

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH :H: DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 2125/Del/2023  
Assessment Year: 2020-21**

Microsoft Regional Sales Pte. Ltd., (Formerly known as Microsoft Regional Sales Corporation), C/o. Mr. Nirmal Malpani, Ernst & Young LLP, 3 <sup>rd</sup> & 6 <sup>th</sup> Floor, Worldmark 1, IGI Airport Hospitality District Aerocity, New Delhi-1100 37  (PAN:AADCM1638A)	Vs.	ACIT, Circle-2(2)(1), International Taxation, Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee by : Shri Akshay Uppal, Adv.  
Department by : Sh. Vizay B Vasanta, CIT-DR

Date of Hearing : 01.10.2023

Date of Pronouncement : 17.10.2023

**ORDER**

**PER SAKTIJIT DEY, VICE PRESIDENT:**

Captioned appeal by the assessee arises out of final assessment order dated 27.06.2023 passed under Section 143(3) read with section 144C(13) of the Income-Tax Act,1961 pertaining to assessment year

2020-21, pursuant to directions of learned Dispute Resolution Panel (DRP).

2. The dispute in the present appeal is relating to taxability of receipts from Cloud Services as royalty both under the domestic law as well as under India-USA Double Taxation Avoidance Treaty (DTAA). At the very outset, learned counsel appearing for the assessee submitted that the issue is squarely covered by the decision of Hon'ble Supreme Court in case of Engineering Excellence (P) Ltd. vs, CIT – 432 ITR 47 (SC). He further submitted that in assessee's own case in past assessment years, the Tribunal has consistently held that the revenue earned from Cloud Services is not taxable as royalty either under the domestic law or under the treaty provisions. He submitted, even, Hon'ble Supreme Court has dismissed the special leave petition filed by the Revenue in assessee's own case on identical issue, in assessment years 2015-16, 2010-11 and 2017-18. Thus, he submitted, the issue stands squarely covered in favour of the Revenue.

3. Learned Departmental Representative, though, fairly agreed with the aforesaid submissions of the assessee, however, he relied upon the observations of the Assessing Officer and learned DRP.

4. Having considered rival submissions and perused the materials on record, we find that this is a recurring issue between the assessee and the Revenue from assessment years 2010-11 onwards. Beginning from assessment years 2010-11 till assessment year 2019-20, the Tribunal has consistently decided the issue in favour of the assessee by holding that the Revenue earned from Cloud Services, cannot be treated as royalty. The latest order passed by the Tribunal on the issue is for assessment years 2018-19 and 2019-20 vide ITA Nos.1912 and 1913/Del/2023 dated 19.01.2023. It is further observed, the decision of the Tribunal in assessment years 2010-11 and 2017-18 has been upheld by the Hon'ble High Court. Even, the Hon'ble Supreme Court has dismissed the Special Leave Petitions filed by the Revenue raising identical issue of taxability of revenue earned from Cloud Services as royalty in assessee's case. The orders of Hon'ble Supreme Court in this regard are placed in the legal

compilation filed before us. Thus, in our considered opinion, the issue stands squarely settled in favour of the assessee.

5. In view of the aforesaid, we direct the Assessing Officer to delete the addition.
6. In the result, the appeal is allowed.

***Order pronounced in the open court on 17.10.2023.***

**Sd/-**

**( DR. BRR KUMAR )  
ACCOUNTANT MEMBER**

**Sd/-**

**(SAKTIJIT DEY)  
VICE-PRESIDENT**

**Dated: 17<sup>th</sup> October, 2023  
Mohan Lal**

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation:	09.10.2023
2.	Date on which the draft of order is placed before the Dictating Member:	11.10.2023
3.	Date on which the draft of order is placed before the other Member:	12.10.2023
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	16.10.2023
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	16.10.2023
6.	Date on which the final order received after having been signed/pronounced by the Members:	17.10.2023
7.	Date on which the final order is uploaded on the website of ITAT:	18.10.2023
8.	Date on which the file goes to the Bench Clerk	18.10.2023
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	