IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

I.T.A. No. 5505/Mum/2025
A.Y: 2010-11
with
I.T.A. No. 5506/Mum/2025
A.Y: 2011-12
with
I.T.A. No. 5507/Mum/2025
A.Y: 2012-13
with
I.T.A. No. 5508/Mum/2025
A.Y: 2013-14

DCIT- Circle 1(3)(1) Room No. 540, 5th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020	Vs.	Diebold India Private Limited Rolta Tower-1, 5th Floor, Plot No. 39, Central Road, MIDC, Marol, Andheri(E), Mumbai-400093 **PAN – AABCD6330N**
(Appellant)		**(Respondent)**

CO. No. 308/Mum/2025
(Arising out of ITA No. 5505/Mum/2025)
A.Y: 2010-11
with
CO. No. 309/Mum/2025
(Arising out of ITA No. 5506/Mum/2025)
A.Y: 2011-12
with
CO. No. 310/Mum/2025
(Arising out of ITA No. 5507/Mum/2025)
A.Y: 2012-13
with
CO. No. 311/Mum/2025
(Arising out of ITA No. 5508/Mum/2025)
A.Y: 2013-14

Diebold India Private Limited Rolta Tower-1, 5th Floor, Plot No. 39, Central Road, MIDC, Marol, Andheri(E), Mumbai-400093 **PAN – AABCD6330N**	Vs.	DCIT- Circle 1(3)(1) Room No. 540, 5th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.
(Appellant)		**(Respondent)**

Assessee by	Shri Nishant Thakkar/ Shri Hiten Thakkar
Revenue by	Shri Krishna Kumar (SR. DR.)

Date of Hearing	09.02.2026
Date of Pronouncement	09.03.2026

ORDER

Per Sandeep Gosain, JM:

The present appeals have been filed by the Revenue and cross objections by the assessee challenging the different impugned orders dt. 03.06.2025, 04.06.2025, 04.06.2025 & 04.06.2025 passed under section 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment years 2010-11, 2011-12, 2012-13 & 2013-14.

2. Since all the issues involved in these appeals and cross objections is common and identical and belongs to one assessee therefore, they have been clubbed, heard together and consolidated order is being passed. Firstly, we shall take **ITA No. 5505/Mum/2025, A.Y 2010-11** as lead case and facts narrated therein.

ITA No. 5505/Mum/2025, A.Y 2010-11

3. The revenue has raised the following grounds of appeal:

1 Whether on the facts and circumstances of the case and in law, Ld. CIT(A) was justified in deleting the disallowance of Rs. 18,42,93,456/-u/s 40(a)(i) of the Income Tax Act, 1961('the Act) by holding that assessee company is not required to deduct tax u/s 195 of the Act for payment for purchase of software products from Diebold Inc. ignoring the fact that such payments come under definition of 'royalty' given in para (3) of Article 12 of DTAA between India and USA?

2. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) was justified in deleting the disallowance of Rs. 18,42,93,456/- u/s 40(a)(i) of the Income Tax Act, 1961 (the Act) by holding that assessee company is not required to deduct tax u/s 195 of the Act for payment for purchase of software products from Diebold Inc. ignoring the fact that such payments come under definition of 'royalty' as per the provisions of Section 9(1)(vi) of the Act?

3. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) was justified in deleting the disallowance of Rs. 18,42,93,456/- u/s 40(a)(i) of the Income Tax Act, 1961('the Act)' by holding that assessee company is not required to deduct tax u/s 195 of the Act for payment for purchase of software products from Diebold Inc. ignoring the judgement of the Hon'ble High Court of Karnataka in the case of CIT, International Taxation vs. Samsung Electronics

Co. Limited [2012] 345 ITR 494 WHARE Hon'ble Court held that right to use software for internal business as per terms & conditions of Agreement and payment made in that regard would constitute 'royalty' as per Sec.9(1)(vi) read with Article 12 of DTAA between India and USA.?

4. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) was justified in deleting the disallowance of Rs. 18,42,93,456/u/s 40(a)(i) of the Income Tax Act, 1961(the Act)' by holding that assessee company is not required to deduct tax u/s 195 of the Act for payment for purchase of software products from Diebold Inc. ignoring the Explanation 4 to Section 9(1)(vi) of the Act inserted by Finance Act, 2012 with retrospective effect from 01.06.1976 which clarifies that the transfer of all or any rights in respect of any right, property or information has always included transfer of all or any right for use or right to use a computer software (including granting of a license)?

4. We first take up the appeal filed by the Revenue. All the grounds raised by the Revenue are inter-related interconnected and relates to challenging the order of Ld. CIT(A) in deleting the disallowance made by the Assessing Officer under section 40(a)(i) of the Act.

At the very outset, the ld. counsels for both the parties submitted that the issue involved in the present appeal is squarely covered by the judgment of the Hon'ble Supreme Court in the case of ***Engineering Analysis Centre of Excellence Pvt. Ltd. v. Commissioner of Income Tax*** and that the ld. CIT(A), while adjudicating the issue, had also relied upon the said decision.

The operative portion of the same has been reproduced herein below:

5.5.3. End-User Licence Agreements (EULA):

5.5.3.1. *The End User O a legal agreement between two entities. It's a legal contract between a software developer and the user, outlining the terms and conditions under which the user can use the software. Essentially, it grants the user rights to use the software while also specifying restrictions.* ***In the appellant's case, the appellant entered into Software Procure Agreement with Diebold Inc. which needs to be considered as EULA in this case.***

5.5.3.2. *In Part 7 of the Software Procure Agreement between the appellant and Diebold Inc. it is averred by the appellant, that it acknowledges that* ***Diebold Inc. is the legal owner of all rights, title and interest in the software acquired by the appellant company thereunder and the appellant is granted only those rights as are specifically provided in the said agreement and that the appellant shall utilize the software only for those purposes authorized therein and shall not take any action which may, in the reasonable opinion of the Diebold Inc., adversely affect or impair Diebold Inc. rights, title and interest in the software****.*

5.5.3.3. *In the Software Procure Agreement, vide a sub-para below Para 5 Other Software/Modification' it is provided* ***that the appellant company expressly acknowledges and agrees that it does not have right to (i) access the source code to the software, (ii) modify the software, (iii) create multiple copies or derivative works from the software or (iv) disclose, reverse engineer, or reverse compile the software, or (v) distribute the software as installed on the ATM it sell in India.***

5.5.3.4. Reservation of Rights and Ownership:

It is specifically noted in the above said agreement that Diebold Inc. granted only those rights as are specifically provided in the sald agreement and that the appellant shall utilize the software only for those purposes authorized therein. Diebold Inc. is the legal owner of all rights, title and interest in the software acquired by the appellant company.

EULA in the appellant's case spells out that Diebold Inc. granted only the copyrighted software to be installed on the ATMs in India and not the copyright embedded in the software.

5.5.3.5. Limitations on End User Rights:

The appellant company does not have right to (1) access the source code to the software, (ii) modify the software, (iii) create multiple copies or derivative works from the software or (iv) disclose, reverse engineer, or reverse compile the software, or (v) distribute the software as installed on the ATM it sells in India

A reading of the aforesaid agreement would show that what is granted to the distributor is only a non-exclusive, non-transferable licence to utilize computer software for ATMs in India, it being expressly stipulated that no copyright in the computer programme is transferred to the ultimate end-user. This is further amplified by stating that apart from a right to use the computer programme by the end-user himself, there is no further right to sub-license or transfer nor is there any right to reverse-engineer, modify, reproduce in any manner otherwise than permitted by the licence to the end-user. ***What is paid by way of consideration to the foreign, non-resident manufacturer, is the price of the computer programme as goods, that the end-user can only use it by installing it in the computer hardware owned by the end-user and cannot in any manner reproduce the same for sale or transfer, contrary to the terms imposed by the EULA.***

5.5.3.6. *In appellant's case, the "licence" that is granted vide the EULA, is not a licence in terms of section 30 of the Copyright Act, which transfers an interest in all or any of the rights contained in sections 14(a) and 14(b) of the Copyright Act, but is a "licence" which imposes restrictions or conditions for the use of computer software. The EULA before us do not grant any such right or interest, least of all, a right or interest to reproduce the computer software. In point of fact, such reproduction is expressly interdicted, and it is also expressly stated that no vestige of copyright is at all transferred, either to the distributor or to the end-user.*

5.5.3.7 *Thus, the right to use the copyrighted software in its ATMs by the appellant company as per the EULA wouldn't be defined as the Copyright itself as per Copyright Act and hence wouldn't be an ingredient of royalty in terms of India-USA DTAA.*

5.5.4. Chargeability of the amount paid by the appellant:

5.5.4.1. *The extract of the core section 195 is produced below:*

195. (1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in section 194LB or section 194LC) 92 (or section 194LD) or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force

5.5.4.2. *TDS u/s 195 has to be deducted on any sum chargeable under the provisions of Income Tax Act, 1961 not being income chargeable under the head 'Salaries'. But on the payments, such as interest, royalty, fees for technical services.*

5.5.4.3. *As per the provisions of Section 5(2)(b) of the Act, the total income of a non-resident also includes all income which accrues or arises or is deemed to accrue or arise in India to the non-resident.*

5.5.4.4. *To check whether the income of the non-resident is deemed to accrue or arise in India, Section 9 of IT Act has to be referred. B*

5.5.4.4.1. *Following shall be deemed to accrue or arise in India.*

Section 9(1)(ii) Income which falls under the head "Salaries", if it is earned in India, i.e. when the services are rendered in India [Tax deductible u/s. 192]

Section 9(1)(iii) Salary payable by the Central Govt. to a citizen of India for services rendered outside India [Tax deductible u/s. 192]

Section 9(1)(iv)- Dividend paid by an Indian company outside India

Section 9(1)(v) -Interest Income by way of interest payable by a Resident shall be deemed to accrue or arise in India except if amount used for business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India

Section 9(1)(vi) -Royalty Income by way of royalty payable by a Resident shall be deemed to accrue or arise in India except where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such

person outside India or for the purposes of making or earning any income from any source outside India.

Section 9(1)(vii) -Fees for Technical Services Income by way of fees for technical services payable by a Resident, except where the fees are payable in respect of services utilized in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

Section 9(1)(viii) -Sum of Money: Income arising outside India, being any sum of money referred to in Section 2(24) (xvila), paid on or after 5 July, 2019 by a resident to a non-resident/foreign company shall be deemed to accrue or arise in India.

Section 2(24) (xviia) includes in Income-any sum of money covered u/s. 56(2)(x) of the Act. However. Gift of any sum of money from relative shall not be liable for withholding tax obligation u/s. 195.

Section 9(1)(i) - Income other than Interest / Royalty FTS/Salaries/Dividend

5.5.4.5. *If the payment to non-resident or a foreign company is covered u/s. 9 of the Act and chargeable to tax, the provisions of Section 195 of the Act shall come into play.*

5.5.4.6. *In the appellant's case, the nature of payment made to Diebold Inc. is nothing but payments towards purchase of copynghted software to operate ATMs (i.e. goods) and the same wouldn't fit into the sections from 9(1)(i) to 9(1)(v Section195 of the Act shan't be applied.*

5.5.4.7. *Further, Circular No. 10/2002 dated 09.10.2002 by the Central Board of Direct Taxes ["CBDT"] to be referred in which "remittance for royalties" and "remittance for supply of articles or...computer software" were addressed as separate and distinct payments, the former attracting the "royalty" provision under Article 12 of the DTAA, and the latter being taxable as business profits under Article 7 of the DTAA, provided that the foreign, non-resident supplier or manufacturer had a permanent establishment ["PE"] in India.*

Article 7- Business Profits 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. *If the enterprise carries on business as*

aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment (b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment or (c) other business activities carried on in the other State of the same or similar kind as those effected through that permanent establishment.

5.5.4.8. *In the appellant's case, Diebold Inc. carried its business on its own and entered into the agreement with the appellant on its own and not via any Permanent Establishment. Hence its business profits won't be chargeable in India as per Article 7 of DTAA.*

5.5.5. *It is also clear from the analysis of the DTAA, the Income-tax Act, the Copyright Act that the amount paid by the appellant to the Diebold Inc. was not "royalty" as per article 7 & 12(3) of DTAA and that the same did not give rise to any "income taxable in India and wherefore, the appellant was not liable to deduct any tax at source u/s 195 of IT Act.*

5.6. *The appellant company relied on various judicial pronouncements in its favour However the recent judgement declared by the* ***Hon'ble SC*** *in the case* ***of Engineering Analysis Centre of Excellence Private Limited vs The Commissioner of Income Tax*** *on 2 March, 2021 needs to be obeyed and followed while studying the issue of the present case.*

5.7 *The instance of the appellant's case falls in the first category of cases dealt in the judgement. The said category deals with cases in which computer software is purchased directly by an end-user resident in India, from a foreign, non-resident supplier or manufacturer.*

5.8. *The relevant extracts of the case are being provided as below:*

"5. These cases have a chequered history. The facts of C.A. Nos. 8733-8734/2018 shall be taken as a sample, indicative of the points of law that arise from the various appeals before us. In this case, the appellant, Engineering Analysis Centre of Excellence Pvt. Ltd. ['EAC"], is a resident Indian end-user of shrink-wrapped, computer software, directly imported from the United States of America [USA]. The assessment years that we are concerned with are 2001-2002 and 2002-2003.

6. The Assessing Officer by an order dated 15.05.2002, after applying Article 12(3) of the Double Taxation Avoidance Agreement ["DTAA],

between India and USA, and upon applying section 9(1)(vi) of the Income Tax Act, found that what was in fact transferred in the transaction between the parties was copyright which attracted the payment of royalty and thus, it was required that tax be deducted at source by the Indian importer and end-user EAC. Since this was not done for both the assessment years, EAC was held liable to pay the amount of Rs. 1,03,54,784 that it had not deducted as TDS, along with interest under section 201(1A) of the Income Tax Act amounting to Rs. 15,76,567/-

5.9. *Vide Para 168 and 169, Hon'ble SC held that the amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which 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*

5.10. The relevant excerpt of the decision is extracted to here:

"168. Given the definition of royalties contained in Article 12 of the DTAAS 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(1)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessees, have no application in the facts of these cases.***

169. Our answer to the question posed before us, is that ***the amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which 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 us in paragraph 4 of this judgment"*

> *5.11. Since the appellant's case would fall in the ambit of the said judgement, following the Honourable Supreme Court's decision in the* ***case Engineering Analysis Centre of Excellence Private Limited vs The Commissioner of Income Tax, the grounds no. 1,2 & 3 are allowed in favour of the appellant. Hence it is reasoned that the appellant is not required to deduct tax u/s 195 for payments of Rs. 18,42,93,456/- made to Diebold Inc. and hence the AO is directed to delete the disallowance of Rs. 18,42,93,456/- u/s 40(a)(i) of the IT Act, 1961.***

5. We have heard the rival submissions and perused the material available on record. We find that the Ld. DR has not been able to place on record any material or establish as to how the case of the assessee is not squarely covered by the decision of Hon'ble Supreme Court in ***Engineering Analysis Centre of Excellence Pvt. Ltd.*** (supra). No new facts or circumstances have been brought before us to controvert or rebut the lawful findings so recorded by the learned CIT(A).

Therefore, we find no reason to deviate from or interfere with the findings recorded by the Ld. CIT(A). Accordingly, the grounds raised by the Revenue are rejected.

6. In the result, the appeal filed by the Revenue is dismissed

Connected Matters

7. As the facts and circumstances in the connected matters i.e. **ITA No. 5506/Mum/2025 for the A.Y 2011-12, ITA No. 5507/Mum/2025 for the A.Y 2012-13 & ITA No. 5508/Mum/2025 for the A.Y 2013-14** are identical to **ITA No. 5505/Mum/2025 for the A.Y 2010-**

11 (except variance in days of delay) and therefore, the decision rendered in above paragraphs would apply ***mutatis mutandis*** for connected appeals also. Accordingly, the grounds of appeal of the connected appeals also stands **dismissed**.

Co. No. 308/Mum/2025 (A.Y. 2010-11), Co. No. 309/Mum/2025 (A.Y. 2011-12), Co. No. 310/Mum/2025 (AY:2012-13), Co. No. 311/Mum/2025 (AY:2013-14)

8. Since we have already dismissed the appeal filed by the Revenue, therefore, COs filed by the assessee stands dismissed as the same becomes infructuous.

9. In the result, the appeal filed by the Revenue and the COs filed by the assessee stand dismissed.

Order pronounced in the open court on 09/03/2026

Sd/-	**Sd/-**
(PRABHASH SHANKAR)	**(SANDEEP GOSAIN)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai:

Dated: 09/03/2026

RY, Sr. PS

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai