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

\+ ITA 246/2024 & CM APPL. 25239/2024

COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION 2 NEW DELHI ..... Appellant

Through: Mr. Sunil Aggarwal, SSC with Mr. Shivansh Pandya, Mr. Utkarsh Tiwari, Advs.

versus

NORTON LIFELOCK SINGAPORE PTE EARLIER KNOWN AS SYMANTEC ASIA PACIFIC PTE LTD ..... Respondent

Through: Mr. Nageshwar Rao, Mr. Aman Rewaria, Mr. Parth, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **01.05.2024**

CM APPL. 25240/2024 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

CM APPL. 25239/2024

Bearing in mind the disclosures made, the delay in filing the appeal is condoned.

The application shall stand disposed of.

ITA 246/2024

1. The Commissioner of Income Tax impugns the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 26 September 2022 and has proposed the following questions of law:-

A. Whether on the facts and in the circumstances of the case, the ITAT has erred in holding that the consideration received by the assessee from sale of software licenses in India is not taxable as Royalty u/s 9(1)(vi) of the Income Tax Act, 1961 ["**Act**"]?

B. Whether the ITAT has erred in not considering the effect of Article 3(2) of the said Double Tax Avoidance Agreement ["**DTAA**"] in terms of which any term not defined in the DTAA is deemed to have the same meaning as it has under the domestic law, and therefore, the clarification provided in Explanation 4 to Section 9(1)(vi) of the Act may be applied for interpreting the scope of Article 12(3) of the DTAA?

C. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in not considering that both the Organisation for Economic Co-operation ["**OECD**"] and United Nations ["**UN**"] adopt a dynamic approach instead of a static approach for the purposes of interpretation of tax treaties?

2. We however note that inter partes in ITA 147/2022 we had while considering similar questions upheld the view as expressed by the ITAT and which itself rested upon the judgment rendered by the Supreme Court in **Engineering Analysis Centre for Excellence vs. CIT** [(2022) 3 SCC 321].

3. In view of the aforesaid and following the view as expressed in ITA 147/2022, we dismiss the instant appeal.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 01, 2024/neha