

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER**

ITA No. 260/Del/2019
(Assessment Year : 2014-15)

Digite Inc. USA C/o. Kirtane and Pandit, CAs, Office No.1 & 2, First Floor, Lunawat Court, Hotel Shiv Sagar Lane, Off. J. M. Road, Shivaji Nagar, Pune, Maharashtra - 411 004 PAN No. AACCD 7140 F (APPELLANT)	Vs.	ADIT (International Transaction), Circle - 1(2) New Delhi - 110 002 (RESPONDENT)
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Assessee by	Shri Mehul Shah, C.A.
Revenue by	Shri Gangadhar Panda, CIT-DR

Date of hearing:	14.11.2022
Date of Pronouncement:	25.11.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order of the Asst. Commissioner of Income Tax, New Delhi under section 144C(13)/143(3) of the Income Tax Act dated 11.10.2017 pursuant to the direction of Dispute Resolution Panel (DRP).

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a foreign company stated to be engaged in the business of development and sales of Project Management Software ('PMS') Licenses to various customers all over the world. Assessee electronically filed its return of income for A.Y. 2014-15 on 22.09.2015 declaring total income at Rs. Nil. The case of the assessee was selected for scrutiny and accordingly notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. AO noticed that the perusal of AIR as per ITD system revealed that an amount of Rs.1,49,48,277/- was received by the assessee which the assessee had claimed to be non taxable. Assessee was asked to show-cause as to why the aforesaid receipts which was from license fees by granting provision of copyrighted software licenses be not taxed as Royalty under the provisions of Income Tax Act, 1961 and India – USA Double Taxation Avoidance Agreement. AO also noted that in the past assessment years also the assessee had claimed similar receipts to be non taxable but the same was disallowed by AO. Assessee made detailed submissions *inter alia* contending that the amount received from various customers in India were not for any grant of copy right but was for merely using user license and was not for giving substantial right to reproduce the software or to copy or to duplicate the same. The submissions of the assessee was not found acceptable to AO. AO thereafter in the draft assessment order passed u/s 144C(1)/143(3) order dated 07.12.2016 held the

amount of Rs.1,49,48,277/- to be taxable as Royalty under Income Tax Act as well as under India – USA DTAA. He accordingly held it to be taxable at 15%, being the rate of tax for royalties as per the DTAAA.

4. Aggrieved by the draft order of AO, assessee carried the matter before DRP who vide order dated 28.09.2017 in the order passed u/s 144C(5) of the Act upheld the draft assessment order. Thereafter, assessment order was framed u/s 144C(13)/143(3) of the Act dated 11.10.2017 wherein the AO determined the total income at Rs.1,49,48,277/-. Aggrieved by the order of AO passed pursuant the DRP directions, assessee is now before us and has raised the following grounds:

- “1. *The Hon’ble DRP-1, Delhi has erred in law and on facts, in upholding learned AO’s order treating the amount of Rs.1,49,48,277/- being received by the assessee company for sales of licenses as a taxable ROYALTY u/s 9(1)(vi) of the ITA, 1961 and as per Article 12 the India – USA DTAA; instead of treating the same as consideration for sale of copyrighted software licenses.*
2. *The DRP /AO ought to have appreciated that the said amount, received from assessee’s Indian customers, is normal Business Income of the appellant arising on account of sale of copyrighted licensed software products and not taxable in India in the absence of Permanent Establishment (PE) in India.*
3. *The assessee company craves leave to add/modify/delete/amend all/ any of the Grounds of Objection.”*

5. Before us, at the outset, Learned AR submitted that identical issues were involved in the case of assessee for A.Ys. 2007-08, 2009-10 to 2013-14 wherein for all those years AO had

held amount received by the assessee as Royalty income taxable in India considering the definition of Royalty u/s 9(1)(vi) as well as Article 12 of the India USA DTAA. He submitted that for A.Y. 2013-14, the Hon'ble Tribunal in ITA No.525/Del/2017 order dated 28.08.2020 after considering the Tribunal's decisions in assessee's own case for A.Ys. 2007-08, 2009-10 to 2013-14 has held the payment received by the assessee from its customers from sale of software product/license to be not in the nature of 'Royalty' u/s 9(1)(vi) and as per Article 12(3) of Indo-US DTAA. He placed on record the aforesaid decision which is placed at page 56 to 87 of the paper book and from which he pointed to the relevant findings at page 74 onwards. He submitted that there are no change in the facts of the present case as compared to that of earlier years and therefore the issue be decided following the aforesaid decisions.

6. Learned DR on the other hand did not controvert the factual submissions made by Learned AR but however supported the order of lower authorities.

7. We have heard the rival submissions and perused the material available on record. The issue in the present grounds is with respect to taxability of the amounts received by the assessee on the sale of software licences. We find that identical issue arose in assessee's own case for A.Y. 2013-14 in ITA No.525/Del/2017 and the Co-ordinate Bench of Tribunal has decided the issue in favour of the assessee by observing as under:

(a) *After considering the relevant findings given in the impugned orders as well as the submissions made by the parties, we find that, it is an admitted fact that this Tribunal in assessee's own case right from the Assessment Years 2007-08, 2009-10, 2010-11, 2011-12 and 2012-13 in ITA No.4918/Del/2012 & 2415/Del/2013 for the Assessment Years 2007-08 & 2009-10; ITA No.772/Del/2014 for Assessment Year 2010-11; ITA No.987/Del/2015 for Assessment Year 2011-12; ITA No.382/Del/2016 for Assessment Year 2012-13, vide order dated 19.11.2019 have discussed this issue in detail and held that payment received by the assessee from its customer from sale of software product/license is not in the nature of 'royalty' u/s.9(l)(vi) and also as per Article 12(3) of Indo-US DTAA. The relevant observation and the findings of the Tribunal are reproduced hereunder:*

"25. We have considered the rival arguments made by both the sides, perused the orders of the AO and DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case is engaged in sale of licenses of its software product called as Project Management Software (PMS). The PMS is considered as a BI Tool i.e. Business Intelligence Tool. It assists the users to regulating effectively utilizing programmer's time on a collectives basis with efficiency. We find the amount received by the assessee from its customers for sale of software products / licenses were treated by the AO as royalty and he taxed the same at applicable rate of tax. According to the AO and Ld. DR the software is delivered at the site of the end customer. There is a specific role out plan and installation and implementation programme. During the same the employees of the customer are given training on how to use the same. The services including updates, maintenance support etc are part and parcel of the contract. Once the license is granted the assessee is responsible to maintain it as it is their proprietary product. After granting of license, the assessee keeps on billing the customers. The software for use of which the license is granted qualified to be technical and commercial equipment. The application of various tests as regards of right to ownership, copying, commercial exploitation etc. clearly establish that the grantee/ license practically steps into the shoes of the

owner/grantor/licensor and he enjoys the copy right to the extent of its grant to the exclusion of others. Therefore, the consideration received by the assessee falls in the category of royalty both u/s. 9(1) (vi) of the IT Act, 1961 and article 12 (3) (a) and article 12 (3) (b) of Indo US DTAA.

25.1 It is the submission of the Ld. Counsel for the assessee that the assessee being a USA company enters into agreements with the customers for sale of licenses. As per various clauses in the agreement the assessee retains the ownership of intellectual property rights relating to the software licenses sold to customers. The assessee permits the customers to merely use the software licenses for their business need. The assessee restricts its customers from duplicating/ adopting etc of the software products. It is the submission of the Ld. Counsel for the assessee that the moment restrictions are put regarding copying/duplicating/ reproducing etc a copy right gets converted into a copy righted product. However, in the instant case, the assessee does not part with any copy right to the customers but merely extends a copy righted product to the customers. It is also his submission that unless and until a right protected under the copy right Act is not extended / shared with a party, and unless consideration is received for such a right, there is no case of any royalty for IT purpose. According to the Ld. AR the limb for sale / commercially rent as so made applicable for software, infact, ascribes copyright protection even in making of such use purpose copies. According to him the enhanced kitty of copyright protections for software, elevates the software family and makes the same highly protected from infringements. It is also his submission that the assessee has not transferred any rights for copying the softwares for commercial exploitation.

26. We find some force in the arguments of the Ld. Counsel for the assessee. The terms royalties as used in article 12 (3) (a) and 12 (3) (b) reads as under :-

*3. The term "royalties" as used in this Article means
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(a) payments of any kind received as a consideration for the use of or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and

(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 Article 8.

27. We find the issue as to whether software with restriction of copying etc is a copy right or a copy righted product has been considered and decided by various courts and different benches of the Tribunal. We find the Hon'ble Delhi High Court in the case of Director of Income Tax Vs. Infra Soft Limited reported in 220 taxman.com 273 has held that amount received by assessee, a non resident company for granting licenses to use its copy righted software for own business purpose only could not be brought to tax as royalty under article 12 (3) Indo US DTAA. The relevant observation of the Hon Tale Delhi High Court reads as under :-

“89. There is a clear distinction between royalty paid on transfer of copyright rights and consideration for V transfer of copyrighted articles. Right to use a copyrighted article or product with the owner retaining 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 non-exclusive 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 right 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 must acquire rights either in entirety or partially co-extensive 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 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 copyrighted 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 Infracsoft copyright and all copies of the software shall be exclusive properties of Infracsoft. 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 Infracsoft.

93. The licensee has been prohibited from copying, decompiling, de-assembling, or reverse engineering the software without the written consent of Infracsoft. 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 Infracsoft and only Infracsoft 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 licensee shall return the software including supporting information and licence authorization device to Infracsoft.

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 copyright 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 copyright 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 Karnataka High Court in the case of Sadisung 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 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 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.

100. The question of law is thus answered in favour of the Assessee and against the Revenue that the Income-tax Appellate Tribunal was right in holding that the consideration received by the respondent Assessee on grant of licences for use of software is not royalty within the meaning of Article 12(3) of the Double Taxation Avoidance Agreement between India and the United States of America.

28. We find the Hon'ble Delhi High Court in the case of PCIT vs. M. Tech India Private Limited reported in 381 ITR 31 has held that where payments are made for purchase of software as a product would be treated as a payment for purchase of software rather than payment for use or right to use software' to be considered as a royalty. The relevant observation of the Hon'ble High Court from para 10 onwards reads as under :-

10. The Assessee had entered into a "VAR Agreement" with THPL. Paragraph 1.1 of the said agreement expressly indicates that THPL had appointed the Assessee (described as VAR) to "market and sell the products" in the Territory. Article 2 of the said Agreement provides for "VAR's Obligations". Clause (a) of paragraph 2.1 of Article 2 expressly provides that the Assessee "Shall promote, market and sell the Products in accordance with a business plan which shall be submitted to Trak within three (3) months of the effective date of the Agreement". Paragraph 4.2 entitles the Assessee to, inter alia, use the software and source codes for a limited purposes to

sell and promote the software for use by third parties; demonstrate the software to third parties; and to customise the software for the purposes of End Users. The said agreement further contains a number of covenants to ensure that the Intellectual Property Rights in respect of the software, related material and source codes remains with THPL. A plain reading of the aforesaid agreement indicates that the Assessee has appointed for the purposes of reselling THPL's software.

11. The CIT (A) found that the Assessee was engaged in the resale of software and the payments made by it to THPL and others were on account of purchases made by the Assessee. The ITAT concurred with the aforesaid finding. It is also not disputed that in the preceding years, the AO had accepted the transactions in question to be that of purchase of software. The limited issue to be addressed is whether in view of these findings the amount paid by the Assessee could be taxed as royalty.

*12. In the cases where an Assessee acquires the right to use a software, the payment so made would amount to royalty. However in cases where the payments are made for purchase of software as a product, the consideration paid cannot be considered to be for use or the right to use the software. It is well settled that where software is sold as a product it would amount to sale of goods. In the case of *Tata Consultancy Sendees v. State of Andhra Pradesh* [2004] 271 ITR 401/141 Taxman 132 (SC), the Supreme Court examined, the transactions relating to the purchase and sale of software recorded on a CD in the context of the Andhra Pradesh General Sales Tax Act. The court held the same to be goods within the meaning of Section 2(b) of the said Act and consequently exigible to sales tax under the said Act. Clearly, the consideration paid for purchase of goods cannot be considered as 'royalty'. Thus, it is necessary to make a distinction between the cases where consideration is paid to acquire the right to use a*

patent or a copyright and cases where payment is made to acquire patented or a copyrighted product/material. In cases where payments are made to acquire products which are patented or copyrighted, the consideration paid would have to be treated as a payment for purchase of the product rather than consideration for use of the patent or copyright.

13. A Coordinate Bench of this Court has also expressed a similar view in the case of *Infrasoft Ltd. (surpa)*. In that case, the Revenue sought to tax the receipts on sale of licensing of certain software as royalty. The Tribunal held that there was no transfer of rights in respect of the copyright held by the Assessee in the software and it was a case of mere transfer of copyrighted article. This Court concurred with the Tribunal and held that what was transferred was not copyright or the right to use a copyright but a limited right to use the copyrighted material and that did not give rise to any royalty income.

14. Insofar as the reliance placed by the Revenue on the decision of the Karnataka High Court in *Samsung Electronics Co. Ltd. (supra)* is concerned, a Coordinate Bench of this Court in *Infrasoft Ltd. (surpa)* has unequivocally expressed its view that it was not in agreement with that decision. Thus, the said decision is of no assistance to the Revenue in this case.

15. In another case, *Dynamic Vertical Software India (P.) Ltd. (supra)*, this Court had reiterated the view that payment made by a reseller for the purchase of software for sale in the Indian market could by no stretch be considered as royalty.

16. In the aforesaid view, the question framed must be answered in the affirmative, that is, in favour of the Assessee and against the Revenue.

17. The Appeal is accordingly dismissed. In the circumstances the parties are left to bear their own costs.

29. We find the Hon'ble Madras High Court in the case of CIT Vs. Vinzas Solutions India Private Limited reported in 77 taxman.com 279 has held as under :

“The provisions of Section 9(1)(vi) dealing with and defining royalty cannot be made applicable to a situation of outright purchase and sale of a product. According to the corpus juris secundum, the word 'royalty' means a share of the product or profit reserved by the owner for permitting another to use the property, the share of the product or profit paid by the owner; a share of the product or proceeds therefrom reserved to the owner for permitting the another to use the property; the share of the produce reserved to the owner for permitting another to exploit and use the property; a share of the profit, reserved by the owner for permitting another to use the property; the amount reserved or the rental to be paid the original owner of the whole estate. [Para 4]

- *The Madras High Court in CIT v. Neyveli Lignite Corpn. Ltd. [2000] 243 ITR 459/109 Taxman 369 has explained the concept of royalty as the payment made by a person who has exclusive right over a thing for allowing another to make use of that thing which may be either physical or intellectual property or thing. The exclusivity of the right in relation to the thing for which royalty is paid should be with the grantor of that right. Mere passing of information concerning the design of a machine which is a tailor- made to meet the requirement of a buyer does not by itself amount to transfer of any right of exclusive user, so as to render the payment made therefore, being regarded as 'royalty'. [Para 5]*
- *The Courts have consistently noted the difference between a transaction of sale of a 'copyrighted article' and one of copyright' itself. [Para 6]*
- *The provisions of section 9(1)(vi) as a whole, would stand attracted in the case of the latter and not the former. Explanations 4 'and 7 relied by the authorities would thus, have to be read and understood only in*

that context and cannot be expanded to bring within its fold transaction beyond the realm of the provision [Para 7]

30. *We find the Mumbai Bench the Tribunal in the case of ADIT (IT) Mumbai Vs. First Advantage Private Limited reported in 77 taxman.com 195 has held that Payment made by assessee to US company for use of software owned by US company, when assessee would use software only for internal business operations and would not sublicense or modify same, could not be considered as royalty within meaning of article 12(4) of DTAA.*

31. *We find the Coordinate Bench of the Tribunal in the case of ACIT Vs. Landmarks Graphics Corporation reported in 87 taxman.com 311 has held that where assessee, a US based company, did not have PE in India and its activities were not covered by deeming fiction of article 5(2) of India - USA DTAA, income earned by it from sale of software to Indian companies which was 'off the shelf software, was not taxable In India.*

32. *We find the coordinate Bench of the Tribunal in the case of Black Duck Software Inc Vs. DCIT reported in 86 taxman.com 62 has held that where assessee, a US based company, granted a non-exclusive, non-transferable software license to Indian customer for a specific time period, since copyright in said software programme was retained by assessee, payment received by it was not liable to tax in India as royalty.*

33. *We find the Delhi Bench of the Tribunal in the case of Aspect Software Inc Vs. ADIT reported in 61 taxmann.com 36 has held that consideration received by assessee for supply of 'contact solutions' used for better management, customer interaction, comprising of sale of hardware alongwith license of embedded software to end user is not royalty under article 12 of DTAA between India and USA. Provision of implementation and maintenance services are inextricably and essentially linked to supply of software; where supply of software is itself not taxable as 'royalty', these services are also not royalty.*

34. *Respectfully following the decisions cited (supra) we hold that the payment received by the assessee from its customers from sale of software products/ licenses is not in the nature of the royalty u/s. 9(1)(vi) of the IT Act, 1961 and also as per article 12(3)(a) and article 12(3)(b) of the Indo US DTAA. In our opinion the said amount received by the assessee is normal business income of the assessee on account of sale of copy righted products (licenses) and not taxable in India in the absence of permanent establishment. The various decisions relied on by the Ld. DR are not applicable to the facts of the case and are distinguishable. The grounds raised by the assessee are accordingly allowed.”*

8. *Ld. DR has submitted that the Tribunal had not decided the issue of ‘royalty’ based on alternative position taken by the Assessing Officer which included PMS software as a patent/process/equipment, etc., and he has highlighted that in this case the payment is also for the consideration for use of ‘process’. However, from the reading of the impugned assessment order, we find that it is not the case of the Assessing Officer that the software sold by the assessee involves any kind of ‘process’. Assessing Officer has by and large discussed the various judgments and the stress upon the fact that the consideration is vis-a-vis for the use of; or the right to use as given in Article 12(3) and Indo-US DTAA and Explanation 4 to Section 9(1)(vi). It is not in dispute that the assessee is into the sale of project management software licenses to various customers and is providing copyright product on the sale basis. This software is downloaded from the internet and products with the licenses extended with the same and are basically in the nature of sale of Shrink wrapped software. No source code or any authority is extended to the customers for making any changes, duplication of the standard software products and it merely gives user license and no substantial right to reproduce or copyright software is given to the customers. Only restricted rights have been given to the customers. In any case, any retrospective amendment brought in the statute cannot be read into the articles of DTAA when no corresponding management in the bilateral treaty have been made. This precise issue stands covered by the decision of Hon’ble Jurisdictional High Court in the case of Nokia Networks OY and DIT vs. Infra Software (supra).*

9. *Thus, there is no change in the facts and circumstances of the case and the issues involved as well as the findings given by the authorities below and therefore, the aforesaid decisions and the findings of the Tribunal will apply mutatis mutandis for this year also, therefore, respectfully following the same, the payment received by the assessee from its customer is held to be from sale of software products/licenses which does not fall in the nature of 'royalty' as per Article 12(3), and therefore, same is not taxable in India. Since, assessee does not have any PE in India which is an admitted position; therefore, sale on account of copyrighted projects is not taxable as business income in India. On the issue of time limit for pronouncement of order as per ITAT Rules 1963, this order is pronounced beyond 90 day from the date of hearing due to COVID 19 and consequent lockdown and restricted operations. Therefore relying up on the decision of the coordinate Bench in [2020] 116 taxmann.com 860 (Mumbai - Trib.) we exclude the period during which lockdown was in force is to excluded for the purpose of time limits set out in Rule 34(5) of the Appellate Tribunal Rules, 1963. Accordingly, the ground raised by the assessee is allowed."*

8. Before us, neither any distinguishing facts of the present case and that of earlier years has been pointed out by Revenue nor has placed on record any material to demonstrate that the order of Tribunal in the assessee's own case for earlier years has been set aside/stayed or overruled by higher judicial forum. In such a situation, following the aforesaid decision of the Coordinate Bench of Tribunal for A.Y. 2013-14 and for similar reasons hold the amount received by the assessee from sale of software products/licenses to be not royalty as per Article 12(3) and as per Section 9(1)(vi) of the Act. **Thus the grounds of the assessee are allowed.**

9. **In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on 25.11.2022

**Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 25.11.2022

PY*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI