

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

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 6604/Del/2019 : Asstt. Year : 2015-16**

Micro Focus Ltd., 22-30, The Lawn, Old Bath Road, Newbury, Berkshire GB RG 141QN, United Kingdom, United Kingdom-999999	Vs	DCIT, Circle-2(2)(1), International Taxation, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAGCM3842B</b>		

**Assessee by : Ms. Sumisha Murgai, AR**

**Revenue by : Ms. Anupama Anand, CIT DR**

**Date of Hearing: 19.05.2022**

**Date of Pronouncement: 20.05.2022**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-43, New Delhi dated 03.05.2019.

2. Brief facts of the case are that the assessee is a company incorporated in United Kingdom and engaged in the business of development and distribution of software products and it sells its software products in India either through distributors or directly to the customers. According to the assessee, they have no offices/project offices/godowns or any other business or presence in India and sale software products is conducted outside India, on principal to principal basis, with Indian purchasers.

3. The moot ground relates to taxation of the amount received from sale of software to Indian customers as royalty instead of business income in the absence of PE. The Coordinate Bench of Tribunal in the case of the assessee for A.Y. 2008-09 to A.Y. 2011-12 and A.Y. 2013-14 to A.Y. 2014-15 held that the income of the assessee is not liable to tax under the head "royalty".

4. The Hon'ble Supreme Court while dealing the question "*whether on facts and circumstances of the case and in law, the ITAT erred in holding that receipts of the assessee from sale of software is not taxable as royalty under the India-UK DTAA?*" affirmed the order of the Tribunal. Since, the matter has attained finality by the order of the Hon'ble Apex Court, the appeal of the assessee is hereby allowed.

Order Pronounced in the Open Court on 20/05/2022.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

**Dated: 20/05/2022**

**\*Subodh Kumar, Sr. PS\***

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**