आयकर अपीलीय अधिकरण
दिल्ली पीठ "डी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आअसं.1974/दिल्ली/2020 (नि.व. 2017-18)
ITA No.1974/DEL/2020 (A.Y. 2017-18)
आअसं.1569 दिल्ली/2022 (नि.व. 2018-19)
ITA No.1569 /DEL/2022 (A.Y.2018-19)
आअसं. 1570/दिल्ली/2022 (नि.व. 2019-20)
ITA No. 1570/DEL/2022 (A.Y2019-20)
आअसं.1858/दिल्ली/2023 (नि.व. 2020-21)
ITA No. 1858/Del/2023 (A.Y. 2020-21)

Bently Nevada LLC,
C/o 19th Floor, DLF Square Building,
DLF Phase-2, Gurugram, Haryana 122 002
PAN: AADCB-8118-J ..... अपीलार्थी/Appellant

बनाम Vs.

Assistant Commissioner of Income Tax,
Circle 1(1)(2), International Taxation, 5th Floor,
D Block, Prayakshar Bhawan, Civic Centre,
Minto Road, New Delhi 110002 ..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sachit Jolly,
Ms. Disha Jham & Shri Divyansh Jain, Advocates

प्रतिवादी द्वारा/ Respondent by : Shri Vijay B Vasanta, CIT-DR

सुनवाई की तिथि/ Date of hearing : 17/10/2024

घोषणा की तिथि/ Date of pronouncement: : 29/10/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These four appeals by the assessee for assessment years 2017-18 to 2020-21, respectively are taken up together as they emanate from identical set of facts and similar grounds have been raised by the assessee in all these appeals. For the sake of convenience, these appeals are taken up for adjudication in seriatim of assessment years. Appeal of the assessee for AY 2017-18 is taken up as a lead case, hence, the facts are narrated from said appeal.

ITA No. 1974/Del/2020 for AY 2017-18

2. This appeal by the assessee is directed against the assessment order dated 29.10.2020, passed u/s. 144C(13) r.w.s 143(3) of the Income Tax Act, 1961(hereinafter referred to as 'the Act').

3. Shri Sachit Jolly appearing on behalf of the assessee narrating facts of the case submitted that the assessee is a US based company engaged in the business of supplying goods from outside India. The assessee is a wholly owned subsidiary of a General Electric Company. During the relevant period, the assessee made offshore sale of goods and offshore sale of software and related support services to its various customers in India. In the past, the assessee has been carrying out similar activities through its Liaison Office (LO) in India. Due to presence of LO in India the Assessing Officer (AO) in the preceding assessment years i.e. AY 2002-03 to 2006-07 held that the assessee has PE in India. Since, the assessee was held to be carrying out its operation through Permanent Establishment (PE), the AO

attributed profits to assessee's PE in India. The Dispute Resolution Panel (DRP) in principle following its earlier directions for AY 2001-02 rejected assessee's objection and upheld the assessment order; however, the DRP modified attribution of profits restricting it to 2.6%. The ld. Counsel for the assessee submitted that in the preceding assessment years i.e. AY 2001-02 to 2006-07, the findings of the AO and the DRP were confirmed by the Tribunal, the Tribunal held that the assessee was having business connection in India and the LO was treated as PE of the assessee in India. In the year 2012, the assessee closed down operations of it's LO and since then no activity was carried out at the LO and no employees were expatriated to LO in India. Hence, there is change in the circumstances with the closure of LO in India.

4. The ld. Counsel submits that in the impugned assessment year, the consistent stand of the assessee throughout is that the assessee has no PE or DAPE in India. The assessee before the AO had furnished an Annual Statement u/s. 285 of the Act in Form 49C wherein it was specifically stated that, *'No activity is undertaken by the LO. Management doesn't intend to continue the LO and intends to file for closure of LO'.* With regard to the number of employees working in the Liaison Office, the assessee had categorically stated that LO had no employees during the subject financial year. To further substantiate its contention the ld. Counsel referred to Notes to the financial statement for the year ended 31.03.2017 (at page 346 of paper book), where he pointed that it was specifically stated that the India Liaison Office did not carry on any activities during the year. The management does not intend to continue the Indian liaison office and intends

to file for closure of Liaison Office in the near future, subject to regulatory compliances.

5. The ld. Counsel asserted that the AO without considering the submissions of the assessee merely followed the assessment order for AY 2001-02 to complete the assessment in the impugned assessment year. He pointed that in para 13 of the assessment order, the AO records assessee's contention that LO at GEIOC has been vacated and no employees visited India, but rejected said contentions of the assessee by observing that no documentary evidences was submitted in support of this claim. He finally following the assessment order for AY 2002-03 to 2006-07 held that the assessee has business connection as well as permanent establishment in India for the year under consideration. The findings of the AO are contrary to facts and documents on record. The assessee had shifted its operations from AIFACS Building as General Electric International. Operations Co. Inc. (GEIOC) had shifted its place of business from said building to Aggarwal Millennium Tower, Wazirpur, Delhi. The assessee in order to substantiate change of office had furnished copy of Form 52 before the AO, wherein the assessee had given the new/current address. The said form was filed before the Registrar of Companies. He further pointed that even in Form no 49C, the copy of which was provided to AO, the principal place of business was mentioned as 401/402, 4th Floor Aggarwal Millennium Tower, Wazirpur, Delhi and not the premises at AIFACS as stated by the AO. The AO has finalized assessment order in the impugned assessment year on wrong appreciation of facts by merely placing reliance on earlier assessment orders.

6. The ld. Counsel for the assessee stated that the Tribunal during the course of hearing of appeal on 13.09.2023 had observed that the authorities below while considering factual matrix particular to the subject years have dealt with the issue in a sketchy manner and, thus, called a remand report from the AO, on the specific two queries i.e. (i) What is the place of business in India i.e. stated to be at the disposal of the assessee during the subject years; and (ii) Who were expatriates present in India so as to constitute PE of the assessee. On the said specific directions of the Tribunal, the AO furnished report on 19.12.2023, wherein the AO admitted that the assessee vacated Liaison Office on 01.05.2012 at the premises AIFACS of GEIOC and with regard to expects the AO recorded that no expatriates were present in India in the years under consideration. The assessee had furnished all the relevant documents before the AO during assessment proceedings, the AO rejected the same without any reasoning and completed the assessment on wrong appreciation of facts. The assessee cannot prove negative. Once the assessee has denied having any LO in India thereafter the onus is on the AO to prove that the assessee has LO in India and the expatriate employees of the assessee are working in India.

7. Against the draft assessment order the assessee raised an objection before the Dispute Resolution Panel. A specific ground i.e. ground no. 3.3 was raised before the DRP with regard to assessee having no fixed place PE under Article 5(1) and 5(2) of the Tax Treaty and also with regard to findings of the AO on expatriate employee of the assessee. The DRP in para 3.2.1 of the directions after considering the earlier order of Tribunal for AY 2001-02 rejected contention of the

assessee and erred in coming to the conclusion that the assessee is having PE in India comprising of expatriate from GEII and is using the LO premises of GEIOC at AIFACS building during the impugned AY.

8. The ld. Counsel for the assessee in support of his submissions placed reliance on the order the of Tribunal in the case of GE Energy Parts Inc vs. ACIT in ITA No. 2033/Del/2022 for AY 2019-20 decided on 25.07.2023 wherein on identical set of facts the AO held that GE Energy Parts Inc was having PE in India in the premises of GEIOC taken on lease at AIFASC building. The Tribunal after considering the facts of the case held that the assessee was not having any PE in India in the impugned assessment year.

8.1. He also placed reliance on the decision of Tribunal in the case *Nuovo Pignone International vs DCIT in ITA No. 999/del/2022 for AY 2018-19* decided on 13.06.2023 on similar set of facts wherein the Tribunal reversed findings of the AO and held that the assessee was not having PE on DAPE in India during the relevant period.

9. Per contra, Shri Vijay B Vasanta, representing the department vehemently defended the impugned assessment order. He pointed that during assessment proceedings a specific query was raised by the AO that as to whether there is any difference in factual matrix or business model during the subject assessment year as compared to the earlier year. The assessee in reply to the query raised by AO categorically stated that there was no change in the factual matrix of the business as compared to the earlier year. Accordingly, the AO completed assessment after

considering the facts of the impugned assessment year and following the assessment orders for AY 2001-02 to 2006-07.

10. We have heard the submissions made by rival sides and have examined the orders of authorities below. The ground of appeal no. 1 to 11 are against the findings of AO in holding that the assessee is having PE in India and attribution of profits to assessee's PE in India. At the outset, we may record that in the preceding assessment years that is AY 2001-02 to 2006-07, the Tribunal has upheld the findings of the AO in holding that the assessee is having business connection and PE in India. Accordingly, profits were attributed to assessee's PE in India.

11. The assessee has always been disputing presence of its PE in India, though it had LO. The assessee's LO was held PE in India as assessee's expatriated employees visited LO from time to time and worked in India.

12. In the impugned assessment year though there is no change in the business of the assessee, however, one major shift in conducting business in India by the assessee is that the assessee closed it’s LO operations. Further, the assessee did not sent any expat employee to India. To substantiate these facts, the assessee furnished a copy of Annual Statement in Form 49C as mandated under the provisions of section 285 of the Act, a copy of Form no. 52 furnished before the Registrar of Companies under the Companies Act 1956, Notes to the financial statement for the year ended 31.03.2017.

13. When this appeal was taken up for hearing by the Bench on 13.09.2023, the Bench during the course of hearing of appeal found that the findings of the authorities below are sketchy with regard to assessee having LO in India. Thus, the Bench sought remand report from the department. For the sake of completeness, the observations/directions of the Bench recorded on 13.09.2023 are reproduced here in below:-

> *"In the captioned 4 Appeals pertaining to AYrs 2017-18 to 2020-21, a common controversy is whether the assessee has a fixed place Permanent Establishment (fixed place PE) and / or Dependent Agent PE (DAPE) in India in terms of Article 5 of the India-US DTAA. The background is that for AYrs. 2002-03 to 2006-07, the income-tax authorities held that the assessee had a fixed place PE as well as a Dependent Agent PE for the reasons - (i) that the assessee had its disposal an office premises by way of AIFACS building occupied by GEIOC LO i.e. (Indian Entity); and, (ii) that expatriates of the assessee alongwith the employees of GEIIPL (another Indian entity) engaged themselves in the activities of soliciting business and concluding contracts in India. The said decision of the income-tax authorities has also been upheld by the Tribunal.*
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> *So far as the captioned assessment years are concerned, the case of the appellant, right from the assessment proceedings, has been that it has neither a Fixed place PE or a Dependent Agent PE for the reasons that - (i) AIFACS building has since been vacated by GEIOC LO on 01.05.2012; (ii) no expatriate employee was present in India in these assessment years; and, (iii) the remuneration paid to GEIIPL had increased substantially from cost +5% to cost +25%. However, in the impugned orders passed by the income-tax authorities, the conclusion drawn for assessment years 2002-03 to 2006-07 has been followed.*
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> *At the time of hearing today, both parties have been heard at some length. The case put-forth by the appellant is that the factual assertions made by it have not being countered by the income-tax authorities, but merely disbelieved, and thus the conclusion drawn is not factually tenable.*
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> *Having perused the impugned orders, it is noticeable that the factual matrix peculiar to the subject years have been considered by the authorities in a very sketchy manner. In the absence of any meaningful and credible discussion in the impugned orders, even the Ld. CIT (DR) is also not in a position to assist the Bench in support of the case of the Revenue. We, therefore, deem it fit and proper to require the Assessing Officer to carry out an exercise of Remand, and record a finding as to – (i) What is the*

place of the business in India, that is stated to be at the disposal of the assessee during the subject years, and once it is so shown, then how the said place is considered at the disposal of the assessee; (ii) who were the expatriates present in India so as to constitute PE of the assessee and, if so, what contracts were concluded by such expatriates so as to constitute a Dependent Agent PE of the assessee in India. The AO is directed to carry out the said exercise and furnish his Report within a period of 6 weeks; and, the Appellant is expected to cooperate with the Assessing Officer, in the conduct of the extant remand exercise.

Registry is directed to post the matter for further hearing on 20.11.2023 as Part Heard. Both parties informed in Court."

14. In compliance with the directions of the Tribunal, the AO furnished report on 19.12.2023, the relevant extract of remand report from AO is as under:-

"To perform the exercise, this office requested information from the assessee vide letters dated 23/11/2023 and 12/12/2023. However, the assessce submitted the requisite information only on 14/12/2023, leaving insufficient time with this office to examine the matter thoroughly.

Keeping in mind the said limitations, the following report is being furnished on the two points at hand.

1.The assessee has submitted that the premises at AIFACS of GEIOC, liaison office was vacated on 1 May 2012 and the same was not at the disposal of the assessee in the year under consideration.

To substantiate the same, the assessee has submitted a copy of Form 52 filed for change of place of business filed with the ROC. However, it is pertinent to mention that the said form does not mention the new address to which the business has shifted. Further, the assessee has filed form 49C filed before the income tax authorities, which mention the LO's principal place of business at an address separate from what was mentioned in the assessment order. However, due to paucity of time it coutdn't be as certained whether the same would constitute a PE of the assessee.

2. Based on the assessee's response in the original proceedings and to the letter issued during remand, no expatriates were present in India the years under consideration."

15. A perusal of the assessment order reveals that the AO after recording the fact that there is no change in business activities as compare to earlier years has completed the assessment on similar lines as was done in AY 2002-03 to 2006-07. So much so that the AO has failed to look into documents furnished by the assessee to substantiate shifting of office premises of GEIOC from AIFACS building to Aggarwal Millennium Tower. A perusal of Form 52 at page 15 of the paper book reveals that GEIOC had shifted its premises in May 2012. However, the AO still recorded in the assessment order that the assessee has failed to furnish any documentary evidences to substantiate the change of office premises. Further, the assessee had furnished Annual Statement u/s. 285 of the Act in Form 49C at page no. 21 of the paper book. A perusal of the same reveals that in response to query at serial no. 7 i.e. Nature of activities undertaken by LO. The assessee replied, '*No activity is undertaken by the LO. Management doesn't intend to continue the LO and intends to file for closure of LO.'* In so far as total number of employees working in the LO during the relevant period, the assessee answered, *'Not applicable, LO had no employees during the subject financial year. However, total number of employees has been entered as 1 in Form 49C as the system is not accepting zero in corresponding row*'. The assessee has also placed on record Statutory Audited Accounts for the year ended on 31.03.2017 (at pages 336 to 445). In Notes to financial statement for the year ended 31.03.2017 under the heading 'Overview' it *inter alia* reported:-

> *"The Indian Liaison Officer did not carry on any activities during the year. Management does not intend to continue the India Liaison Office and intends to file for closure of the Liaison Office in the near future, subject to regulatory compliances."*

16. Once the relevant documents were placed before the AO by the assessee to substantiate its claim of having no LO in India, the onus shifts on the Revenue to prove otherwise. The AO has made no effort to examine claim of the assessee and to check the veracity of documents furnished during the assessment proceedings. The Tribunal sought remand report from the AO in September 2023. Six weeks time was given to the AO to furnish the report. The Assessing Officer furnished the report in December 2023, the said report is stated to be based on the information provided by the assessee. The AO had also expressed his helplessness in providing the said report without complete verification due to paucity of time. We do not agree with the Revenue/AO on the excuse of time limitation in furnishing the report. This appeal is taken up for hearing after almost 10 months from the date of furnishing report. If, the Assessing Officer had something more to add to the report dated 19.12.2023 or had any contrary material to rebut the contentions of the assessee, the AO could have very well furnished the same by way of supplementary report. The AO has not placed on record any material whatsoever to rebut contentions of the assessee with regard to closure of LO operations and no expatriate employees in India during the relevant period. The closure of LO operations in India result in paradigm shift in taxability and attribution of profits in India. With the closure of LO operations in India, the assessee will have no PE or DAPE in India. The Revenue has not placed on record any material to show that even after closure of LO operations, the assessee still has business connection that can be termed as PE or DAPE in India. In light of above, we find merit in the case of assessee. In the facts of the case and

documents on record, we hold that since no business activity was carried out by the assessee during the relevant period through LO and no expat employee were engaged by the assessee at LO, the assessee ceases to have any PE or DAPE in India in the impugned AY.

17. In somewhat similar facts in the case of assessee's group company Nuovo Pignone International SRL vs. DCIT (supra) the coordinate Bench after examining the facts held as under:-

> *"11. However, as far as the facts relating to impugned assessment year are concerned, AIFACS building, which earlier constituted the fixed place PE of the assessee in India, was vacated on 01.05.2012. In fact, this was brought to the notice of both the Assessing Officer and learned DRP in course of proceedings before them. In fact, on 29th May, 2018, the assessee has furnished annual statement u/s. 285 of the Act in Form 49C for the financial year 2017-18, clearly indicating that since no activity was undertaken by the liaison office, the Management does not intend to continue the liaison office and is to file for closure of the liaison office. Thus, the fact that AIFACS building has been vacated, no expatriates visited India during the year and the liaison office has been closed were brought to the notice of the departmental authorities in course of proceedings to demonstrate that the reasons for which the departmental authorities as well as the Tribunal and Hon'ble jurisdictional High Court held existence of PE, no longer exists in the impugned assessment year.*
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> *12. This is clearly evident from the submissions made and documents filed before the departmental authorities. Despite such submissions and evidences produced by the assessee, the departmental authorities have remained oblivious to such facts and materials brought on record and proceeded to conclude existence of PE merely relying upon the past orders passed by them and higher appellate authorities. It is trite law, the existence or otherwise of PE has to be determined on year to year basis, as the existence of PE has to be decided based on the definition of PE in the relevant tax treaty. Merely because in one year, the assessee had a PE in India, that by itself cannot lead to the conclusion that the assessee must be having a PE in subsequent assessment year, without looking into the relevant facts. In this context, we refer to the decision in the case of M/s. Bentley Nevada Inc. (supra). Further, in case of E-Funds IT Solution Inc. (supra), Hon'ble Supreme Court has very clearly and categorically held that the onus is entirely on the Revenue to establish existence of PE.*

13. Adverting to the facts of the present appeal, undisputedly, the assessee brought on record all material and evidences to establish that it does not have any PE in India. As it appears from the respective orders of the departmental authorities, without dealing with the submissions of the assessee and evidences brought on record through proper reasoning or by bringing any contrary material to controvert them, the departmental authorities have merely followed their earlier decision without making any effort to look into the specific facts of the impugned assessment year. As discussed earlier, the assessee has brought on record cogent evidence to demonstrate that there is substantial change in facts in impugned assessment year qua the existence of PE. The specific averment of the assessee regarding vacation of office premises at AIFACS building and no visit by expatriates in India during the year, have not been controverted by the departmental authorities by any specific factual finding. In case of Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd. (supra), Hon'ble jurisdictional High Court, while dealing with the issue of reopening of assessment based on information received from third party, observed, though such information can form basis for an examination/investigation by the Assessing Officer, but the decision to reopen the assessment has to be of the Assessing Officer and not of the third party. The Assessing Officer cannot merely do a cut and paste job for reopening the assessment without independent application of mind or verification or investigation. The aforesaid ratio laid down by Hon'ble jurisdictional High court squarely applies to the facts of the present appeal, as the departmental authorities have merely followed the decision taken by them and higher appellate authorities in assessee's cases in past assessment years without independent application of mind to the facts brought on record by the assessee or making proper verification/investigation of the evidences.

14. Thus, essentially, the evidences brought on record by the assessee remain uncontroverted. When the evidences brought on record by the assessee are before the departmental authorities, it is the duty of the departmental authorities to examine them on merits and thereafter, either to accept them or to reject them with proper reasoning by bringing on record contrary material/evidence. In the facts of the present appeal, the departmental authorities have failed to undertake such exercise. Therefore, in our view, it has to be concluded that the departmental authorities have not found anything amiss or adverse in the facts and material brought on record by the assessee. In such a scenario, we do not find any reason to again remit the matter back to the Assessing Officer to provide him a second inning to improve upon the deficiencies in the original assessment order. In view of the aforesaid, we are inclined to hold that keeping in view the facts and materials peculiar to the impugned assessment year, it has to be concluded that the assessee did not have any PE, either fixed place PE or dependent agent PE, in India in the year under consideration. We again reiterate, our aforesaid conclusion is purely based on the facts involved in the impugned assessment year."

18. In another case of assessee's group concern GE Energy Parts Inc. vs. ACIT (supra) the coordinate Bench on identical set of facts followed the decision in the case of Nuovo Pignone International SRL (supra) and held that the assessee has no PE in India in the impugned AY.

19. The ld. DR vehemently prayed for restoring the issue back to the file of AO for verification of facts. The Tribunal had already granted opportunity to the AO and to furnish report on the averments made by the assessee before us. But the Assessing Officer missed the opportunity. We don't want to keep this matter pending further any more. The department can avail the remedy of rectification, if, the assertions of the assessee are found to be factually incorrect with respect to no business activity being carried out by the assessee through LO in the impugned assessment year and no expat employees sent to India. Needless to say, such remedy has to be availed within the limitation period prescribed under provisions of the Act.

20. Thus, in facts of the case, we find merit in submissions of the assessee. Accordingly, we have no hesitation in holding that the assessee has no PE in Inida during the impugned AY, hence, question of attribution of profits to PE in India does not arise. In the result, ground no. 1 to 11 of appeal are allowed.

21. In ground no. 12 to 17 of appeal, the assessee has assailed the findings of AO in holding receipts from supply of software in India as 'Royalty'. The ld. Counsel for the assessee submitted that the software supplied by the assessee is embedded in the hardware. The reasons given by AO to treat the receipts as

Royalty in the impugned assessment year are similar to the one as were stated in the preceding assessment years. The assessee in AY 2012-13, 2014-15 & 2015-16 carried the issue in appeal before the Tribunal in ITA Nos. 743/Del/2017, 6304/Del2017 & 484/Del/2019, respectively. The Tribunal vide common order dated 07.03.2021 decided the issue in favour of the assessee.

22. The ld. DR vehemently defending the findings of the AO on this issue. However, he fairly stated that this issue has been considered by the Tribunal in assessee's own case in the preceding assessment years.

23. We have heard the submissions made by both sides. We find that in the assessment order the AO has treated the receipts from sale of software as royalty under the provisions of section 9(1)(vii) of the Act. The assessee raised objections before the DRP, the DRP directed the Assessing Officer to verify the records and, if, software supplied by the assessee is found to be embedded in hardware itself, the addition on account of royalty income was directed to be deleted. We find that the AO without complying with the directions of the DRP reiterated the findings given in draft assessment order and treated the receipts from software & related support as Royalty. This issue was also considered by the coordinate Bench in assessee's own case in the preceding assessment years i.e. AY 2012-13, 2014-15 & 2015-16 (supra). The Tribunal deleted the addition by observing as under:-

> *21. Second challenge is in respect to receipts of income from supply of software in India treating the same as royalty in terms of provisions of section 9(1)(vi) of the Act and Article 12 of the DTAA.*

22. A perusal of the assessment order shows that referring to the definition of royalty as in India-USA DTAA, the Assessing Officer was of the opinion that the words "use of or right to use" denote that both specific use and use of copy right result in earning of royalty income, even if it is called as 'sale' can be treated as royalty under the provisions of the Act.

23. This quarrel is now well settled by the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Center of Excellence Pvt Ltd. [2021] 432 ITR 471. The conclusion drawn by the Hon'ble Supreme Court in respect of such quarrel read as under:

> *"Given the definition of royalties contained in article 12 of the DTAAs 168 mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the Income-tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end- users, which would amount to the use of or right to use any copyright. The provisions contained in the Income-tax Act (section 9(l)(vi), along with*
>
> *Explanations 2 and 4 thereof), which deal with royalty, not being beneficial to the assessees, have no application in the facts of these cases.*
>
> *"Our answer to the question posed before us, is that the amounts paid by resident Indian end-users/distributors to non-resident computer s. manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the pay of royalty for the use of copyright in the computer software, and that same does not give rise to any income taxable in India, as a result of the persons referred to in section 195 of the Income-tax Act were not liable to deduct any TDS under section 195 of the Income-tax Act. The answer to this question will apply to all four categories of cases enumerated by paragraph 4 of this judgment.*
>
> *"The appeals from the impugned judgments of the High Court of Karnataka are allowed, and the aforesaid judgments are set aside. The rule the AAR in Citrix Systems (AAR) (supra) is set aside. The appeals from impugned judgments of the High Court of Delhi are dismissed."*
>
> *24. Respectfully following the decision of the Hon'ble Supreme Court [supra] we direct the Assessing Officer to delete the impugned addition in the captioned Assessment Years.*

Since, the facts in the impugned assessment year are perimetria, we see no reason to take a different view. Ergo, ground no. 12 to 17 are allowed for parity of reasons.

24. Ground no 18 to 20 of appeal are without prejudice and alternate to ground no. 12 to 17. Since, we have accepted primary contention of the assessee in respect of ground no. 12 to 17 of appeal, the grounds raised without prejudice in grounds of appeal no. 18 to 20 have become academic, hence, not deliberated upon.

25. In ground no. 21 and 22 of appeal, the assessee has assailed levy of interest u/s. 234A and 234B of the Act. Charging of interest under the aforesaid sections is consequential and mandatory, hence, ground no. 21 and 22 are dismissed.

26. In ground no. 22 of appeal, the assesee has assailed initiation of penalty proceeding u/s. 270A(9)(a) of the Act. Challenge to penalty proceedings at this stage is premature, hence, this ground is dismissed.

27. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

ITA No 1569/Del/2022 for AY 2018-19
ITA No 1570/Del/2022 for AY 2019-20
ITA No 1858/Del/2023 for AY 2020-21

28. Both sides unanimously stated that facts in the impugned assessment years and the grounds raised in appeals are identical to AY 2017-18. Hence, the submissions made in appeal for AY 2017-18 would equally hold good for these assessment years as well. We have examined the grounds of appeal for respective

AYs, we find that the assessee has raised grounds of appeal in the impugned assessment years identical to grounds raised in AY 2017-18. In light of above statement made by both the sides, findings given on various grounds of appeal in AY 2017-18 would *mutatis mutandis* apply to the impugned assessment years. For parity of reasons, appeals of the assessee are partly allowed.

29. **To sum up, appeals of the assessee for AYs 2017-18 to 2020-21 are partly allowed.**

Order pronounced in the open court on Tuesday the 29th day of October, 2024.

Sd/-	Sd/-
(AVDHESH KUMAR MISHRA)	(VIKAS AWASTHY)
लेखाकार सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 29/10/2024

NV/-

<u>प्रतिलिपि अग्रेषितCopy of the Order forwarded to</u> :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI