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

\+ **ITA 1186/2017**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -2 ..... Appellant

Through : Mr Puneet Rai, Advocate.

versus

NETAPP B.V. ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K.CHAWLA

O R D E R

% **22.12.2017**

1. The common question of law urged in this Appeal is in respect of taxability of sale of software and subscription amount received by the Assessee.

2. The Revenue had brought to tax these amounts under Section 9(i)(vii) read with Article 12 of the Indo-Dutch Double Taxation Avoidance Agreement. This Court had, by relying upon *Commissioner of Income Tax versus ZTE Corporation*, (2017) 392 ITR 80 for other years, i.e. Assessment Years 2008-2009 and 2010-2011, rejected the Revenue's Appeals under Section 260A in ITA 884-885/2017(*Commissioner of Income Tax – International Taxation-2 versus NET APP BV)* decided on 23.10.2017.

3. The other question urged for both years is with respect to the applicability of interest liability under Section 234B; the Income Tax Appellate Tribunal (ITAT) had followed *Director of Income Tax versus GE Package Power Corporation Inc.* (2015) 370 3 ITR 65.

4. Following order in ITA 884-885/2017(dated 23.10.2017), it is held that no substantial question of law arises as both the issues urged in these appeals are covered by the said two decisions.

5. The Appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

A.K.CHAWLA, J

DECEMBER 22, 2017

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