

ITAT: Payment for software license with restricted use, not Royalty

Mar 26, 2021

Reliance Corporate IT Park Ltd [TS-215-ITAT-2021(Mum)]

Conclusion

Mumbai ITAT holds that software license payment made by assessee (an Indian Co. providing support services) to a UK-company for AY 2014-15, doesn't constitute royalty under India-UK DTAA, rules that TDS u/s 195 was not applicable; Assessee purchased software from a UK-company and as per software license agreement, obtained non-exclusive and non-transferable license and also deducted TDS @10.51%, while making the remittance to the said company; Assessee preferred an appeal u/s 248 before CIT(A) against the TDS liability, claiming that (i) agreement is one of sale of goods, in the nature of ready-made, off-the-shelf software, (ii) payment is not in the nature of Royalty, but business profits, and (iii) since UK-company does not have PE in India, profits earned by them are not taxable in India; CIT(A) treated the payment as Royalty since access to significant proprietary database" was being allowed to the assessee by the software; ITAT relies on co-ordinate bench ruling assessee's own case where it was held that license fee paid for purchases of software is not in the nature of royalty under India-Singapore DTAA and assessee is not liable to deduct TDS u/s 195; ITAT, in the aforementioned case remarked that that when database access by itself does not result in taxation as royalty, such database access being coupled with software license cannot bring the software consideration within the scope of royalty.:ITAT Mum

Decision Summary

The ruling was delivered by the Mumbai ITAT bench comprising Shri Pramod Kumar and Shri C.N Prasad.

Dr. Sunil M. Lala appeared for the assessee, while Revenue was represented by Mr. Vijaykumar G Subramanyam.

Taxsutra Note

1. Under Sec.248, where having deducted TDS u/s195, the deductor claims that no tax was required to be deducted on such income, an appeal may be filed with the CIT(A) for a declaration that no tax was deductible on such income.
2. Mumbai ITAT in assessee's own case [\[TS-215-ITAT-2021\(Mum\)\]](#) with similar fact pattern, held that software license payment to a Singaporean entity, doesn't constitute royalty under India-Singapore DTAA. ITAT also held that access to database is outside the ambit of Royalty.
3. SC in [\[TS-106-SC-2021\]](#) held that payments made for software are not covered under Art. 12 of DTAAs and Indian payers are not liable to withhold tax u/s 195 as no income chargeable to tax arises in India

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"I" BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, HON'BLE VICE PRESIDENT AND
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

ITA NO. 7301/MUM/2016 (A.Y: 2014-15)

Reliance Corporate IT Park Ltd. Building No.4 & 5 TTC Industrial Area Thane-Belapur Road, Ghansoli Navi Mumbai 400701 PAN: AABCD7169H	v.	DCIT(IT)-4(1)(1) Room No. 1712, 17th Floor Air India Building, Nariman Point Mumbai 400021
(Appellant)		(Respondent)

Assessee by	:	Dr. Sunil M. Lala
Department by	:	Shri Vijaykumar G Subramanyam
Date of Hearing	:	30.12.2020
Date of Pronouncement	:	05.02.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-58, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 02.08.2016 for the A.Y. 2014-15.

2. Assessee has raised following grounds in its appeal: -

"Ground No. 1: On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [CIT(A)] has erred in holding that the consideration paid by the Appellant to Spiral Software Limited represents Royalty as per Income-tax Act, 1961 ('Act') as well as the India-UK Double Taxation Avoidance Agreement ('DTAA').

Ground No. 2: On the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the Appellant is liable to withhold tax under section 195 of the Act at the rate specified in the DTAA or Act, whichever is beneficial.

The Appellant craves leave to add to or alter, by deletion, substitution, modification, or otherwise, the above grounds of appeal, either before or during the hearing of the appeal."

3. Briefly stated the facts are that, the assessee has remitted certain amounts to a non-resident during the period on which TDS has been made as contemplated u/s. 195 of the Act. However, the case of the assessee is that the amount is not taxable in India and hence it had no liability to deduct TDS. The assessee is a company incorporated in India and is primarily engaged in Business of providing support services. The assessee has placed Work Order no. MD1/31073931 dated 11/01/2013 with Spiral Software Ltd., 101, Science Park, Milton Road, Cambridge, United Kingdom for purchase of 'Crude Manager' and 'Shell Assay Library' Software. As per the terms of the software license agreement, Spiral has granted to the Assessee a perpetual, non-exclusive and non-transferable license. As per the arrangement between Spiral and the Assessee, the taxes, if any, payable on the captioned transaction of purchase of

software, are to be borne by the Assessee. The software product has been supplied by Spiral from outside India and the payment for the same has been made in foreign exchange to Spiral outside India. The Assessee has remitted Euro 1,75,000 to spiral towards purchase of software. The Assessee has deposited taxes of ₹.14,18,845 (₹. 12,70,190 on 23.04.2013 and ₹.1,48,655 on 16.05.2013), being 11.74% (i.e. rate of 10.51% under the Income-tax Act, 1961, on payment of Euro 1,75,000 in terms of Section 195 of the Act. The assessee has claimed that the software has been supplied subject to the restrictions that the Assessee shall not reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the software or create derivative works based on whole or part of the software Spiral is a company resident in UK and does not have a permanent establishment in India. Accordingly, the provisions of the DTAA will be applicable to Spiral. Section 90 of the Act provides that the provisions of the DTAA shall prevail over those of the Act, to the extent that they are beneficial to an assessee.

4. It was further submitted before lower authorities that Spiral does not have any Permanent Establishment ('PE') in India. The Assessee was of the view that it is not required to deduct tax at source u/s 195 from the payment for the purchase of software, and therefore, preferred an appeal

before the Ld.CIT(A) as per the provisions of Section 248 of the Act. The assessee claimed that the agreement entered into between it and Spiral is one of sale of goods, in the nature of ready-made, off-the-shelf software. The goods have been supplied from outside India and the payment for the same has been made outside India to Spiral. As per the assessee, payment of license fees for purchase of off-the-shelf software under the agreement ought not to be characterized as 'Royalties' but as 'business profits', both under the Act as well as under the DTAA. Accordingly, since Spiral does not have a permanent establishment or a business connection in India, the payment of software license fees does not constitute income chargeable to tax in India in the hands of Spiral either under the DTAA or the Act.

5. Not convinced with the submissions of the assessee the Ld.CIT(A) treated the payment made by the assessee for purchase of software licence fee as royalty observing as under: -

"6.4 The functional aspects of the so called software acquired by the appellant have been described to me by the appellant. Crude Manager, now known as Crude Suite, is an industry-leading, enterprise toolset for sharing, managing and modeling crude oil information. Its advanced features enable companies to extract maximum value from their data across the Petroleum Industry. The Crude Manager Software is integrated with the various libraries/databases provided by the seller of software, whose access is provided to the appellant for use. The Crude Manager is useless without use of these data bases. It is able to provide crude

characteristics and details by tapping into these databases. Hence, the availability and access to the databases is a sine-qua-non for use of these software. Clearly, the software is not merely a copyrighted article in the present case but represents use of confidential and systematic scientific information developed by the database owners.

While dealing with the ground raised, two basic issues arise for consideration which will be relevant for determination of its nature-

i. Whether the purchased software represents sale of a copyrighted article and hence not liable to be treated as royalty under India UK DTAA; or

ii. Whether even if the purchase represents sale of copyrighted article, it is required to be treated as royalty as concluded by the AO in his order.

Clearly, if the character of the license is such that the purchase does not represent sale of copyrighted article, there would not be any need to discuss the various issues raised by the appellant with respect to the character of copyrighted article as against right to a copyright.

6.5 The nature of the software purchased by the appellant has been discussed in detail in the preceding para. As detailed above, the Crude Suite purchased by the appellant is a multi-user application purchased along with the data sets developed by various petroleum related database developers. The software comes along with the right to use these databases which, as elaborated earlier, are essential for the operation of this software. This implies that the software comprises of a right to use Assay databases developed by Such as well as - representing a Proprietary Equipment Reliability Database for which the seller has a right to allow the purchase of the software to 'use or give a right to use the database which represents information concerning industrial, commercial or scientific experience. These databases are specific to the software and relates to the industry in which the group operates.

6.6 Hence, the transaction does not represent a mere sale of software as submitted by the appellant. There is a critical difference as significant proprietary databases are allowed to be accessed by the enterprise versions of the software. Clearly the license fee paid by the purchaser not only relate to the cost of software but also for use or right to use such proprietary information.

6.7 Keeping in view the overall nature of the software license acquired by the appellant, it is noticed that this does not represent off-the self or shrink wrapped software but software access

alongwith database access. Without the use of the proprietary information which comes alongwith the software, the plain software sold is useless and carries no value. These accesses change the character of the software acquired by the appellant and it no longer merely remains a standalone independent software product sale as claimed by the appellant. It is no longer sale of a copyrighted article but payment for the use of databases and suitable scientific manipulating (design/analysis) tools provided alongwith. The India UK DTAA defines Royalty to be :

Article 13(3) – For the purposes of this Article, the term "Royalties" means

(a) payments of any kind received as a consideration for the use of or the right to use, any copyright of a literary, artistic or scientific work, including cinematography films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience: and ;

(b) payments of any kind received as consideration for the use of or the right to use any industrial commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the Operation of ships or aircraft in international traffic.

6.8 In light of the specific facts of this case, the dispute with respect to whether the license represents right to a copyrighted article or a right to use the copyright itself does not arise. The payments represent a payment for use or right to use any copyright of a design or model or for information concerning industrial, commercial or scientific experience. It is clear that this is not a case of sale of software per se. In light of these facts, there is hardly any need to go into the dispute of 'copyright vs copyrighted article' although I find no reason or justification for the reliance placed by the appellant on the statutes of US, Australia and OECD rather than the DTAA and the Indian Income Tax Act."

6. At the time of hearing, Learned Counsel for the assessee submitted that identical issue has been decided in assessee's own case by the Tribunal in ITA.No. 7300/Mum/2016 dated 10.12.2016 wherein licence

fee paid by the assessee for the software purchased from Exida Asia Pacific Pte. Limited was held to be not royalty.

7. Ld.DR fairly submitted that the issue is more or less identical and the issue is decide in favour of the assessee.

8. We have heard the rival submissions, perused the orders of the authorities below and the decision of the Tribunal in ITA.No. 7300/Mum/2016 dated 10.12.2019. On a perusal of the order of the Tribunal we find that identical issue has been decided in favour of the assessee wherein the Tribunal held that the licence fee paid for purchases of software "exSilentia Version 3 ultimate bundle" is not in the nature of royalty, therefore, assessee is not liable to deduct TDS. While holding so the Tribunal observed as under: -

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

6. We find that the basic reasoning adopted by the learned CIT(A), for holding that the payment for software licence is royalty, is the access to "significant proprietary database" being allowed to the assessee by the software in question. However, we find that assessee to database, in the context of materially similar DTAA provision, has been held to be outside the ambit of „royalty“. While holding so, the coordinate bench, in the case of ITO vs Cadila Healthcare Ltd. [(2017) 162 ITR 575 (Ahd)] has observed as follows:-

17. We find that as the treaty provision unambiguously requires, it is only when the use is of the copyright that the taxability can be triggered in the source country. In the present case, the payment is for the use of copyrighted material rather than for the use of copyright. The distinction between the copyright and copyrighted article has been very well pointed out by the decisions of Hon'ble Delhi High Court in the case of *DIT Vs Nokia Networks OY* [(2013) 358 ITR 259 (Del)]. In this case all that the assessee gets right is to access the copyrighted material and there is no dispute about. As a matter of fact, the AO rightly noted that 'royalty' has been defined as "payment of any kind received as a consideration for the use of, or right to use of, any copyright of literary, artistic or scientific work" and that the expression "literary work", under section 2(o) of the Copyright Act, includes 'literary database' but then he fell in error of reasoning inasmuch as the payment was not for use of copyright of literary database but only for access to the literary database under limited non exclusive and non transferable licence. Even during the course of hearing before us, learned Departmental Representative could not demonstrate as to how there was use of copyright. In our considered view, it was simply a case of copyrighted material and therefore the impugned payments cannot be treated as royalty payments. This view is also supported by Hon'ble Bombay High Court's judgment in the case of *DIT Vs Sun and Breadstreet Information Services India Pvt. Ltd* [(2011) 318 ITR 95 (Bom)].

7. When database access by itself does not result in taxation as royalty, such database access being coupled with software licence cannot bring the software hence consideration within the scope of royalty. Nothing, therefore, turns on the reasoning adopted by the learned CIT(A).

8. As per the taxation of payment for licencing of software, we find that the issue is covered in favour of the assessee by a coordinate bench decision in the case of *ADIT vs TII Team Telecom International Ltd.* [12 ITR (Tri) 688 (Mum)] whereas, dealing with materially similar issue, has observed as follows:-

14. It is an admitted position that the assessee did not have any permanent establishment in India, in terms of the provisions of Article 5 of the tax treaty, and, accordingly, the assessee cannot be held liable to be taxed in respect of

business profits, under Article 7, on supply of software in question. The case of the revenue really rests on taxability under Article 12 which provides as follows

"Royalties.—(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term royalties as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or perform in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise

in the State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention."

15. In terms of the provisions of Article 12(3) of the Indo Israel tax treaty, royalty is defined, for the purposes of this tax treaty, as "payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience". The question then arises whether a payment for computer software cannot be a payment for use of or right to use of 'a copyright of literary, artistic or scientific work, including cinema photographic film', and, while examining this question, it is important to bear in mind the fact that there is a specific mention about the use "of" copyright. The only other clause in which payment for software could possibly fall is "consideration for use of, or right to use of, a "process". Let us examine these two aspects of the definition of 'royalty' under the India Israel tax treaty.

16. As regards the question whether the payment for software could be treated as payment for "use of, or the right to use, any copyright of literary, artistic or scientific work", we find that this issue directly came up for consideration of a Special Bench of this Tribunal in the case of Motorola Inc. (supra). That was a case in which the Special Bench had an occasion to decide whether payment for software amounts to 'royalty', for the purposes of India Sweden tax treaty which incidentally is the same as in Indo Israel tax treaty and which also defines royalty as "payments of any kind received as a consideration

for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience". The Special Bench, after a very erudite discussion on various facets of the issue before them, concluded that "we hold that the software supplied was a copyrighted article and not a copyright right, and the payment received by the assessee in respect of the software cannot, therefore, be considered as royalty either under the IT Act or the DTAA". Right now we are only concerned with the provisions of the tax treaty, and we have noticed that the provisions of tax treaty as before the Special Bench are exactly the same as before us in this case. The issue, therefore, as to whether payment for supply of software can be viewed as a payment for copyright or not is no longer *res integra*. The Special Bench has decided this issue in favour of the assessee, and the views so expressed by the Special Bench, being from a higher forum than this division bench, are binding on us. In any case, as the provisions of Article 12(3) specifically provide, what is liable to be treated as royalty is payment for "use of, or the right to use, any copyright of literary, artistic or scientific work", and the connotations of "use of copyright" of a work are distinct from the use of a copyrighted article. The meaning of "use of copyright of a work" cannot be treated as extending to "use of a copyrighted work" as well, as it would amount to doing clear violence to the words employed by the treaty. Copyright is one thing, and copyrighted article is quite another thing. To give a simple example, when a person is using a music compact disc, that person is using the copyrighted article, i.e. the product itself, and not the copyright in that product. As held by the Special Bench, in *Motorola Inc. case (supra)*, the four rights which, if acquired by the transferee, constitute him the owner of a copyright right, and these rights are:

i)	The right to make copies of the computer programme for purposes of distribution to the public by sale or other transfer of ownership, or by rental, lease, or lending.
ii)	The right to prepare derivative computer programmes based upon the copyrighted computer programme

iii)	<i>The right to make a public performance of the computer programme.</i>
iv)	<i>The right to publicly display the computer programme."</i>

17. It is not even revenue's case that any of these rights have been transferred by the assessee, on the facts of this case, and, for this reason, the payment for software cannot be treated as payment for use of copyright in the software. As we hold so, we may mention that in the case of *Gracemac Corpn. (supra)*, a contrary view has been taken but that conclusion is arrived at in the light of the provisions of clause (v) in Explanation 2 to section 9(1)(vi) which also covers consideration for "transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work" – a provision which is clearly larger in scope than the provision of Article 12(3) of the Indo Israel tax treaty. The word "of" between 'copyright' and 'literary, artistic or scientific work' is also missing in the statutory provision. The treaty provision that we are dealing with are thus certainly not in pari materia with this statutory provision, and, by the virtue of section 90(2) of the Act, the provisions of India Israel tax treaty clearly override this statutory provision. In *Gracemac Corpn. case (supra)*, the coordinate bench was of the view that the provisions of the applicable tax treaty and the Income tax Act are "identical" – a position which does not prevail in the situation before us. We, therefore, see no reasons to be guided by *Gracemac Corpn. case (supra)*. The next issue that we need to consider is whether a payment for software can be said to be a payment for "process" as a computer program is a nothing but a set of instruction lying in the passive state and this execution of instructions is 'a process' or 'a series of processes'. No doubt, in terms of the provisions of section 2(ffc) of the Indian Copyright Act, 1957, a computer program, i.e., software, has been defined as "a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result", but the moot question is as to what is that a customer pays for when he buys, or to put it in technical terms 'obtains licence to use' the software – for the process of executing the instructions in the software, or for the results achieved on account of use of the software. To draw an analogy, it is akin to a situation in which

a person hires a vehicle, and the question could be as to what does he pay for – for the use of the technical know-how on the basis of which vehicle operates, or for the use of a product which carries passengers or goods from one place to another. The answer is obvious. When you pay for use of vehicle, you actually pay for a product which carries the passengers or goods from one place to another and not the technical know-how on the basis of which such a product operates. Same is the case with the software, when someone pays for the software, he actually pays for a product which gives certain results, and not the process of execution of instructions embedded therein. As a matter of fact, under standard terms and conditions for sale of software, the buyer of software is not even allowed to tinker with the process on the basis of which such software runs or to even work around the technical limitations of the software. In Asia Satellite Telecommunications Ltd. v. Dy. CIT [2003] 78 TTJ 489, 85 ITD 478 (Delhi), a coordinate bench of this Tribunal did take the view that when an assessee pays for transponder hire, he actually pays for the a process inasmuch as transponder amplifies and shifts the frequency of each signal, and, therefore, payment for use of transponder is in fact a payment for process liable to be treated as 'royalty' within meanings of that expression under Explanation 2 to section 9 (1)(vi) of the Incometax Act. However, when this decision came up for scrutiny of Hon'ble Delhi High Court, in the case reported as Asia Satellite Telecommunications Co. Ltd. v. CIT [2011] 332 ITR 340/ 197 Taxman 263. Their Lordships, after a very erudite and detailed discussion, concluded that "we are unable to subscribe to the view taken by the Tribunal in the impugned judgment on the interpretation of section 9(1)(vi) of the Act". It cannot, therefore, be open to us to approve the stand of the revenue to the effect that the payment for software is de facto a payment for process. That is a hyper technical approach totally divorced from the ground business realities. It is also important to bear in mind the fact that the expression 'process' appears immediately after, and in the company of, expressions "any patent, trade mark, design or model, plan, secret formula or process". We find that these expressions are used together in the treaty and as it is well settled, as noted by Maxwell in Interpretation of Statutes and while elaborating on the principle of noscitur a sociis, that when two or more words which are susceptible to analogous meaning are used together they are deemed to be used in

their cognate sense. They take, as it were, their colours from each other, the meaning of more general being restricted to a sense analogous to that of less general. This principle of interpretation of statutes, in our considered view, holds equally good for interpretation of a treaty provision. Explaining this principle in more general terms, a very distinguished former colleague of ours Hon'ble Shri M.K. Chaturvedi, had, in an article 'Interpretation of Taxing Statutes' (AIFTP Journal: Vol. 4 No. 7, July, 2002, at p. 7), put it in his inimitable words as follows :

"Law is not a brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism. Similarly, the rules relating to interpretation are also based on common-sense approach. Suppose a man tells his wife to go out and buy bread, milk or anything else she needs, he will not normally be understood to include in the terms "anything else she needs" a new car or an item of jewellery. The dictum of ejusdem generis refers to similar situation. It means of the same kind, class or nature. The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of same kind as specified. Noscitur a sociis is a broader version of the maxim ejusdem generis. A man may be known by the company he keeps and a word may be interpreted with reference to the accompanying words. Words derive colour from the surrounding words."

18. Viewed in this perspective, and taking note of lowest common factors in all the items covered by definition of the expression 'royalty' in Article 12(3), the 'process' has to be in the nature of know-how and not a product. In this view of the matter, and in view of Hon'ble Delhi High Court's declining to uphold the coordinate bench's decision in the case of Asia Satellite Telecommunication Co. Ltd. (supra), we are of the considered view that the payment for software, by no stretch of logic, can be treated as a payment for "a process" liable to be taxed as royalty. This is precisely what was held by a coordinate bench of this Tribunal in the case of Sonata Information Technology Ltd. (supra), though for different reasons.

9. Respectfully following the above views, we hold that the payment for licence fee of software is not taxable in nature. No contrary decision, which is binding in nature, has been cited before us.

10. In view of the above discussions, as also hearing in mind entirety of the case, we uphold the plea of the assessee and hold that no tax was deductible from remittance in question."

9. Facts being identical, respectfully following the above said decision

we allow the grounds of assessee.

10. In the result, appeal of the assessee is allowed.

Order pronounced on 05.02.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Mumbai / Dated 05/02/2021
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum