

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI PRAMOD KUMAR(VICE PRESIDENT) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 7313/MUM/2019
Assessment Year: 2016-17**

Dassault Systems Solid
Works Corporation,
C/o Deloitte Haskins and
Sells LLP , 7th Floor, ASV
Ramana Towers 52,
Venkatnarayana Road,
Chennai – 600 017

Vs. The Dy. Commissioner of Income
Tax– (International Taxation)-
2(1)(2)
Mumbai

PAN No. AAFCS8787E

Appellant

Respondent

Appellant by	: Shri. Pranit, A.R
Respondent by	: Shri. Sanjay Singh, CIT D.R

Date of Hearing	: 18.06.2020
Date of pronouncement	: 30.06.2020

ORDER

PER RAVISH SOOD, JM

The captioned appeal file by the assessee is directed against the order passed by the A.O u/s 143(3) r.w.s 144C(13) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 26.09.2019. The impugned order has been assailed before us by the assessee on the following grounds of appeal:

“Based on the facts and circumstances of the case, Dassault Systemes Solidworks Corporation (“assessee” or “appellant”), respectfully submits as under:

1. General

1.1. The order of the learned Assessing Officer (AO), is contrary, to canons of equity and natural justice, cont., to law and facts involved, not based on facts and circumstances of the case, contrary to mandatory, Provisions of Income'. Act, 1961 ("Act"), lacks jurisdiction and is liable to be struck down.

1.2. The learned AO has erred in law and on facts in computing the total income of the assessee at INR 63,71,64,640/-.

2. Taxability of receipts towards sale of software products

2.1. The Honourable DRP has erred in upholding the draft assessment order after rejecting the appellant's objections merely for the reason that the issue was decided against the appellant by the DRP in the earlier years, even as it noted that the binding decisions of the jurisdictional Mumbai Bench of the Income Tax Appellate Tribunal on identical issue in the appellant's own case for the earlier assessment years 2003-04, 2005-06 and 2006-07, 2007-08, 2009-10, 2011-12, 2013-14 and 2014-15 were concluded in favour of the appellant.

2.2. On the facts and the circumstances of the case and in law, the learned AO and DRP have erred in holding that the income from sale of shrink-wrapped software is taxable in India, being in the nature of royalty under the provisions of section 9(1)(vi) of the Act as well as Article 12(3) of the Double Taxation Avoidance Agreement (DTAA) between India and USA.

2.3. On the facts and circumstances of the case and in law, the learned AO and DRP have erred in not appreciating that the payments received on sale of shrink-wrapped software is for 'sale of copyrighted article' and not 'transfer of copyright right' as the end users in India obtained only a right to use the software products as against any copyright right.

2.4. On the facts and circumstances of the case and in law, the learned AO has erred in holding that software is a process or a property similar to patent, invention, design, secret formula, process, etc as defined under Explanation 2 to section 9(1)(vi) of the Act.

2.5. The learned AO has erred in law in stating that the retrospective amendment to section 9(1)(vi) of the Act by way of Insertion of Explanation 4 to the said section through Finance Act 2012 is applicable also to the definition of "Royalty" under Article 12 of the DTAA.

2.6. Without prejudice to the other grounds, the learned AO have erred in computing the tax on income at the rate of 15 percent along with levying surcharge and cess after recognizing the income of the assessee as royalty income, whereas section 115A of the Act prescribes a rate of 10 percent under the Act on royalty income.

Each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the appellant.

The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds Of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Honourable Income Tax Appellate Tribunal to decide this appeal according to law.”

2. Briefly stated, the assessee company which is a non-resident company incorporated in the United States of America (USA), is engaged in the business of developing and marketing of 3D mechanical design solutions e.g CAD. The assessee company had on 30.03.2018 filed its return of income for A.Y 2016-17, declaring its total income at Rs. 1,17,41,400/-. On the basis of the return of income the assessee had claimed a refund of Rs. 6,59,89,780/- out of tax deducted at source of Rs. 6,72,23,330/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the shrink-wrap application software developed and sold by the assessee was called “SolidWorks”, and was used for 3D modeling. It was observed by the A.O, that the software was sold by the assessee through distributors/resellers to the end-users in India. Accordingly, the assessee had entered into software distribution agreements with resellers in India who would buy shrink wrapped software from the assessee, and in turn sell the same to the customers in India. It was noticed by the A.O that the assessee had suo motto offered a sum of Rs. 1,17,41,400/- to tax as royalty received from one concern viz. M/s Geometric Ltd. However, it was observed by the A.O that as per “Form No. 26AS” the total receipts of the assessee during the year were reflected at Rs. 63,71,64,638/- on which an amount of Rs. 6,72,23,331/- was deducted towards tax at source. It was further noticed by him that the

assessee had in its return of income claimed credit for the TDS of Rs. 6,72,23,331, without offering the corresponding receipts as its income for the year under consideration. On being called upon to explain as to why the entire receipt from the sale of software may not be treated as 'royalty' income, and accordingly be brought to tax in its hands, it was submitted by the assessee that the Tribunal in its own case for A.Y 2003-04, A.Y 2005-06, A.Y 2006-07, A.Y 2007-08, A.Y 2009-10 & A.Y 2011-12, had held the receipts earned by the assessee under similar fact pattern as its "business income", which in the absence of its "Permanent Establishment" (PE) in India were not taxable in India. Further, the assessee drawing support from the "Software Distribution Agreements submitted, that the distributors/resellers sold the shrink-wrap software bought in the fully packaged condition, as received from the assessee to the end users in India i.e without opening the package. It was further submitted by the assessee, that the SolidWorks software was given to the customers in India along with and pursuant to an end user license agreement. Although the end user license agreement was not physically signed, it was built-in-as a part of the installation process and would 'pop up' on the computer screen, and had to be indispensably 'accepted' by the user, as it was only then the user could operate the software. It was further submitted by the assessee, that the end-user had limited rights to use the software for internal purposes, right to copy the software on hard disk or to make copies for archive purpose. It was the claim of the assessee, that the end-user was divested of any right to transfer the software or reproduce the same, as the same per the terms of the license agreement were specifically prohibited. The assessee also made submissions before the A.O on the scope of the term 'royalty' as per 'Explanation 2' to Sec. 9(1)(vi); the meaning of the term

‘copyright’ under the Copyright Act, 1957; the amendment introducing ‘Explanation 4’ below Sec. 9(1)(vi) and its impact on software distributor and on the DTAA; and the definition of ‘royalty’ under the India-USA tax treaty.

4. The A.O after deliberating on the contentions advanced by the assessee, therein observed, that as per the ‘License and Subscription Service Agreement’, SolidWorks granted the end-user a non-exclusive non-transferable license to use the software and the printed or electronic documentation. It was observed by the A.O, that in lieu of the single user license which entitled the end-user to use one copy of the software or a multiple user or network license, as the case may be, the end-user would pay license fees. Admittedly, as claimed by the assessee, it was observed by the A.O that the software was owned by SolidWorks and the copyright, trademark and proprietary rights were retained by it and not transferred to the end-user. At the same time, the A.O held a conviction that the software was not goods or tangible property but was an intangible intellectual property, which being similar to patent, invention, design, secret formula etc. would fall within the meaning of ‘process’ as mentioned in ‘Explanation 2’ to the definition of ‘royalty’ under the Act. In support of his aforesaid view, the A.O relied on the CBDT Circular No. 621 of 19/12/1991 to hold that payment for acquisition of software was to be held as ‘royalty’. Insofar the claim of the assessee that the issue was covered in its favor by the orders of the Tribunal in its own case for the preceding years, the A.O observed that the same had been assailed by the revenue before the Hon’ble High Court, and thus had not yet attained finality. Also, it was observed by the A.O, that the Hon’ble High Court of Karnataka in the case of CIT Vs. Samsung Electronic Co. Ltd (2012) 345 ITR 494 (Kar), had concluded, that the payments received by the assessee from the resellers in

India for the acquisition of computer software was in the nature of 'royalty', and thus chargeable to tax. Also, the A.O in order to drive home his aforesaid conviction relied on the amendment to 'Explanation 4' to Sec. 9(1)(vi) of the Act, that was made available on the statute vide the Finance Act, 2012, w.r.e.f 01.06.1976. On the basis of his aforesaid deliberations, the A.O vide his draft assessment order passed u/s 143(3) r.w.s 144C(1) of the Act, dated 27.12.2018 proposed to treat the amount of Rs. 63,71,64,640/- received by the assessee from the resellers/distributors in India, as 'royalty', and thus subject the same to tax in India.

5. The assessee filed its objections before the Dispute Resolution Panel-1(WZ), Mumbai (for short "DRP"). As regards the claim of the assessee, that the view taken by the revenue in its case for the preceding years that the receipts from resellers of software in India was to be held as 'royalty', had been dislodged, and decided by the Tribunal in its favour, it was observed by the DRP that as the revenue had assailed the said orders before the Hon'ble High Court of Bombay, therefore, the same had not attained finality. Observing, that as per the extant law, its decisions were binding on the lower authorities and the revenue was precluded from filing appeal against its order, the DRP taking cognizance of the fact that the matter was already sub-judice before the Hon'ble High Court, therefore, observed it would not be possible to take a view which would appear to prejudging the matter under consideration. Further, taking stock of the fact that the A.O and the DRP in the preceding years had consistently held the sale receipts from the licensees of the software, as being in the nature of 'royalty', the DRP followed the view taken by it in A.Y 2015-16. Accordingly, backed by his aforesaid conviction, the DRP held the sale receipts of software to be in the nature of 'royalty', both

under the India-USA tax treaty, as well under the Act. As regards the alternative claim of the assessee that if the sale receipts were to be held as 'royalty', then the same should be taxed at the rate of 10% under Sec. 115A of the Act, the same de hors availability of facts in support thereof was rejected by the DRP.

6. The A.O after receiving the order passed by the DRP u/s 144C(5) of the Act, dated 01.07.2019, therein passed the final assessment order u/s 143(3) r.w.s 144C(13) of the Act, dated 26.09.2019, and assessed the income of the assessee company at Rs. 63,71,64,640/-.

7. The assessee being aggrieved with the order passed by the A.O u/s 143(3) r.w.s 144C(13), dated 26.09.2019, has carried the matter in appeal before us. The ld. Authorised representative (for short "A.R") for the assessee, at the very outset submitted that the issue involved in the present appeal i.e as to whether or not the sale receipts from the licensees of the software was to be held as 'royalty', was squarely covered in the favor of the assessee by the orders of the Tribunal in its own case for the preceding years. In order to buttress his aforesaid claim, the ld. A.R drew our attention to the orders passed by the Tribunal in the assessee's own case for the preceding years viz. A.Y 2003-04, A.Y 2005-06, A.Y 2006-07, A.Y 2007-08, A.Y 2009-10, A.Y 2011-12, A.Y 2013-14, A.Y 2014-15 and A.Y 2015-16. It was submitted by the ld. A.R, that the Tribunal in all the aforesaid orders had consistently held that the sale receipts from the licensees of the software could not held as 'royalty' in the hands of the assessee. In order to buttress his aforesaid claim, the ld. A.R took us through the order of the Tribunal in the assessee's own case for A.Y 2009-10 viz. ITA No. 7790/Mum/2012, dated 31.03.2016. In the backdrop of the

aforesaid facts, it was submitted by the Id. A.R that as the fact situation during the year under consideration remained the same, therefore, the view earlier taken by the Tribunal while disposing off the appeals of the assessee for the preceding years was required to be followed.

8. Per contra, the Ld. D.R relied on the orders of the A.O/DRP.

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. On a perusal of the recent order of the Tribunal i.e ITAT "I" Bench, Mumbai, in the assessee's own case for the immediately preceding year i.e A.Y 2015-16 in ITA No. 7027/Mum/2018, dated 10.01.2019, we find that it was observed by the Tribunal as under:

"5. We have heard the rival submissions and perused the orders of the authorities below and the decision of the Coordinate Bench. On a perusal of the order of the Tribunal for the earlier assessment year we find that this issue has been decided by the Tribunal observing as under: -

"3. At the outset, Ld. AR placed on record series of the order of the Tribunal in assessee's own case for the A.Y. 2003-04 order dated 15/12/2009, A.Y. 2005-06 order dated 01/04/2010, A.Y.2006-07 order dated 08/02/2012, A.Y.2007-08 order dated 31/03/2016, 4 ITA No. 7027/MUM/2018 (A.Y: 2015-16) Dassault Systems Solidworks Corporation A.Y.2009-10 order dated 31/03/2016 and A.Y.2011-12 order dated 28/02/2017 wherein exactly similar issue was decided in favour of the assessee and it was held that receipts towards sale of software products was not liable to tax as royalty. The precise observation of the Tribunal for the A.Y.2011- 12 order dated 28/02/2017 reads as under:-

ISSUE NO.1 TO 7:- 4. Issue no. 1 to 7 are interconnected, therefore, are being taken up together for adjudication. Under these issues, it is to be determined that the receipt from the sale of software products to clients in India through its distributor / reseller amounting to USD 6.05 millions is in the nature of royalty or not. The learned representative of the assessee has argued that the case of the assessee has duly been covered by the decision

of the Hon'ble Income Tax Appellate Tribunal in the assessee's own case for the A.Y.2002-03 in ITA No. 3095/Mum/2007 order dated 15th December 2009 and for the A.Y.2005-06 in ITA No.5097/Mum/2008 order dated 1st April 2010 and for A.Y.2006-07 in ITA No.3219/Mum/2010 order dated 08.02.2012 and for A.Y.2007-08 in ITA No.8721/Mum/2010 order dated 31.03.2016 and for A.Y.2009-10 in ITA No.7790/Mum/2012 order dated 31.03.2016. Therefore, in the said circumstances, the order passed by the Assessing Officer on the direction of the DRP is wrong against law and facts and is liable to be set aside and the receipt is not liable to be treated as royalty. It is also argued that when no patent right was sold however computer programs were sold which could not be taxed in view of the provision u/s.9(1) of the Act therefore in the said circumstances the amount in question is not liable to be treated as royalty. However, on the other hand, the learned representative of the department has refuted the said contentions and argued that the Hon'ble Karnataka High Court has decided the issue in favour of the revenue in the cases of CIT Vs. Synopsis International Old Ltd., 212 Taxman 0454 (Kar. HC), dated 03.08.2010, CIT V. Samsung Electronics Co. Ltd. & Others, (2011) 345 ITR 0494, Kar HC, dated 15.10.2011, CIT V. Wipro Ltd. (2011), 355 ITR 0284 (Kar) / 203 Taxman 621 (Kar.) HC, dated 15.10.2011 and CIT Vs. CGI Information Systems and Management Consultants (P) Ltd., (2014) 48 Taxmann.com 264 (Kar), dated 09.06.2014. It is also specifically argued that the Jurisdictional Tribunal in case of the DIT(IT) Vs. Reliance Infocomm Ltd. (Mum Trib) dated 06.09.2013 has followed the decision of Hon'ble Karnataka High Court in the case of CIT Vs. Synopsis International Old Ltd., 212 Taxman 0454 (Kar. HC), dated 03.08.2010 and CIT Vs. Samsung Electronics Co. Ltd. & Others, (2011) 345 ITR 0494, Kar HC, dated 15.10.2011. Therefore, in the said circumstances the order passed by the 5 ITA No. 7027/MUM/2018 (A.Y: 2015-16) Dassault Systems Solidworks Corporation Assessing Officer is justifiable which is not liable to be interfere with at this appellate stage. Keeping in view of the argument advanced by the parties and perused the record carefully, it is apparent on record that the said issue has been decided in favour of the assessee by the Hon'ble Income Tax Appellate Tribunal in the assessee's own case for the A.Y.2002-03 in ITA No. 3095/Mum/2007 order dated 15th December 2009 and for the A.Y.2005-06 in ITA No.5097/Mum/2008 order dated 1st April 2010 and for A.Y.2006-07 in ITA No.3219/Mum/2010 order dated 08.02.2012 and for A.Y.2007-08 in ITA No.8721/Mum/2010 order dated 31.03.2016 and for A.Y.2009-10 in ITA No.7790/Mum/2012 order dated 31.03.2016. On appraisal of the latest order for the A.Y.2009-10, we found that the Hon'ble Income Tax Appellate Tribunal considered the order passed by the Hon'ble Karnataka High Court which was favour of the assessee. In the said order, the discussion in this regard is hereby reproduced below:-

“5. We see no reasons to take any other view of the matter than the view so taken by the coordinate bench. There is nothing much that we can add to such a well researched and erudite order either. The decisions of non jurisdictional High Courts, in favour of the revenue on this point, have already been dealt with in this order. As to what should be done in a situation in which there are conflicting views of Hon’ble non jurisdictional High Courts and in which we do not have the benefit of guidance from Hon’ble jurisdictional High Court, we can only add, with respectful concurrence, the views expressed below by the coordinate benches:It will be wholly inappropriate for us to choose views of one of the High Courts based on our perceptions about reasonableness of the respective viewpoint, as such an exercise will be de facto amount to sitting in judgment over the views of the High Courts something diametrically opposed to the very basic principles of hierarchical judicial system. We have to, with our highest respect of both the Hon’le High Courts, adopt an objective criterion for deciding as to which of the Hon’ble High Court should be followed by us.

8. We find guidance from the judgment of Hon’ble Supreme Court in the matter of CIT Vs. Vegetable Products Ltd. 1973 CTR (SC) 177 : (1972) 88 ITR 192 (SC). Hon’ble Supreme Court has laid down a principle that “if two reasonable constructions of a taxing provisions are possible, that construction which favours the assessee must be adopted”. This principle has been consistently followed by the various authorities as also by the Hon’ble Supreme Court itself. In another Supreme Court judgment Petron Engg. Construction 6 ITA No. 7027/MUM/2018 (A.Y: 2015-16) Dassault Systems Solidworks Corporation (P.) Ltd. & Anr. Vs. CBDT & Ors. (1998) 75 CTR (SC) 20: (1989) 175 ITR 523 (SC), it has been reiterated that the above principle of law is well established and there is no doubt about that. ITA No.936/M/2015 A.Y.2011-12 8 Hon’ble Supreme Court had, however, some occasions to deviate from this general principle of interpretation of taxing statute which can be construed as exceptions to this general rule. It has been held that the rule of resolving ambiguities in favour of taxpayer does not apply to deductions, exemptions and exceptions which are allowable only when plainly authorized. This exception, laid down in Littman vs Barron 1952(2) AIR 393 and followed by apex Court in Mangalore Chemicals & Fertilizers Ltd. vs Dy. Commr. of CT (1992) Suppl. (1) SCC 21 and Novopan India Ltd. vs CCE & C 1994 (73) ELT 769 (SC), has been summed up in the words of Lord Lohen, in case of ambiguity, a taxing statute should be construed in favour of a tax-payer does not apply to a provision giving taxpayer relief in certain cases from a section clearly imposing liability. This exception, in the present case, has no application. The rule of resolving ambiguity in favour of the assessee does not also apply where the interpretation in favour of assessee will have to treat the provisions unconstitutional, as held in the matter of State of M.P. vs Dadabhoy’s New

Chirmiry Ponri Hill Colliery Co. Ltd. AIR 1972 (SC) 614. [Tej International Pvt. Ltd. Vs. DCIT (2000) 69 TTJ 650 (Del)]

52. Even otherwise, the Revenue has not cited any direct case law of the jurisdictional High Court of Bombay before us. In the case laws cited by the Revenue of the Hon'ble Karnataka High Court in the matter of CIT Vs. Samsung Electronics Company Ltd." (supra) and CIT Vs. Synopsis International Old Ltd. (supra) though a view in favour of the Revenue has been taken, but, the Hon'ble Delhi High Court in the case of DIT Vs. Infrasoftware Ltd. (supra) which is a latter decision and has discussed the Samsung case also has taken the view in favour of the assessee. The Hon'ble Delhi High Court has taken the identical view favouring the assessee in the case of DIT Vs. Nokia Network (supra) and in the case of DIT Vs. Ericsson A.B. (supra) also. The Hon'ble Bombay High Court in the case of the Addl. Commissioner of Sales Tax Vs/ M/s. Ankit International, Sales Tax Appeal No.9 of 2011 vide order dated 15th September, 2011 while relying upon the decision of the Hon'ble Supreme Court in the Commissioner of Income Tax V. Vegetable Product Ltd. (1973) 88 ITR 192 and in Mauri Yeast India Pvt. Ltd. Vs. Stte of U.P. (2008) 14 VST 259 (SC) : (2008) 5 S.C.C. 680 has held that, if two views in regard to the interpretation of a provision are possible, the Court would be justified in adopting that construction which favours the assessee. Reliance can also be placed in this regard on the 7 ITA No. 7027/MUM/2018 (A.Y: 2015-16) Dassault Systems Solidworks Corporation decision of Hon'ble Supreme Court in Bihar State Electricity Board and another Vs. M/s. Usha Martin Industries and another : (1997) 5 SSC 289. We accordingly adopt the construction in favour of the assessee. [Capgemini Business Services India Ltd. Vs. ACIT (TS 100 ITAT 2016 (Mum)]

6. In view of the above discussion and having noted that there is no material difference in the facts of the case for this year vis-à-vis the facts of the assessment year 2006-07 as discussed above, respectfully following the views of the coordinate benches, we uphold the grievance of the assessee. It is, therefore, held that the receipts of Rs.19,20,14,000/- on account of receipts for software are not exigible to tax in India. The Assessing Officer is, therefore, directed to delete the impugned addition of Rs.19,20,14,000/.

7. In the result, the appeal is allowed. Pronounced in the open court today on 31st day of March, 2016."

5. However, the present case has been decided in view of the latest law settled by the Hon'ble Delhi High Court in case of Ericsson AV (343 ITR 470) (Del.) On appraisal of the above mentioned finding, it came into the notice that the Hon'ble Delhi High Court in case of DIT Vs. Infrasoftware Ltd. 264 CTR 329 (Del.) and in case of CIT Vs. Vegetable Products Ltd. 88 ITR 192 (SC) has

decided this issue in favour of the assessee. Since, the matter has also been considered by the Hon'ble Income Tax Appellate Tribunal and decided this issue in favour of the assessee specifically for the A.Y.2002-03 in ITA No. 3095/Mum/2007 order dated 15th December 2009 and for the A.Y.2005-06 in ITA No.5097/Mum/2008 order dated 1st April 2010 and for A.Y.2006-07 in ITA No.3219/Mum/2010 order dated 08.02.2012 and for A.Y.2007-08 in ITA No.8721/Mum/2010 order dated 31.03.2016 and for A.Y.2009-10 in ITA No.7790/Mum/2012 order dated 31.03.2016 in which the receipt on account of sale of Shrinkwrap software is not in the nature of royalty hence is not liable ITA No.936/M/2015 A.Y.2011-12 12 in India in view of the provision of section 9(1)(iv) of the Act as well as Article 12(3) of the Double Taxation Avoidance Agreement between India and U.S.A. In view of the said circumstances, we are of the view that the case of the assessee is fully covered by the above mentioned decisions and the finding of the Assessing Officer is based upon the DRP direction is wrong against law and facts and is hereby ordered to be set aside on this issue. It is therefore held that receipt to the tune of Rs.26,87,30,378/- on account of the receipt for sale of shrink-wrap software is not liable to tax in India. Therefore, the Assessing Officer is hereby directed to delete the full addition. Accordingly, these 8 ITA No. 7027/MUM/2018 (A.Y: 2015-16) Dassault Systems Solidworks Corporation issues are decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the assessee is hereby ordered to be Allowed."

4. We have gone through the orders of the Tribunal as cited by Ld. AR and Tribunal Order dated 28/02/2017, wherein the Tribunal have held that receipts from sale of Shrink-wrap software is not liable to tax in India accordingly, AO was directed to delete the addition so made on account of receipts for sale of Shrink-wrap software. Facts and circumstances in both the years under consideration are parimateria, therefore, respectfully following the order of the Tribunal in assessee's own case, we do not find any justification for taxing the receipt as taxable as royalty."

6. No distinguishing facts have been brought to our notice. Thus, facts being identical, respectfully following the said decision we allow the ground raised by the assessee on this issue."

In the backdrop of our aforesaid observations, we are of the considered view that as the fact situation pertaining to the year under consideration had not witnessed any change as in comparison to the immediately preceding year, therefore, respectfully following the view taken by the Tribunal in the

assesses own case for A.Y 2015-16 in ITA No. 7027/Mum/2018, dated 10.01.2020, we herein conclude that the addition made by the A.O by treating the sale receipts of shrink-wrap software as 'royalty' cannot be sustained, and is hereby vacated.

10. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
(Pramod Kumar)
VICE PRESIDENT

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 30.06.2020

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai