

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.6740/Del/2018
Assessment Year: 2015-16

DCIT International Taxation Circle 1 (3) (1) New Delhi	Vs	Gemcom Software Australia Pvt. Ltd. Level-8, 190, Saint Georges Terrace Perth WA, Perth
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Sanjay Kumar, Sr. DR
Respondent by	Sh. Vishal Kalra, Advocate Sh. Ankit Sahni, Advocate

Date of hearing:	14/02/2022
Date of Pronouncement:	14/02/2022

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the revenue is preferred against the order of the CIT(A)-42, New Delhi dated 16.08.2018 for A.Y. 2015-16.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.31481419/- from sale of software products in India and in holding that the revenue received by the assessee from supply of software is not taxable in India as Royalty as provided in the Article 12 form the Indian-Australia DTAA.

3. The counsel furnished the following calculation of tax effect :-

S. No.	Particulars	Amount as per Assessment order	Amount post giving effect to rectification application (attached as Annexure 1)
1.	Returned Income	9,63,224	9,63,224
2.	Disputed addition on account of sale of software products related to royalty	2,40,92,950	2,40,92,950
3.	Assessed Income under normal provision ('A')	2,50,56,174	2,50,56,174
4.	Total Income chargeable had the total income under normal provision is reduced by disputed addition ('B')	9,63,224	9,63,224
5.	Income for tax effect (A-B)	2,40,92,950	2,40,92,950
6.	Income tax (20% as per assessment order) (15% as per rectification application applying DTAA rate) (T)	48,18,590	36,13,943
7.	Add: Surcharge ('ii')	-	-
8.	Add: Education cess (2% of i + ii) ('iii')	96,372	
9.	Add: Secondary and higher education cess (1% of I +ii) (V)	48,186	
10.	Total tax effect (i+ii+iii+iv)	49,63,148	36,13,943

4. A perusal of the above show that the tax effect as per assessment order and as per order giving effect rectification application is less than Rs.50 lacs, therefore, this appeal filed by the revenue is dismissed as per Circular No.3/2018 read with Circular No.17/2019.

5. In the result, the appeal filed by the revenue is accordingly dismissed.

6. The order is pronounced in the open court on 14.02.2022 in the presence of both the rival representatives.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-14.02.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	14.02.2022
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	14.02.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	