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

+ ITA 267/2017

**THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION – 2** Appellant

Through: Mr. Kunal Sharma, Advocate.

versus

MOL CORPORATION RespondentThrough: Mr. Nageswar Rao and Ms. Deepika
Agarwal, Advocates.

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Date of Decision: 19th May, 2022**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMOHAN, J (Oral):**

1. Present appeal has been filed by the Revenue challenging the remand order passed by the Income Tax Appellate Tribunal ('ITAT'). The relevant portion of the impugned order is reproduced hereinbelow:

“18. In view of the above facts it is apparent that after rendering of the decision of the tribunal based on which the reopening has been initiated by revenue and addition has been made in the hands of the appellant, the decision of the Hon'ble Delhi high court in case of DIT versus Infrasoft limited covers the issue in favour of the assessee. As the lower authorities did not have any benefit of the decision of the Hon'ble Delhi high court while deciding the issue about the taxation of copyrighted article i.e. the software being sold by the appellant but have solely relied



upon the decision of the coordinate bench in case of M/s Gracemac Corporation, it would be in the interest of the Justice to set the whole issue back to the file of the Ld. assessing officer to decide it afresh after considering the decision of Hon'ble Delhi high court DIT versus Infrasoftware Ltd (supra), applying it to nature of the software of the appellant, which covers the issue with respect to the sale of software holding that according to article 12(3) of the Indo US DTAA, is a sale of 'copyrighted article', and is not chargeable to tax as 'royalty'. In view of the above, ground No.3 to ground number 4.13.4 of the appeal of the assessee are allowed with above direction."

2. Learned counsel for the appellant/revenue submits that the ITAT instead of remanding the matter to the Assessing Officer to decide the issue of royalty in accordance with the judgment of this Court in ***DIT versus Infrasoftware Ltd.*** should have decided the issue itself.

3. It is pertinent to mention that after passing of the impugned orders by the ITAT, the Supreme Court in ***Engineering Analysis Centre of Excellence Pvt. Ltd. vs. Commissioner of Income Tax & Anr., 2021 SCC OnLine SC 159*** has confirmed the view taken by this Court in ***DIT versus Infrasoftware Ltd.***

4. However, learned counsel for the appellant/revenue states that the matter on merits is not covered by the judgment of the Supreme Court in ***Engineering Analysis Centre of Excellence Pvt. Ltd.*** (supra). Needless to state learned counsel for the respondent/assessee states that matter in issue is squarely covered by the judgment of the Apex Court in ***Engineering Analysis Centre of Excellence Pvt. Ltd.*** (supra).

5. In any event, in pursuance to the impugned remand orders, the Assessing Officer, Dispute Resolution Panel (DRP) as well as ITAT have decided the matter. In fact, the ITAT in its subsequent order dated 14th



February, 2022 followed its own coordinate bench decision dated 16th November 2020, which order now stands confirmed by orders this court dated 7th March, 2022 and 15th March, 2022. Similarly, ITAT in its order dated 13th April, 2022 (passed during the pendency of the present appeals) has not only followed the decision of the Supreme Court *Engineering Analysis Centre of Excellence Pvt. Ltd* (supra) but has also followed the decisions of this Court dated 15th March, 2022 and 7th March, 2022 whereby the appeals filed by the Revenue against the respondent/assessee on similar questions of law were dismissed.

6. Consequently, keeping in view the subsequent orders dated 14th February, 2022 and 13th April, 2022 deciding the issue of royalty by the ITAT, this Court is of the view that the present appeal challenging the order of remand and seeking a decision by the ITAT is infructuous. In fact, some of the cross-appeals filed by the respondent/assessee against the same impugned orders have today been dismissed as infructuous.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

**MAY 19, 2022
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