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

+ **ITA 61/2018 & CM APPL. 2140/2018**

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

Through: Mr. Sachit Jolly with Mr. Rohit
Garg, Advocates

Versus

PRINCIPAL COMMISSIONER OF INCOME-TAX,
DELHI-IV Respondent

Through: Mr. Ruchir Bhatia, Sr. Standing
Counsel

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CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **12.02.2018**

The question of law urged in this appeal is that:-

*“Whether payment made for licences to use the
software, constituted royalty within the meaning of
Section 9(1)(vi) of the Income Tax Act, interpreted
in the context of Article 12 of the Double Taxation*

Avoidance Agreement (DTAA) that India was a party too, with the USA and United Kingdom respectively.”

The facts are that the appellant was previously representing the interest of GE Technology Centre. Originally, the assessee was GE India Technical Centre, which was subsequently amalgamated into the appellant/assessee (GE India).

It was originally assessed to Income Tax within the jurisdiction of the authorities under the 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 Bangalore Tribunal 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.

In the impugned order, by applying the ratio of the Bangalore Bench decision in *Commissioner Income Tax Vs. Samsung Electrics* 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 Vs. Infra Soft Limited*, 264 CTR 329.

This Court had considered the judgment in *Samsung (supra)* and distinguished it in *Director of Income Tax Vs. Infra Soft Limited*

(*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 A.E., is not 'royalty' under Section 9 of the Act, nor does it fall within the meaning of this term under Article 12 of the DTAA in question.

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

The appeals are therefore allowed.

The other question of law urged is with respect to the applicability of Section 206AA of Income Tax Act. The ITAT held that the rate of tax mandated by that provision applies. Recently, in *Danisco India Pvt. Ltd. Vs. Union of India* in WP(C) No.5908/2015, this Court has held that the said provision cannot apply or override the provisions of the applicable DTAA so as to get the maximum rate of taxation, agreed to by the parties i.e. the concerned foreign State and the Indian Government.

This question therefore is also answered in favour of the assessee and against the Revenue.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 12, 2018/P