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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 7/2017**

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) – 1 ..... Appellant
Through: Mr. Ashok K. Manchanda, Senior standing counsel with Mr. Raghvendra Singh, Junior standing counsel.

versus

ASPECT SOFTWARE INC. ..... Respondent
Through: Ms. Rashmi Chopra with Ms. Asiya, Advocates.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R
% **25.04.2017**

CM APPL 715/2017 (delay) in ITA 7/2017

1. For the reasons stated therein, these applications are allowed. The delay of 14 days in re-filing the appeals is condoned.

ITA No. 7/2017

2. This appeal under Section 260A of the Income Tax Act, 1961 ('Act') by the Revenue against the impugned Order dated 27th June, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1842/Del/2016 for the Assessment Year ('AY') 2011-12.

3. While admitting these appeals on 16th January, 2017, this Court passed the following order:

"Admit.

The following questions of law arise for consideration:

(i) Did the ITAT fall into error in holding that the transaction in question, i.e., supply of customized software was not "royalty" under Article 12 (4) of the Indo-US Double Taxation Avoidance Agreement (DTAA) read with Section 9 (1) (vii) of the Income Tax Act, 1961, in the circumstances of the case.

(ii) Did the ITAT fall into error in its interpretation of Section 234 (B) of the Income Tax Act, 1961, in the circumstances of the case."

4. Apart from the order as noted above, the Court decided that these present appeal would be considered in light of the judgment to be rendered by the Court in a batch of appeals (***The Commissioner of Income Tax International Transaction -2 v. ZTE Corporation – ITA 904-909/2016).***

5. The Court by its decision in ***The Commissioner of Income Tax International Transaction -2 v. ZTE Corporation 237 (2017) DLT 572 (DB)*** decided the questions that arose in the aforementioned batch of appeals (which also involve the questions that arise in the present appeal) in favour of the Assessee and against the Revenue.

6. Further by a separate order passed today, this Court has answered identical questions urged by the Revenue in ITA No. 909 of 2015 [***Commissioner of Income Tax (International Taxation-1 v. Aspect Software Inc.***] and batch concerning earlier AYs, against it and in favour of the same Assessee.

7. Accordingly, the questions framed are answered in the negative i.e.

against the Revenue and in favour of the Assessee.

8. The appeal is dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 25, 2017
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