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

+ ITA 348/2022

COMMISSIONER OF INCOME TAX (INTERNATIONAL
TAXATION)-2 Appellant

Through: Ms.Easha Kadian, Advocate for
Mr.Sanjay Kumar, Sr.Standing
Counsel for the Revenue.

versus

M/S. NAGRAVISION S.A. Respondent

Through: Ms.Ananya Kapoor with Mr.Vibhu
Jain, Advocates.

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Date of Decision: 21st September, 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 income tax appeal has been filed challenging the order dated 31st January, 2022 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 140/Del./2021 for the Assessment Year 2017-18. The relevant portion of the impugned order is reproduced hereinbelow:-

“4.2 It was also claimed by the Appellant that issues raised in grounds no 3 and 4, are squarely covered by the order of the Hon'ble Tribunal in Appellant's own case i.e. ITA No.9130/Del/2019 AY 2016-17 decided on 06-07-2020 and recent Judgement of the Hon'ble Apex Court in Engineering Analysis Centre for Excellence Private Limited Vs Commissioner of Income Tax & Another - AIR 2021 SC 124/432 ITR 471(SC).

4.3 The Ld. DR did not refute the claim of the Appellant.

*4.4 We have given thoughtful consideration to the submissions of the Appellant and perused the order and judgment as referred above by the Appellant and observed that the issues under consideration as raised vide grounds no. 3 and 4 in this appeal, are identically the same, as have been decided by the Hon'ble Tribunal in Appellant's own case i.e. ITA No.9130/Del/2019 for the previous AY 2016-17 decided on 06-07-2020 and even covered by the recent judgment of the Hon'ble Supreme Court in the case of **Engineering Analysis Centre for Excellence Private Limited vs. Commissioner of Income Tax & Another (Supra).**"*

2. Learned counsel for the Appellant states that the ITAT has erred in holding that the income from supply of CAS and middleware products to indian customers, does not fall under the 'royalty' as defined under Section 9(1)(vi) of the Income Tax Act, 1961 ('the Act') and Article 12(3) of the India- Swiss DTAA.
3. Admittedly, the questions of law urged in the present appeal are covered by the decision of the Supreme Court in the case of **Engineering Analysis Centre of Excellence Pvt. Ltd. Vs. CIT 432 ITR 471 SC.**
4. At this stage, learned Counsel for the Appellant states that the revenue has not accepted the decision in **Engineering Analysis (supra)** and has preferred a review petition against the same.
5. Though the review petition in **Engineering Analysis (supra)** is pending before the Supreme Court, yet there is no stay of the said judgment till date.
6. Consequently, in view of the judgments of the Supreme Court in **Kunhayammed and Others Vs. State of Kerala And Another, (2000) 6 SCC 359** and **Shree Chamundi Mopeds Ltd. Vs. Church of South India**

Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1, the present appeal is covered by the judgment of the Supreme Court in *Engineering Analysis* (supra).

7. Accordingly, no substantial question of law arises for consideration in the present appeal and the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 21, 2022
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