

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT**

ITA No.602/Del/2023
Assessment Year: 2017-18

DCIT, Circle-1(1)(2), International Taxation, New Delhi	Vs.	Black Duck Software Inc., 265, Winter Street Waltham 02451, USA
		PAN :AAECB2775L
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Sanjay Kumar, Sr. DR

Date of hearing	03.08.2023
Date of pronouncement	10.08.2023

ORDER

This is an appeal by the Revenue against order dated 28.12.2022 passed by learned Commissioner of Income Tax (Appeals)-42, Delhi, pertaining to assessment year 2017-18.

2. When the appeal was called out, none appeared on behalf of the respondent-assessee. On perusal of record, it is observed that notice of hearing was issued to the respondent-assessee, both through postal mode as well as in the email id as provided in the

memorandum of appeal. However, none appeared on behalf of the assessee to represent the case.

3. Considering the nature of dispute, we proceed to dispose of the appeal *ex-parte qua* the respondent-assessee after hearing learned Departmental Representative and based on the materials available on record. The dispute in the present appeal is confined to the issue, whether the amount of Rs.4,10,37,496/- received by the assessee from certain entities in India is in the nature of royalty/Fee for Included Services (FIS) under section 9(1)(vi) of the Income-tax Act, 1961 (in short 'the Act') and Article 12 of India – USA Double Taxation Avoidance Agreement (DTAA).

4. Briefly the facts are, the assessee is a non-resident corporate entity and a tax resident of United States of America (USA). As stated by the Assessing Officer, the assessee is a leading provider of software products and services. The assessee had entered into master license and subscription agreement with Infosys Ltd. and Wipro Ltd., two Indian entities, for supply of software products with associated services. In the year under consideration, the assessee received an amount of Rs.4,10,37,496/- towards supply of software products and services to Indian entities. In course of

assessment proceedings, the assessee claiming the benefit under Article 12 of India – USA DTAA, submitted that since, there is no transfer of use or right to use of copyright, the amount received from the Indian entities is not in the nature of royalty/FIS. The Assessing Officer, however, was not convinced with the submissions of the assessee. He observed that while framing assessments for assessment years 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17, the revenue received by the assessee for providing licenses and services to the Indian customers have been treated as royalty under section 9(1)(vi) of the Act. Thus, relying upon the decision making process adopted in past assessment years, the Assessing Officer, ultimately, concluded that the amounts received by the assessee from supply of software licenses and associated services from Indian entities are taxable as royalty/FIS, both under the provisions of the Act and India-USA DTAA. Accordingly, he added back the amount to the income of the assessee and brought it to tax on gross basis by applying the rate of 15%. The assessee contested the aforesaid addition before learned Commissioner (Appeals).

5. From the submissions made by the assessee and materials produced, learned Commissioner (Appeals) noticed that following the decision of Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence Pvt. Ltd., (2021) 432 ITR 471, the Tribunal has decided the issue in favour of the assessee in past assessment years, i.e., assessment years 2012-13, 2014-15, 2015-16 and 2016-17. He further found that the Assessing Officer himself in assessment year 2019-20 has accepted assessee's claim that the amounts received from sale/supply of software licences and associated services are not taxable as royalty/FIS. Accordingly, he deleted the addition.

6. Before us, learned Departmental Representative fairly submitted that in the past assessment years, identical issue has been decided in favour of the assessee by the orders of the Tribunal.

7. Thus, considering the fact that the issue in dispute is squarely covered in favour of the assessee by the decision of Hon'ble Supreme Court in case of Engineering Analysis Centre of Excellence Pvt. Ltd. (supra) and various orders of the Tribunal in assessee's own case in past assessment years, we do not find any

reason to interfere with the decision of learned Commissioner (Appeals). Accordingly, we uphold the deletion of amount in dispute. Grounds are dismissed.

8. In the result, appeal is dismissed.

Order pronounced in the open court on 10th August, 2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Dated: 10th August, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi