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

\+ ITA 307/2025 CM APPL. 50511/2025 CM APPL. 50512/2025

\+ ITA 309/2025 CAV 310/2025 CM APPL. 50535/2025 CM APPL. 50536/2025

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3

.....Appellant

Through: Mr. Ruchir Bhatia SSC with Mr. Anant Mann and Mr. Pratyaksh. Gupta, JSCs.

versus

VERITAS STORAGES SINGAPORE PTE LTD

.....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. with Mr. Nikhil Gupta, Mr. Rochit Abhishek, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% 12.05.2026

1. Mr. Anant Mann, learned Junior Standing Counsel for the appellant has invited the Court’s attention towards the relevant part of the assessment order dated 27.06.2022, whereby the Assessing Officer (AO) has made additions on following grounds :-

(i) Sale of hardware appliances

(ii) Sale of software licenses

(iii) Maintenance support and other services related to software licenses

(iv) Education and training services

2. He submitted that ignoring the fact that the additions were made on four counts, the Income Tax Appellate Tribunal, Delhi 'D' Bench (ITAT) (*hereinafter referred to as 'the Tribunal'*) has allowed the respondent-assessee's appeal, as if the issue involved in the present case was only that of sale of software licenses.

3. Learned counsel for the appellant in this regard invited the Court's attention towards paragraphs no. 5 and 9 of the Tribunal's order and pointed out that the Tribunal has decided the entire appeal in light of the judgment of Hon'ble the Supreme Court in the case of **Engineering Analysis Center of Excellence (P) Ltd. v. CIT** reported in **(2022) 3 SCC 321**.

4. He therefore, argued that the appeal be allowed and the matter be remanded back to the Tribunal to decide it afresh *qua* remaining aspects i.e., (i) Maintenance support and other services related to software licenses, (ii) Education and training services, as he did not dispute the legal position that there could not have been any addition separately for sale of hardware appliances.

5. Mr. Tarun Gulati, learned Senior Counsel on behalf of the assessee-respondent, on the other hand, submitted that may be due to an inadvertence or a typographical error, the Tribunal has allowed the assessee's appeal but made references of judgment only in the case of **Engineering Analysis** (supra).

6. He submitted that so far as the other two issues i.e., Maintenance support and other services related to software licenses and Education and training services are concerned, these issues too are otherwise covered by the judgment of this Court in ITA No. 165/2024 titled as **The**

Commissioner of Income Tax – International Taxation-3 v. TSYS Card Tech Ltd. and therefore, the appeal in any case, was likely to be allowed by the Tribunal.

7. It was further submitted by Mr. Tarun Gulati, learned Senior Counsel that in the subsequent years i.e., Assessment Year (AY) 2020-21 onwards, the AO has accepted the correct legal position and has not made any addition on either of the remaining two counts, i.e., Sale of hardware appliances or Sale of software licenses.

8. Heard learned counsel for the parties.

9. A look at the impugned order of the Tribunal shows that the Tribunal has allowed respondent-assessee's appeal, relying upon the judgment of Hon'ble the Supreme Court in **Engineering Analysis** (supra), which essentially deals with sale of software as "royalty". The relevant observations rendered in **Engineering Analysis** (supra) are reproduced hereinfra :-

> *"**179**. The Revenue, therefore, when referring to "royalties" under the DTAA, makes a distinction between such royalties, no doubt in the context of technical services, and remittances for supply of computer software, which is then treated as business profits, taxable under the relevant DTAA depending upon whether there is a PE through which the assessee operates in India. <u>This is one more circumstance to show that the Revenue has itself appreciated the difference between the payment of royalty and the supply/use of computer software in the form of goods, which is then treated as business income of the assessee taxable in India if</u>*

it has a PE in India.

Conclusion

***180**. Given the definition of "royalties" contained in Article 12 of the DTAAs mentioned in para 46 of this judgment, it is clear that there is no obligation on the persons mentioned in Section 195 of the Income Tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright. The provisions contained in the Income Tax Act [Section 9(1)(vi), along with Explanations 2 and 4 thereof], which deal with royalty, not being more beneficial to the assessees, have no application in the facts of these cases.*

***181**. Our answer to the question posed before us, is that the amounts paid by resident Indian end-users/distributors to non resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in Section 195 of the Income Tax Act were not liable to deduct any TDS under Section 195 of the Income Tax Act. The answer to this question will apply to all four categories of cases enumerated by us in para 3 of this judgment."*

10. The remaining two issues i.e., Maintenance support and other services related to software license and Education and training services, despite being involved in the appeal before the Tribunal but have not been dilated upon or decided by the Apex Court in the reasoning given by the Tribunal while relying upon **Engineering Analysis** (supra) for setting aside the entire demand in question, is thus, erroneous.

11. Be that as it may. Mr. Anant Mann, learned Junior Standing Counsel for the appellant is not in a position to dispute the contention raised by Mr. Tarun Gulati, learned Senior Counsel for the respondent that other two issues are squarely covered by the judgment dated 16.07.2024 passed by this Court titled as **The Commissioner of Income Tax – International Taxation-3 v. TSYS Card Tech Ltd.** in ITA No. 165/2024.

12. Hence, even if we allow the appeal and remand the matter to the Tribunal to decide the appeal on remaining issues, no fruitful purpose would be served or such exercise would be futile, as these issues have already been decided in favour of the assessee in the case of **TSYS Card Tech Ltd.** (supra).

13. Such being the position, both the appeals are dismissed. All the pending applications are also disposed of.

DINESH MEHTA, J

VINOD KUMAR, J

MAY 12, 2026/*dd*