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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 773/2017**

THE COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-1 ..... Appellant

Through: Mr.Sanjay Kumar, Mr.Rahul Chaudhary, Advocates.

Versus

ESERVGLOBAL SA. ..... Respondent

Through: Mr.Nageswar Rao, Advocate with Mr.Sandeep S.Karhail, Mr.Purushottam Anand, Advocates.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **27.09.2017**

<u>C.M.No.32599/2017 (delay in filing)</u>

1. For the reasons explained in the application, the delay in filing the appeal is condoned. The application is disposed of.

<u>ITA No.773/2017</u>

2. The Revenue is in appeal against an order dated 19th January, 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.557/Del/2013 for the Assessment Year ('AY') 2006- 07.

3. The question urged by the Revenue concerns the deletion by the ITAT of the addition made by the Assessing Officer of the revenue received by the Assessee from Nortel India Pvt. Ltd. for the supply of software.

4. The question whether the said payment can be termed as payment of

royalty is no longer *res integra.* In ***Director of Income Tax v. Infrasoft Ltd. (2014) 264 CTR 329 (Del)*** and ***Principal Commissioner of Income Tax v. M.Tech India (P) Ltd. (2016) 381 ITR 31 (Del)*** this Court has held that the aforementioned payment for supply of software cannot be brought to tax as royalty.

5. No substantial question of law arises from the impugned order of the ITAT. The appeal is accordingly dismissed.

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 27, 2017
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