India Portuguese / India USA DTAA for bringing to tax FTS in India.

3.4. The learned CIT(A) has erred in holding that the services rendered are in the nature of 'consultancy services' which make available technical knowledge, experience and skill to the Indian entity without appreciating the fact that as per the Service Agreement, it is clear that the Appellant only provides corporate back office services to QlikTech India and such services are not consultancy services and the same do not involve transfer of any technical knowledge or skill or experience to the recipient.

3.5. The learned CIT(A) has erred in law and on facts in stating that, since the business model and the accounting and financial policies of the business remains the same, the consultancy services could be utilised by the Indian entity in its business year after year, thereby satisfying the 'make available' condition. On the contrary, the learned CIT(A) has failed to appreciate that the year on year rendition of services by the Appellant to the Indian entity proves that technical knowledge is not transferred or made available to the Indian entity for independently function without the aid of the Appellant.

3.6. On facts and circumstances of the case, the learned CIT(A) has erred in following the decision of the AAR in the case of Areva T&D India Limited [2012] 18 Taxmann.com 171 (AAR - New Delhi) to hold that the services rendered by the Appellant amounts to fees for technical services under the provisions of the Income Tax Act as well as the DTAA.

3.7. Without prejudice to any other grounds taken herein, the learned CIT(A) has erred in law and on facts by not following the principle laid out by various judicial precedents relied upon by the Appellant, including the decision of the Jurisdictional Karnataka High Court.

3.8. Without prejudice to the above grounds, the CIT(A) has erred in law and on facts in not adjudicating the alternate argument that, by virtue of the MFN clause as contained in the Protocol to the India Sweden DTAA, the Appellant can claim the benefit of the India Finland DTAA which provides that only such services would be chargeable to tax in India, which are rendered in India. Therefore, given that in the current case of

the Appellant, the services are rendered entirely from Sweden, the same would not be liable to tax in India.

13. The assessee entered into an agreement with Qlik India Ltd., whereby it agreed to provide assistance to Qlik India in respect of certain back office support operations, through it's shared services center. Copy of the said agreement is at pages 113-119112 of the assessee's Paper Book. As per the said agreement, the assessee agreed to provide the following assistance to QlikTech India :

- General Ledger related services

- closing of local books and group reporting activities on a monthly basis

- statutory filings of local tax and local financial statements

- assistance with audit related work

- Revenue Operations related services
  - reviewing closed orders and preparing and issuing of invoices
  - support to sales related to technical admin in ERP
- Expenses, Banking & AP related services
  - handling of 011 accounts payable invoices, including reminders
  - handling cash disbursements and receipts
  - reviewing and payment of all travel expense claims
  - payroll related payments
- Payroll related services
  - administrating info sharing with outsourcing provider
  - review of payroll runs.

14. The assessee received a sum of Rs.98,93,448/- from Qlick India for provision of shared services. The plea of the assessee that the said receipt is not chargeable to tax in India was that the services were rendered outside India and payments were received outside India by the person to

whom services were provided. It was the plea of the assessee that it being a non-resident, in terms of section 5(2)(b) & (c) of the Act, it is only income that is chargeable to tax in India that which accrue or arise in India or is deemed to accrue or arise in India. Since the services in question was rendered outside India, payment cannot be regarded as income that accrues or arises in India. Assessee also pointed out that payment in question cannot be regarded as "Fees for Technical Services" (FTS). The assessee brought to the attention of the AO the provisions of section 9(1)(vii) which defines the terms of FTS to mean any consideration for rendering any managerial, technical or consultancy services. The plea of the assessee was that back office services rendered by the assessee were neither managerial, technical or consultancy services. The assessee, therefore, submitted that the receipt in question cannot be brought to tax as FTS.

15. Without prejudice to the above submission, the assessee submitted that in terms of Article 12(3) (b) The term 'fees for technical services' means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provisions of services by technical or other personnel. The definition under the Act and DTAA is therefore one and the same as far as FTS is concerned. In terms of Article 12(2) of the DTAA, it is taxable in the State in which it arises, i.e., India. The assessee submitted that under article 12 of the India-Sweden DTAA, FTS cannot be brought to tax in India because under the protocol to the India-Sweden DTAA **if under any Convention, Agreement or Protocol between India and a third State which is a member of the OECD, India limits its taxation at source on, inter alia, fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in the India-Sweden DTAA, the same**

rate or scope as provided for in that Convention, Agreement or Protocol on the said items of income shall also apply under the India-Sweden DTAA. Such terms contained in a DTAA are referred to as the Most Favoured Nation ("MFN") clause. The assessee therefore submitted that on the basis of the MFN clause as contained in the Protocol to the India-Sweden DTAA, the assessee referred to the India-Portugese DTAA and the India-USA DTAA, which imposes more restrictions for taxation of FTS by source state by adding a condition that the FTS must **"make available" *technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained therein.*** The relevant provisions of the Act, India-Portugeues DTAA, India-USA DTAA reads as follows:

Provisions of the Act – Explanation 2 to Section 9(1)(vii)	**Provisions of India-Portuguese DTAA – Article 12(4)**	**Provisions of India – USA DTAA – Article 12(4)**
"Fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or	*"Fees for Included Services" ("FIS") means payments of any kind, other than those mentioned in Articles 14 and 15 of this Convention, to any person in consideration of the rendering of any **technical or consultancy services** (including through the provisions of services of technical or other personnel) if such services:* *(a) are ancillary and subsidiary to the application or enjoyment*	*"Fees for technical services" means payments of any kind to any person in consideration for the rendering of any **technical or consulting services** (including through the provision of services of technical or other personnel) if such services:* *(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described*

consideration which would be income of the recipient chargeable under the head "Salaries".	*of the right, property or information for which a payment described in paragraph 3 is received; or* ***(b) make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained therein***	*in paragraph 3 is received ; or* *(b)* ***make available technical knowledge,. experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.***

The assessee pointed out that the definition of FIS/ FTS as per the India-Portuguese DTAA has a more restricted scope compared to the provisions of the Act since, as per the India-Portuguese DTAA, the services shall be considered as fees for included/technical services only when there is transfer of technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained therein. Similarly, the India-USA DTAA also has a more restricted scope compared to the provisions of the Act since, as per the India-USA DTAA, the services shall be considered as fees for included/technical services only when there is transfer of technical knowledge, experience, *skill,* know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

16. The assessee submitted that it was a tax resident of Sweden and therefore it was entitled to avail the benefit of the MFN clause as contained in the Protocol to the India-Sweden DTAA by virtue of which, it can claim the benefit of the "make available" condition imposed for bringing to tax the fees for technical services in the India-Portuguese / India-USA DTAA. It was submitted that since the provisions of India Sweden DTAA read with India-Portuguese /India-USA DTAA are more beneficial as compared to the provisions of the Act, the same will override the provisions of the Act, to the extent to which the provisions of the said DTAAs are more beneficial.

17. The assessee submitted that for the purposes of the services, as provided by the assessee to Qlik India, to be covered under the definition of FIS/ FTS as contained in the India-Portuguese / India-USADTAA, it is important that the said services fall in the nature of technical or consultancy services as the definition of the term FIS/ FTS in the DTAA covers only technical and consultancy services and does not cover services which are managerial in nature. It was submitted by the assessee that the services provided by the assessee, even if considered to be managerial in nature, the same would not fall in the nature of technical or consultancy services and accordingly, would not fall within the definition of FIS/ FTS as contained in the India-Portuguese / India-USA DTAA. Therefore, the same would not be liable to tax in India under Article 12 of DTAA.

18. Without prejudice to the above, it was submitted that if the services provided by the assessee are considered to be technical or consultancy services, even otherwise, the payments in respect of the same would be considered as FIS/ FTS only if –

- They are ancillary and subsidiary to the application or enjoyment of a right, property or information for which are royalty payment is made; or
- They **make available** technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

The assessee submitted that as per the memorandum to India-USA DTAA services will be regarded as made available only when:

> *"Technology will be considered 'made available' when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not per se mean that technical knowledge, skills etc are made available to the person purchasing the service. Similarly, the use of a product which embodies technology shall not per se be considered to make the technology available."*

Therefore, under paragraph 4 of Article 12 of the DTAA, technical and consultancy services are considered included services only to the extent they make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design. The assessee pointed out that by providing the back office services referred in the earlier paragraph, nothing is made available to the recipient of services from the assessee.

19. The AO, however, did not agree with the submissions made by the assessee and he held that services were in the nature of consultancy and services were regarded as FTS. With regard to the argument on Article 12 of the India-Sweden Tax Treaty, reliance was placed by the assessee on NSN. The AO held that the services rendered by the assessee was made

available to the Indian company to the benefits of such services. The AO did not specifically discuss about the NSN clause.

20. On appeal by the assessee, the CIT(A) concurred with the view of the AO and placed reliance on the decision of the Authority for Advanced Ruling (AAR) in the case of Areva T & D India Ltd., (2012) 18 taxmann.com 171 (AAR – New Delhi). In the decision relied upon by the CIT(A), it was held that the person providing services, if he has a PE in India then FTS is taxable under DTAA as well as under the Act.

21. Aggrieved by the order of the CIT(A), the assessee has raised ground No.3 before the Tribunal.

22. We have heard the rival submissions. The learned Counsel for the assessee drew our attention to the decision of the ITAT Pune Bench in the case of Sandvik AB Vs. DDIT (2015) 61 taxmann.com 31 (Pune – Trib.). In the aforesaid decision, the Hon'ble Pune Bench had to consider the effect of the protocol of DTAA between India-Sweden with regard MFN Clause. The facts of the case before the Pune Tribunal were that the assessee, a non-resident company, incorporated in Sweden had received 'Management Service Fee' from Indian AEs for direction or guidance relating to business strategy and its group policies. The Assessing Officer taxed the consideration received for services rendered by it as fees for technical services under article 12 on the ground that article 12 included managerial, technical or consultancy services. The assessee stated that the above payment was not taxable in view of the protocol to DTAA between India and Sweden on article 12 and that the services provided by the assessee-company were managerial in nature and, hence, were non-technical. The DRP did not accept the contention of the assessee that the services

rendered were in nature of marketing, manufacturing and human resources and information technology functions and in view of lack of clarity on part of the assessee to establish that the services rendered by it were eligible for the beneficiary clause under India-Portugal treaty, the DRP declined to interfere with the order passed by the Assessing Officer. On further appeal, the Pune ITAT, held that as per the protocol, on the principle of the most favoured nation (MFN) clauses received by the assessee company from its Indian subsidies. If under any Convention. Agreement between India and a third State which is a member of the OECD, India limits its taxation at source on dividends, interest, royalties, or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this convention on said items of income, same rate or scope as provided said items of income shall also apply under this Convention. On the basis of the protocol to the DTAA between the India and Sweden the assessee can claim the benefit of the conditions imposed for bringing to tax the fees for technical services in the treaty between the India and Portugal. The Tribunal noted that India entered into DTAA with the Sweden which was notified vide notification no. GR 705/E dated 17.12.1997. Article 12 of the India-Sweden DTAA provides the mode of taxation of the royalties and fees for technical services whether the same are to be taxed in the source country or in the residence country. The definition of the fees for technical services (FTS) is given in Article 12(3)(b) of the Act. It is true that it is a very conservative definition and there is no condition that the technical services should be made available. The India also entered into the treaty with Portuguese republic which was notified vide notification no. GR F42/E dated 16th June, 2000. The Tribunal accepted the argument that considering the principle of most favoured nation (MFN) clause in treaty between India and Portuguese unless a

condition of make available the technical knowledge or skill or services is fulfilled then said payment cannot be taxed in source country i.e. India.

23. We are of the view that the assessee is entitled to take the benefit of MFN Clause rely on the provisions of Article 12(4)(v) of the Inda-Portuguese DTAA and claim that the receipts can be brought to tax only if the services provided makes available technical knowledge, experience, skill, etc., to the person acquiring the services. The decision of the Pune Tribunal in the case of Sandvik AB (supra) clearly supports the plea of the assessee in this regard.

24. The meaning of the expression make available were considered by the Tribunal in the case of Raymond Ltd. Vs. DCIT (2003) 80 TTJ (Mum) 120. The Tribunal after elaborate analysis of all the related aspects observed that :-

> "The words 'making available' in Article 13.4 refers to the stage subsequent to the 'making use of' stage. The qualifying words is 'which' the use of this relative pronoun as a conjunction is to denote some additional function the 'rendering the services' must fulfil. And that is that it should also 'make available' technical knowledge, experience, skill etc. The word which occurring in the article after the word 'services' and before the words 'make available' not only described or defines more clearly the antecedent noun '(services') but also gives additional information about the same in the sense that it requires that the services should result in making available to the user technical knowledge, experience, skill, etc. Thus, the normal, plain and grammatical meaning of the language employed is that a mere rendering of services is not roped in unless the person utilizing the services is able to make use of the technical knowledge, etc. by himself in his business or for his own benefit and without recourse to the performer of the services in future. The technical knowledge, experience, skill etc. must remain with the person utilizing the services even after the rendering of the services has come to an end. A transmission of the technical knowledge,

> experience, skill, etc. from the person rendering services to the person utilizing the same is contemplated by the article. Some sort of durability or permanency of the result of the 'rendering services' is envisaged which will remain at the disposal of the person utilizing the services. The fruits of the services should remain available to the person utilizing the services in some concrete shape such as technical knowledge, experience skill etc.

25. Going by the nature of services enumerated in the present case, we are of the view that the services were purely in the nature of back office services and nothing can be regarded as having been made available to the recipient of services. As per the terms of the *Service Agreement, it is clear that the assessee only provides corporate back office services to* QlikTech India and such services are not consultancy services and the same do not involve transfer of any technical knowledge or skill or experience to the recipient. The CIT(A) has erred in law and on facts in stating that, since the business model and the accounting and financial policies of the business remains the same, the consultancy services could be utilised by the Indian entity in its business year after year, thereby satisfying the 'make available' condition. On the contrary, the CIT(A) has failed to appreciate that the year on year rendition of services by the assessee to the Indian entity proves that technical knowledge is not transferred or made available to the Indian entity for independently function without the aid of the assessee. We therefore agree with the plea of the assessee and hold that the sum received towards shares services were not in the nature of FTS and cannot be brought to tax in India as "FTS". The sum in question cannot be taxed as business profits also, as under Article 7(1) of DTAA, as the receipts in question cannot be attributed to the permanent establishment. Ground No.3 is accordingly allowed.

26. In the result, appeal of the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	**Sd/-**
(CHANDRA POOJARI)	**(N.V. VASUDEVAN)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Bangalore,
Dated, the 6th July, 2021.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.