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

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Date of Decision : 14.05.2025

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ITA 148/2025

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAX)-1,
NEW DELHI

.....Appellant

Through: Mr. Puneet Rai, Mr. Ashvini Kumar,
Mr. Rishabh Nangia, Advocates.

versus

GOTO TECHNOLOGIES IRELAND UNLIMITED
COMPANY

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

CM APPL. 29107/2025(Delay of 147 days in re-filing the present appeal)

1. For the reasons stated in the application, the delay in re-filing the present appeal is condoned.
2. The application is disposed of.

ITA 148/2025 and CM APPL. 29106/2025(Exemption)

3. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning an order dated 05.08.2024 passed by the Income Tax Appellate Tribunal [**ITAT**] in ITA No. 3250/Del/2023 in respect of Assessment Year [**AY**] 2021-22.



4. The respondent [**Assessee**] – a tax resident of the Republic of Ireland – has preferred the said appeal impugning an order dated 19.09.2023 passed by the Assessing Officer [**AO**] under Section 143(3) read with Section 144C(13) of the Act.

5. One of the controversies involved in the present appeal is regarding subscription payments received by the Assessee for providing cloud services. Whereas the Revenue claims that the said proceeds are taxable as royalty, the Assessee contests the same. It is the Assessee's case that such payments could not be considered as royalty under the provisions of Article 12(3) of the India Ireland Double Taxation Avoidance Agreement [**DTAA**]. It is also contended on behalf of the Assessee that the issue stands covered in its favour by the decision of the Supreme Court in ***Engineering Analysis Centre of Excellence (P) Ltd. v. CIT: (2022) 3 SCC 321***.

6. The learned ITAT had noted that the said issue was covered by the earlier decisions in the Assessee's case in ITA No. 1514/Del/2022 and ITA No.793/Del/2023 relating to AY 2019-20 and AY 2020-21 respectively. Additionally, the learned ITAT relied upon the order dated 25.09.2023 whereby the aforementioned appeals were disposed of and noted the following extract from the said order:

“3. The assessee hitherto is a non-resident corporate entity incorporated under the laws of Ireland and tax resident of Ireland. The assessee is stated to be engaged in the business of sale of software subscription in various countries including India. The assessee operates software as Service (SaaS) business model, wherein, the customers are allowed to access the application software developed by the assessee from various devices through



Cloud Computing Technology. The subscription receipts from Cloud Services permitted to customers was not offered to tax in India, as the assessee was of the view that they are not in the nature of royalty, but business receipts and in the absence of PE in India, they are not taxable under the India-Ireland Double Taxation Avoidance Agreement (DTAA). However, the Assessing Officer was not convinced with the submissions of the assessee and proceeded to assess subscription receipts as royalty income both under the Act as well as under the treaty provisions and accordingly, framed draft assessment orders. Learned DRP also upheld the decision of the Assessing Officer.

4. Learned counsel for the assessee submitted that the issue is squarely covered by the decision of Hon'ble Delhi High Court in case of CIT vs. MOL Corporation vs. DCIT in ITA No. 99/2023-order dated 16.02.2023. He further relied upon the decision of coordinate Bench in case of Amazon Web Services, Inc. vs. ACIT in ITA Nos. 522 & 523/ Del/ 2023.

5. Learned Departmental Representative fairly submitted that the issue is covered by the decisions cited by learned counsel for the assessee. However, he dutifully relied upon the observations of the Assessing Officer and learned DRP.

6. We have considered rival submissions and perused materials on record. The short issue arising for consideration is whether the subscription received from Cloud Services is taxable as royalty income. As we find, while considering identical issue in case of CIT vs. MOL Corporation (supra), Hon'ble jurisdictional High Court has upheld the decision of the Tribunal holding that no substantial question of law arises out of the order of the Tribunal in accepting that subscription receipts from Cloud Services is not taxable as royalty. In case of Amazon Web Services Inc (supra), the coordinate Bench of the Tribunal has also expressed identical view holding that subscription received from Cloud Services is not taxable as royalty. Thus, in our view, the issue is squarely covered by the aforesaid decisions. Accordingly, we hold that the income received by the assessee from Cloud Services is not taxable in India, as they cannot be treated as royalty income. Accordingly, we direct the Assessing Officer to delete the additions. Grounds are allowed.



7. In the result, appeals are allowed.”

7. The learned ITAT noted that there were no material changes in the factual matrix or the legal proposition. Therefore, following the earlier decisions, the learned ITAT had allowed the Assessee’s appeal.

8. The Revenue has preferred the present appeal projecting the following questions for consideration of this court:

- “A. Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in holding that the subscription payments received towards Cloud Services by the Assessee is not taxable as Royalty income within the meaning of Article 12(3) of the India-Ireland DTAA as well as section 9(1)(vi) of the Income Tax Act, 1961?
- B. Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in holding that the payments received by the assessee from customers is not royalty without appreciating the fact that the assessee company grants access to the Indian customers to online services maintained by it rather than providing service to them as an end user & is in the business of providing information and communication technology solutions to its customers and hence constitutes ‘royalty’ in terms of clause (iv) of Explanation 2 to Section 9(1)(vi) of the Act?
- C. Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in relying on the decision of Hon’ble Delhi High Court in case of CIT vs. MOL Corporation and on the decision of coordinate Bench in case of Amazon Web Services, Inc. vs. ACIT in ITA Nos. 522 & 523/Del/2023 as the facts of these cases are differentiable to the facts of the case of the assessee?”

9. Concededly, the decisions rendered by the learned ITAT in ITA



No.1514/Del/2022 and ITA No.793/Del/2023 in respect of AY 2019-20 and AY 2020-21 were subject matter of the appeals filed by the Revenue in this Court being ITA No.282/2024 and 315/2024 respectively. The said appeals were examined and disposed of by this Court in terms of the orders dated 14.05.2024 and 02.07.2024 respectively. This Court had rejected the Revenue's contention that the decision of the Supreme Court in ***Engineering Analysis Centre of Excellence (P) Ltd. v. CIT (supra)*** would not cover the issues in question.

10. Concededly, the issues involved in the appeal is covered by the decision of this Court in ITA No.282/2024 and 315/2024, captioned ***Commissioner of Income Tax International Taxation-1, New Delhi v. Goto Technologies Ireland Unlimited Company (Earlier known As Logmein Ireland Unlimited Company)***.

11. In view of the above, no substantial question of law arises for consideration of this Court. The present appeal is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 14, 2025/sms

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