IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)

ITA No.6603/Del/2019
Assessment Year: 2015-16

Qualcom Technologies Inc. Oval Office, 18 iLabs Centre, Hitech City, Madhapur, Hyderabad-500081 PAN No.AAACQ3149D	**Vs**	**DCIT Circle – 3 (1)(1) New Delhi**
(APPELLANT)		**(RESPONDENT)**

ITA No.191/Del/2021
Assessment Year: 2016-17

Qualcom Technologies Inc. The Skyview 10, 18th Floor, Zone-A, Survey No.83/1, Raidurgam, Hyderabad, Telangana 500032	**Vs**	**DCIT Circle – 3 (1)(1) New Delhi**
(APPELLANT)		**(RESPONDENT)**

Appellant by	Sh. Ananya Kapoor, Advocate
Respondent by	Smt. Anupama Anand, CIT DR

Date of hearing:	16/11/2021
Date of Pronouncement:	16/11/2021

ORDER

PER N. K. BILLAIYA, AM:

ITA No.660/Del/2019 and 191/Del/2021 are two separate appeals by the assessee preferred against the two separate orders of the CIT(A)-43, New Delhi dated 03.05.2019 and 05.02.2020 pertaining to A.Y.2015-16 and 2016-17 respectively.

2. Since common grievances are involved in these appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance relates to :-

1) Treating revenue received by the assessee under the BREW agreement as taxable under the provisions of article of India-US DTAA.

2) Treating revenue received by the assessee under the test tool agreements as income of the assessee.

4. At the very outset the counsel for the assessee stated that both the issues have been considered and decided by this Tribunal in earlier assessment years in favour of the assessee and against the revenue.

5. The DR strongly objected to this submission of the counsel. It is the say of the DR that the CIT(A) has elaborately discussed the facts of the case in hand and distinguish the judgment of Infrasoft which has been relied upon by the Tribunal in earlier assessment years.

6. We have given a thoughtful consideration to the rival contentions and have carefully perused the orders of the authorities below. We find force in the contention of the counsel. The AO himself has discussed the assessment proceedings of earlier assessment years. The relevant querry raised during the assessment proceedings read as under :-

> *6. During the assessment proceedings, the assessee was required to explain:*
>
> *a)/ Why the revenue received by QTI under the BREW agreements should not be taxable as Royalty under the provision of section 9(1)(vi)(c) of IT Act, 1961 and Article 12 of the India USA DTAA?*
>
> *b) Why the revenue received under test Tools agreement should not be taxable as Royalty under the provision of section 9(1)(vi)(c) of the Act and Article 12 of the treaty?*
>
> *c)Why the assessment may not be completed on the basis of assessment for A.Y 2014-15 in case of the assessee company as the assessee is providing the services on the basis of same agreement after reorganization of the group.*
>
> *d)The assessee company has received an amount of Rs.10,23,76,889/- from different Indian entities under the Brew agreement, test tool agreement and ultrason agreement during the year. The facts and circumstances of the case, services rendered and the amount received are identical to that of earlier years i.e,*

2013.14 and 2014-15. In those earlier years the amount received against the above agreement was software license fee and test tools which was treated as royalty. In view of above please show cause as to why the same view may not be treated for this year also and the above amount of Rs. 10,23,76,889/- may not be treated as royalty and may not be taxed as per provisions of Section 9(1)(vi) of IT Act, 1961 and under Article 12 of DTAA between India and USA as the amount was received against the grant of license to manufactured the various products for the right to use products of assessee's intellectual property portfolio which includes certain software right essential to and/ or useful in the manufacture and sale of certain wireless products.

7. After considering the submissions of the assessee the AO discussed the assessment history as under :-

9. Assessment History

In the earlier years, in case of Qualcomm, the AO made the following observations which are also identically applicable in assessee's case for the current assessment year:

(a) The payment received by the assessee under the BREW operator Software agreements qualifies as royalty as per Indian Income Tax Act as well as India-US DTAA. The reasons have been mentioned in detail in the assessment orders for AY 2008-09 and 2011-12.

b) The income of the assessee from licensing of BREW software Indian operators is taxable under section 9(1) (vi)of the I.T. Act and under article 12 of Indo -US DTAA.

(c) (i) Section 9(1)(vi) of the I.T. Act is a deeming provision seeking to tax royalty payable by one non-resident to another non-resident in relation to income earned from a source in India. Under the

provisions of section 9(1) (vi) (c) of the I.T. Act, it is not mandatory to bring the payer to tax before initiating the proceedings against the person receiving royalty income.
(ii) In terms of Article 12(7) (b) of the DTAA between India and USA, the royalty arising to QTI is clearly taxable in India. The relevant article is reproduced as under:-

"Where under sub-paragraph (a), royalties or fees for included services do not arise in one of the contracting states, and the royalties relate to the use of, or the right to use, the right or property, or the fees for included services relate to services performed, in one of the contracting states, the royalties or fees for included services shall be deemed to arise in that contracting state."
In view of above, Hon'ble DRP has confirmed the proposed additions of Royalty made on account of revenue received through BREW Operator Agreements in earlier years in case of M/s Qualcomm Incorporated.

Hence, the reasoning given in the earlier years orders in case of Mis Qualcomm Incorporated as confirmed by CIT (A) and DRP is followed in the current year also.

8. In so far as the grievance raised vide ground No.2 is concerned the AO's findings are as under :-

"11.5 As per assessee's own submission, the amount received under Test Tools' represents annual maintenance fee for the software. During AY 2015-16, there is no element of hardware in the said receipts. Therefore, the contention of the assessee is not

acceptable. In view of the above it is clear that the nature of the amount received towards the annual maintenance of software is nothing but falls under the category of royalty. Therefore, the amount received under the head Test Tools' is taxable as royalty under the provisions of IT Act, 1961 and also under the Indo-USA DTAA.

11.6 Further, the amount of Rs. 6,20,50,000/- received on account of development of Ultrason Software from Reliance Jib Infocomm Limited is nothing but the amount received under the test tool agreement (para 2.5 of assessee's reply dated 01.11.2017). The facts of the agreement with Reliance Jio Infocomm Limited are identical and has same spirit. Hence, the same is also treated as Royalty under the provisions of IT Act, 1961 and also under the Indo-USA DTAA as mentioned above.

11.7 in the view of the above discussions the income of the assessee from licensing of BREW software, under the head Test Tools and development of Ultrason Software is taxable under section 9(1) (vi) of the I.T.Act and under article 12 of Indo - US DTAA.

9. A perusal of the past history of the assessee show that the impugned quarrel started from A.Y.2005-06 and this Tribunal in ITA No.3701 and 3702/Del/2009, 5343/Del/2010 and 4608/Del/2011 for A.Y.2005-06 to 2008-09 has considered the quarrel and held as under :-

102. That takes us to ground no. 4, as raised by the assessee, against holding that the revenues received by the Appellant under the BREW Operator Agreement and BREW Carrier Agreement is taxable as royalty income in India under section 9(1)(vi) of the Act and Article 12 of the India-USA tax treaty. The assessee contends that in doing so, the AO has failed to appreciate that the provision of BREW software to Tata and Tata Teleservices

(Maharashtra) Limited and Reliance Communications Infrastructure Limited results in sale of 'Copyrighted Article' and not licensing of a 'Copyright'.

103. So far as this grievance of the assessee is concerned, only a few facts are required to be taken note of. During the course of the assessment proceedings, the Assessing Officer noted that the assessee has invoiced an amount of Rs 2,52,70.569 to Tata Teleservices Limited under BREW (Binary Runtime Environment for Wireless) agreement. It was noted that it is an application development platform, developed by Qualcomm, for mobile phones that enables users to download and run applications for playing games, sending messages and sharing photos etc. It was also noted that this platform runs between the application and wireless device's chip operating system so that programmers can develop applications for wireless device without the code for system interface or understanding operating systems. It was also noted that end users of BREW customers are the carriers who pay an enablement fees based on device sales or a revenue share for application software that are downloaded. On these facts, the Assessing Officer proceeded to bring the same to tax by observing as follows:

> **I have perused the submissions made by the assessee. However, this hypothesis is not correct as Software is licensed and not sold. Furthermore as per the terms of the BOA as reproduced above, the assessee has given TATA Teleservices the license to reproduce and install the copyrighted software. The license fee for the right to reproduce and use the BREW Software cannot be anything else but royalty. There is a distinction between sale and license since in a sale no agreement is entered into between buyer and seller, however in case of licensing of software an agreement is entered into between copyright holder and the user.**
>
> **Grant of license is granting the user a right to use the software. The assessee's submission that in cases where rights acquired are limited and necessary only to enable the user to operate the program and allow the user to copy the program on the user's computer hard drive, payments would not be treated as towards royalty but as towards business income is not acceptable. The assessee itself agrees that payment is made for only the right to use the software and no other title or interest in the software is transferred to the payer. There is no transfer of ownership rights. Various decisions of the Supreme Courts and High Courts clarify that sales constitutes out and out transfer, whereas in license there is only right to use. Some of these decision are at 69 ITR 692 (SC), 236 ITR 314 (ASC), 811 ITR 243, 671 ITR**

> **227. Thus this reasoning of the assessee has no legal or factual basis. In this case, the user only has a right and gets a license to use the software.**
>
> **Even in the OECD commentary it is mentioned that the character of payments received in transactions involving the transfer of computer software depends upon the nature of rights that the transferee acquires under the particular arrangement, regarding the use and exploitation of the program. The rights in computer programme are in the form of intellectual property. It has further mentioned "payments made for the acquisition of partial right in the copyright (without the transferor fully alienating the copyrights) will represent a royalty, where the consideration is for granting of rights to use the program in a manner, that would without such licenses constitute the infringement of copyrights." Under the laws of the country, if the software owned by the assessee is used without licenses, it becomes infringement of the copyright. Therefore arguments of the assessee regarding applicability of OECD commentary fail on this count as well**

104. The assessee did raise a grievance before the DRP but without any success. The assessee is not satisfied and is in appeal before us.

105. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

106. We find that the payment in question is admittedly the payment is for a software which is for a copyrighted article and not the copyright itself. There is nothing on record to suggest that the payment is for the copyright itself. In this view of the matter, the issue is clearly covered, in favour of the assessee, by Hon'ble Delhi High Court's judgment in the case of **DIT Vs Infrasoft Limited [(2014) 264 CTR 329]** wherein Their Lordships have, inter alia, observed as follows:

> **85. The Licensing Agreement shows that the license is non-exclusive, non-transferable and the software has to be uses in accordance with the Agreement. Only one copy of the software is being supplied for each site. The licensee is permitted to make only one copy of the software and associated support information and that also for backup purposes. It is also stipulated that the copy so made shall include Infrasoft's copyright and other proprietary notices. All copies of the Software are the exclusive property of Infrasoft. The Software includes a licence authorisation device, which restricts the use of the Software. The software is to be used only for Licensee's own business as defined within the Infrasoft Licence**

Schedule. Without the consent of the Assessee the software cannot be loaned, rented, sold, sublicensed or transferred to any third party or used by any parent, subsidiary or affiliated entity of Licensee or used for the operation of a service bureau or for data processing. The Licensee is further restricted from making copies, decompile, disassemble or reverse-engineer the Software without Infrasoft's written consent. The Software contains a mechanism which Infrasoft may activate to deny the Licensee use of the Software in the event that the Licensee is in breach of payment terms or any other provisions of this Agreement. All copyrights and intellectual property rights in and to the Software, and copies made by Licensee, are owned by or duly licensed to Infrasoft.

86. The Licensing Agreement shows that the license is non-exclusive, non-transferable and the software has to be uses in accordance with the agreement. Only one copy of the software is being supplied for each site. The licensee is permitted to make only one copy of the software and associated support information and that also for backup purposes. It is also stipulated that the copy so made shall include Infrasoft's copyright and other proprietary notices. All copies of the Software are the exclusive property of Infrasoft. The Software includes a licence authorisat ion device, which restricts the use of the Software. The software is to be used only for Licensee's own business as defined within the Infrasoft Licence Schedule. Without the consent of the Assessee the software cannot be loaned, rented, sold, sublicensed or transferred to any third party or used by any parent, subsidiary or affiliated entity of Licensee or used for the operation of a service bureau or for data processing. The Licensee is further restricted from making copies, decompile, disassemble or reverse-engineer the Software without Infrasoft's written consent. The Software contains a mechanism which Infrasoft may activate to deny the Licensee use of the Software in the event that the Licensee is in breach of payment terms or any other provisions of this Agreement. All copyrights and intellectual property rights in and to the Software, and copies made by Licensee, are owned by or duly licensed to Infrasoft.

87. In order to qualify as royalty payment, it is necessary to establish that there is transfer of all or any rights (including the granting of any licence) in respect of copyright of a literary, artistic or scientific work. In order to treat the consideration paid by the Licensee as royalty, it is to be established that the licensee, by making such payment, obtains all or any of the copyright rights of such literary work. Distinction has to be made between the acquisition of a "copyright right" and a "copyrighted article". Copyright is distinct from the material object, copyrighted. Copyright is an intangible incorporeal right in the nature of a privilege, quite independent of any material substance, such as a manuscript. Just because one has the copyrighted article, it does not follow that one has also the copyright in it. It does not amount to transfer of all or any right including licence in respect of copyright. Copyright or even right to use copyright is distinguishable from sale consideration paid for "copyrighted" article. This sale consideration is for purchase of goods and is not royalty.

88. The license granted by the Assessee is limited to those necessary to enable the licensee to operate the program. The rights transferred are specific to the nature of computer programs. Copying the program onto the computer's hard drive or random access memory or making an archival copy is an essential step in utilizing the program. Therefore, rights in relation to these acts of copying, where they do

no more than enable the effective operation of the program by the user, should be disregarded in analyzing the character of the transaction for tax purposes. Payments in these types of transactions would be dealt with as business income in accordance with Article 7.

89. There is a clear distinction between royalty paid on transfer of copyright rights and consideration for transfer of copyrighted articles. Right to use a copyrighted article or product with the owner retaining his copyright, is not the same thing as transferring or assigning rights in relation to the copyright. The enjoyment of some or all the rights which the copyright owner has, is necessary to invoke the royalty definition. Viewed from this angle, a non -exclusive and non-transferable licence enabling the use of a copyrighted product cannot be construed as an authority to enjoy any or all of the enumerated rights ingrained in Article 12 of DTAA. Where the purpose of the licence or the transaction is only to restrict use of the copyrighted product for internal business purpose, it would not be legally correct to state that the copyright itself or right to use copyright has been transferred to any extent. The parting of intellectual property rights inherent in and attached to the software product in favour of the licensee/customer is what is contemplated by the Treaty. Merely authorizing or enabling a customer to have the benefit of data or instructions contained therein without any further right to deal with them independently does not, amount to transfer of rights in relation to copyright or conferment of the right of using the copyright. The transfer of rights in or over copyright or the conferment of the right of use of copyright implies that the transferee/licensee should acquire rights either in entirety or partially co-extensive with the owner/ transferor who divests himself of the rights he possesses pro tanto.

90. The license granted to the licensee permitting him to download the computer programme and storing it in the computer for his own use is only incidental to the facility extended to the licensee to make use of the copyrighted product for his internal business purpose. The said process is necessary to make the programme functional and to have access to it and is qualitatively different from the right contemplated by the said paragraph because it is only integral to the use of copyrighted product. Apart from such incidental facility, the licensee has no right to deal with the product just as the owner would be in a position to do.

91. There is no transfer of any right in respect of copyright by the Assessee and it is a case of mere transfer of a copyrighted article. The payment is for a copyrighted article and represents the purchase price of an article and cannot be considered as royalty either under the Income Tax Act or under the DTAA.

92. The licensees are not allowed to exploit the computer software commercially, they have acquired under licence agreement, only the copy righted software which by itself is an article and they have not acquired any copyright in the software. In the case of the Assessee company, the licensee to whom the Assessee company has sold/licensed the software were allowed to make only one copy of the software and associated support information for backup purposes with a condition that such copyright shall include Infrasoft copyright and all copies of the software shall be exclusive properties of Infrasoft. Licensee was allowed to use the software only for its own business as specifically identified and was not permitted to

loan/rent/sale/sub -licence or transfer the copy of software to any third party without the consent of Infrasoft.

93. The licensee has been prohibited from copying, de - compiling, de-assembling, or reverse engineering the software without the written consent of Infrasoft. The licence agreement between the Assessee company and its customers stipulates that all copyrights and intellectual property rights in the software and copies made by the licensee were owned by Infrasoft and only Infrasoft has the power to grant licence rights for use of the software. The licence agreement stipulates that upon termination of the agreement for any reason, the licencee shall return the software including supporting information and licence authorization device to Infrasoft.

94. The incorporeal right to the software i.e. copyright remains with the owner and the same was not transferred by the Assessee. The right to use a copyright in a programme is totally different from the right to use a programme embedded in a cass ette or a CD which may be a software and the payment made for the same cannot be said to be received as consideration for the use of or right to use of any copyright to bring it within the definition of royalty as given in the DTAA. What the licensee has acquired is only a copy of the copyright article whereas the copyright remains with the owner and the Licensees have acquired a computer programme for being used in their business and no right is granted to them to utilize the copyright of a computer programme and thus the payment for the same is not in the nature of royalty.

95. We have not examined the effect of the subsequent amendment to section 9 (1)(vi) of the Act and also whether the amount received for use of software would be royalty in terms thereof f or the reason that the Assessee is covered by the DTAA, the provisions of which are more beneficial.

96. The amount received by the Assessee under the licence agreement for allowing the use of the software is not royalty under the DTAA.

97. What is transferred is neither the copyright in the software nor the use of the copyright in the software, but what is transferred is the right to use the copyrighted material or article which is clearly distinct from the rights in a copyright. The right that is transferred is not a right to use the copyright but is only limited to the right to use the copyrighted material and the same does not give rise to any royalty income and would be business income.

98. We are not in agreement with the decision of the Andhra Pradesh High Court in the case of SAMSUNG ELECTRONICS CO. LTD (SUPRA) that right to make a copy of the software and storing the same in the hard disk of the designated computer and taking backup copy would amount to copyright work under section 14(1) of the Copyright Act and the payment made for the grant of the licence for the said purpose would constitute royalty. The license granted to the licensee permitting him to download the computer programme and storing it in the computer for his own use was only incidental to the facility extended to the licensee to make use of the copyrighted product for his internal business purpose. The said process was necessary to make the programme functional and to have access to it and is qualitatively different from the right contemplated by the said provision because it is only integral to the use of copyrighted product. The right to make a backup copy

> **purely as a temporary protection against loss, destruction or damage has been held by the Delhi High Court in DIT v. M/s Nokia Networks OY (Supra) as not amounting to acquiring a copyright in the software.**
>
> **99. In view of the above we accordingly hold that what has been transferred is not copyright or the right to use copyright but a limited right to use the copyrighted material and does not give rise to any royalty income.**

107. Learned Departmental Representative, even as he vehemently relied upon and supported the stand of the authorities below, could not point out any distinguishing feature in this case.

108. In view of the above discussions, and respectfully following the esteemed views of Hon'ble jurisdictional High Court, we uphold the grievance of the assessee and direct the Assessing Officer to delete the impugned addition of Rs 2,52,70.569. The assessee gets the relief accordingly.

109. Ground no. 4 is thus allowed.

110. No other grievance was pressed before us.

111. In the result, the appeal for the assessment year 2007-08 is partly allowed in the terms indicated above.

ITA No. 4608/Del/2011
Assessment year 2008-09

112. We now move to the ITA No. 4608/Del/11, i.e. assessee's appeal against the order dated 18th August 2011, in the matter of assessment under section 143(3) r.w.s. 144C (13) of the Income Tax Act, 1961 for the assessment year 2008-09.

113. Learned representatives fairly agree that whatever is decided for the assessment year 2007-08 will equally apply for this assessment year as well

as all the material facts and circumstances of the case, as also grievance of the assessee, are the same.

114. In view of the above position, and following our decision for the assessment year 2007-08, we hold that the observations made in the order for the said year will apply *mutatis mutandis* to this assessment year as well. The issue regarding taxation of royalty in respect of the CDMA handsets and equipment thus stands restored to the file of the Assessing Officer, and the addition in respect of invoicing the revenues under the BREW agreement thus stand deleted.

115. In the result, the appeal for the assessment year 2008-09 is also partly allowed in the terms indicated above.

ITA No. 3701 and 3702/Del/2009
Assessment year 2005-06 and 2006-07

116. That leaves us with the ITA Nos 3710 and 3702/Del/2009, i.e. appeals filed by the assessee for the assessment years 2005-06 and 2006-07 against the consolidated order dated 26th June 2009 passed by the CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act, 1961, which was a consolidated order for the assessment years 2000-01 to 2006-07.

117. Vide order dated 31st January 2013, a coordinate bench of this Tribunal has already adjudicated upon this CIT(A)'s order, though only for the purposes of assessment years 2000-01 to 2004-05, so far as the addition in respect of royalty income in respect of the CDMA handsets and equipment is concerned and right now the matter is pending for adjudication before Their Lordships of Hon'ble High Court. One of the arguments raised by the learned

Departmental Representative before us is that the order of the CIT(A) has, for all practical purposes, merged in the order passed by the coordinate bench, and, therefore, it is no longer open to us to adjudicate on the same. It is thus suggested that propriety requires that all the appeals, in respect of which a common order is passed, should be heard together and even the appeals, which are already disposed of, should be recalled for that purpose. On the other hand, learned counsel for the assessee has submitted that there is no merger of the CIT(A)'s order in the coordinate bench's order, and, therefore, the point being made by the learned Departmental Representative is devoid of legally sustainable merits.

118. We are indeed unable to see any legally sustainable merits in the stand of the learned Departmental Representative. If they were really aggrieved of the stand so taken by the coordinate bench, the right course of action for them was to raise that point before the coordinate bench, either during the hearing itself or by way of a miscellaneous petition later, but that has not been done. In such circumstances, these appeals are to be disposed of on merits.

119. The issues raised in these appeals are exactly the same as raised in the assessment year which we have disposed of above by way of a detailed order. Accordingly, the observations which we have made for the assessment year 2007-08 will also apply *mutatis mutandis* to these assessment years as well, and the Assessing Officer will give effect to the same accordingly.

120. In the result, the appeals for the assessment years 2005-06 and 2006-07 are also partly allowed in the terms indicated above.

121. To sum up, all the four appeals are partly allowed in the terms indicated above. Pronounced in the open court today on 20th day of February, 2015.

10. Further in ITA No.7231/Del/2017 for A.Y.2014-15 this Tribunal following the earlier orders of the coordinate bench held as under :-

9. We have heard the rival submissions and perused the relevant material available on the record. We find, the Assessing Officer, in the instant case, following his order for the earlier years, brought royalty from Brew Operators Agreement to tax in the hands of the assessee u/s 9(1)(vi) of the Act as well as Article 12 of the Indo-USA DTAA. The ld.CIT(A) upheld the action of the Assessing Officer. We find the issue stands decided in favour of the assessee by the decision of the Tribunal in assessee's own case from assessment year 2005-06 to 2012-13. We find the Tribunal, in the consolidated order dated 16th April, 2018 for assessment year 2009-10 to 2012-13, vide para 46 of the order, has discussed the issue and held that the royalty from BREW Operators Agreement is not chargeable to tax in the hands of the assessee u/s 9(1)(vi) of the Act as well as Article 12 of the Indo-US DTAA.

11. In so far as the second issue is concerned the coordinate Bench held as under :-

10. Respectfully following the order of the Tribunal in assessee's own case and in absence of any distinguishable feature brought to our notice by the ld. DR, we hold that the royalty from BREW Operator Agreement is not chargeable to tax in the hands of the assessee u/s 9(1)(vi) of the IT Act as well as Article 12 of the Indo-USA DTAA. Following similar reasonings, we also hold that the CIT(A) is not justified in upholding the action of the Assessing Officer in bringing to tax the royalty from Test Tools Agreement. The grounds raised by the assessee are accordingly allowed.

12. Considering the assessment order of the AO wherein he has followed the findings given in earlier assessment years and considering the fact that the same agreement is being carried on since A.Y.2005-06, we do not find any reason in differing with the view taken by this Tribunal (supra), therefore, respectfully following the finding of the coordinate Bench (supra) we hold that the royalty from BREW Operator agreement is not chargeable to tax in the hands of the assessee and also the revenue received under the test tools agreement. We direct the AO to delete the impugned additions.

13. In the result, both the appeals filed by the assessee are allowed on the grounds argued before us.

14. Decision announced in the open court in the presence of both representatives on 16.11.2021.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA
Date:-16.11.2021
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	16.11.2021
Date on which the typed draft is placed before the dictating Member	16.11.2021
Date on which the typed draft is placed before the Other member	16.11.2021
Date on which the approved draft comes to the Sr.PS/PS	16.11.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	16.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	16.11.2021
Date on which the final order is uploaded on the website of ITAT	16.11.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	