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

+ ITA 370/2018, C.M. APPL.12447/2018

GE INDIA INDUSTRIAL PVT. LTD. (AS SUCCESSOR IN INTEREST TO GE INDIA TECHNOLOGY CENTRE PVT. LTD. NOW AMALGAMATED)

..... Appellant

Through : Sh. Sachit Jolly and Sh. Sidharth Joshi,
Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME-TAX, DELHI-IV

..... Respondent

Through : Sh. Ruchir Bhatia and Sh. Tushar Gupta,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **03.04.2018**

1. Admit.

2. Following question of law arises for consideration:

“(a) Did the Income Tax Appellate Tribunal (ITAT) fall into error in upholding the findings of the lower authorities with respect to the disallowance under Section 40(a)(i) of the Income Tax Act, 1961 [hereafter “the 1961 Act”], by holding that the payments made by the assessee were “royalty” under Section 9(1)(vi) of the 1961 Act read with Article 12 of the Double Taxation Avoidance Agreement (DTAA) that India was a party to with the USA and the UK?”

3. The facts are that the appellant was previously representing the interest of GE India Technology Centre Pvt. Ltd. Originally, the assessee was GE India Technology Centre Pvt. Ltd., which was subsequently amalgamated into the appellant/assessee (GE India Industrial Pvt. Ltd). It was originally assessed to Income Tax within the jurisdiction of the authorities under the 1961 Act at Bangalore. By order dated 09.10.2017, the Principal Commissioner of Income Tax transferred the assessments and all pending proceedings to Delhi. It is under

these circumstances that the present appeal against the order of the ITAT Bench at Bangalore was filed. The assessee licenses software from its AE, General Electronic Company, US; various kinds of software are licenced by these arrangements. The licence fee so paid, was held to be ‘royalty’ by the tax authorities and affirmed by the Bangalore Bench of the ITAT. In the impugned order, by applying the ratio of the Bangalore Bench decision in *Commissioner Income Tax v. Samsung Electronics Ltd.* 345 ITR 494, the assessee contends that the jurisdiction having changed, the views of the ITAT is not in consonance with the view of this Court. It relies upon the decision in *Director of Income Tax v. Infrasoftware Limited* 264 CTR 329 (Del). This Court had considered the judgment in *Samsung (supra)* and distinguished it in *Infrasoftware (supra)*; the reasoning which persuaded the Court to hold that licence fee was not ‘royalty’, was that the copyright in the software was not transferred, but merely allowed to be used, and it being a part of operative standard. That reasoning squarely applies in the facts of this case; therefore, it is held that the licence fee paid by the assessee to its AE, is not ‘royalty’ under Section 9 of the 1961 Act, nor does it fall within the meaning of this term under Article 12 of the DTAA in question.

4. An identical situation pertaining to the issue of royalty was decided by this Court in *GE Industrial Pvt. Ltd. v. Principal Commissioner of Income Tax, Delhi-IV* [ITA 61-62/2018, decided on 12.02.2018] between the same parties. The reasoning squarely applies to the facts of the case. Therefore, the license fee paid by the assessee to the Associated Enterprise (AE) is not “royalty” under the provisions of the DTAA in question.

5. The question of law is accordingly answered in favour of the assessee and against the Revenue. The appeal is accordingly allowed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 03, 2018/ajk