

1

\*

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

+

**ITA 334/2016**

COMMISSIONER OF INCOME TAX -7 ..... Appellant  
Through: Mr. Dileep Shivpuri, Sr. Standing  
Counsel with Mr. Sanjay Kumar, Advocate.

versus

ORACLE INDIA PVT.LTD. .... Respondent  
Through: Mr. M.S. Syali, Sr. Advocate with Mr.  
Mayank Nagi and Ms Husnal Syali, Advocates.

**CORAM:**

**HON'BLE DR. JUSTICE S.MURALIDHAR**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

**% 12.07.2016**

1. This appeal by the Revenue is directed against the order dated 14<sup>th</sup> October 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1432/Del/2011 for the Assessment Year ('AY') 2004-05.

2. The question of law urged by the Revenue is whether the ITAT was justified in deleting the addition made by the Assessing Officer ('AO') of Rs. 59,78,91,950/- on the basis of the adjustment made by the Transfer Pricing Officer ('TPO') on account of international transactions of payment of royalty and not confirming the action of the AO in restricting the payment of royalty to 30% of the actual sales as against 56% claimed by the assessee.

3. The brief facts are that, pursuant to the reference made by the AO, the TPO passed an order dated 13<sup>th</sup> December, 2006 for the AY in question on the basis of the Transfer Pricing ('TP') Study submitted by the Assessee. *Inter alia*, in the order the TPO noted the submission made by the Assessee by its letter dated 8<sup>th</sup> November 2006 giving the reason for enhancement of the royalty rate from 30% to 56%. The Assessee drew a distinction between the royalty rate that was paid in the earlier years and the 'effective royalty' during those years. The Assessee was able to demonstrate that the average effective rate of royalty paid during the five years from 1998-99 to 2002-03 was 59% and that by revising the royalty agreement to 56%, it had actually resulted in a lower payout during the current year. The Assessee also attributed the enhancement of the royalty rate from 30% to 56% to the relaxing of controls by the Government of India.

4. In the impugned order of the ITAT has after a detailed discussion concluded as under:

“32. We have considered rival submissions and have perused the record of the case. There is no dispute that for distribution division, in the current assessment year, the assessee had adopted TNMM as the arm's length standard for the inter company royalty expenses. The Assessee had earned an OP/sales ratio of 23.3%, which was much more than the mean OP/sales ratio of 2.2% earned by comparable companies. The assessee in June 2003 had changed its royalty arrangement for Oracle Corporation to a level of 56% of actual sales revenue from earlier level of 30% of the IPP (Indian Published price). This change had been made after following due

procedure and approval from FIPB.

33. The assessee, in its submission dated 8-11-2006, had stated that the change in royalty rate was prompted by present exchange control regime as the earlier agreement had been a result of the controls imposed by Government of India's foreign exchange control policy. Prior to FY 2003-04 the assessee made royalty payment, calculated at 30% of IPP of the products licensed to Indian customer, to comply with the then prevailing Exchange Control Regulations. The provision of the Exchange Control Regime then authorized the Indian Master licensee to duplicate the software and sub-license to Indian customers. It restricted the consideration payable by the Indian Master licensee to 30% of the IPP of the software product sub-licensed to Indian customers. This was an exchange control stipulation and the ceiling on the payment was meant to restrict payment from an exchange control perspective. However, the new Exchange Control Policy had removed the limits of such royalty payment for duplication and sub-licensing activity. The liberalized policy also did away with the requirement of domestic duplication by the Indian Master Licensee as well as requirement of necessarily computing the royalty payable with reference to the list price and not actual sales value."

5. It has been rightly noted by the ITAT, once the liberalized policy did away with the requirement of computing the royalty with reference to the list price (Indian Published Price), the Assessee moved from the regime of royalty payment as a percentage of the list price to the actual license and support review.

6. In the circumstances, the conclusion arrived at by the ITAT appears

to be perfectly justified. It is based on facts and does not give rise to any substantial question of law. It may also be noticed that in the AYs 2008-09 and 2009-10, the TPO has accepted the royalty payment at 56% of the actual sales. Also, the Dispute Resolution Panel has accepted the Assessee's case for AYs 2006-07 and 2007-08.

7. Accordingly, the appeal is dismissed.

**S.MURALIDHAR, J**

**NAJMI WAZIRI, J**

**JULY 12, 2016**

kk