

ITEM NO.1501 Court 3 (Video Conferencing) SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 8733-8734/2018

ENGINEERING ANALYSIS CENTRE OF EXCELLENCE
PRIVATE LIMITED

Appellant(s)

VERSUS

THE COMMISSIONER OF INCOME TAX & ANR.

Respondent(s)

([HEARD BY : HON'BLE ROHINTON FALI NARIMAN, HON'BLE HEMANT GUPTA
AND HON'BLE B.R. GAVAI, JJ.]

(IA No. 103490/2020 - APPLICATION FOR TAGGING/DETAGGING)

C.A. No. 10114/2013 (IV-A)
C.A. No. 10112-10113/2013 (IV-A)
C.A. No. 10106/2013 (IV-A)
C.A. No. 10115-10117/2013 (IV-A)
C.A. No. 10103/2013 (IV-A)
C.A. No. 10104/2013 (IV-A)
C.A. No. 6386-6387/2016 (XIV-A)
C.A. No. 10098-10102/2013 (IV-A)
C.A. No. 10758/2017 (XIV-A)
C.A. No. 8735-8736/2018 (IV-A)
C.A. No. 8737-8941/2018 (IV-A)
C.A. No. 8942-8947/2018 (IV-A)
C.A. No. 8950-8953/2018 (IV-A)
C.A. No. 8948-8949/2018 (IV-A)
C.A. No. 4420/2012 (IV-A)
C.A. No. 8954-8955/2018 (IV-A)
C.A. No. 8956/2018 (IV-A)
C.A. No. 8957/2018 (IV-A)
C.A. No. 8959/2018 (IV-A)

C.A. No. 8962/2018 (IV-A)
C.A. No. 8958/2018 (IV-A)
C.A. No. 4629/2014 (IV-A)
C.A. No. 4631/2014 (IV-A)
C.A. No. 4630/2014 (IV-A)
C.A. No. 10105/2013 (IV-A)
C.A. No. 7852/2012 (IV-A) (FOR AMENDMENT IN CAUSE TITLE ON IA
115452/2020)
C.A. No. 4634/2014 (IV-A)
C.A. No. 8974-8975/2018 (IV-A)
C.A. No. 8966/2018 (IV-A)
C.A. No. 8973/2018 (IV-A)
C.A. No. 8963/2018 (IV-A)
C.A. No. 8965/2018 (IV-A)

C.A. No. 8972/2018 (IV-A)
C.A. No. 8961/2018 (IV-A)
C.A. No. 8969/2018 (IV-A)
C.A. No. 8960/2018 (IV-A)
C.A. No. 8971/2018 (IV-A)
C.A. No. 8970/2018 (IV-A)
C.A. No. 8964/2018 (IV-A)
C.A. No. 8967/2018 (IV-A)
C.A. No. 8968/2018 (IV-A)
C.A. No. 1403/2013 (IV-A)
C.A. No. 1412/2013 (IV-A)
C.A. No. 1416-1418/2013 (IV-A)
C.A. No. 1421/2013 (IV-A)

C.A. No. 1415/2013 (IV-A)
C.A. No. 1414/2013 (IV-A)
C.A. No. 1413/2013 (IV-A)
C.A. No. 1407/2013 (IV-A)
C.A. No. 1406/2013 (IV-A)
C.A. No. 1408/2013 (IV-A)
C.A. No. 8990/2018 (XIV-A)
C.A. No. 1405/2013 (IV-A)
C.A. No. 1410/2013 (IV-A)
C.A. No. 1409/2013 (IV-A)
C.A. No. 1419/2013 (IV-A)
C.A. No. 1411/2013 (IV-A)
C.A. No. 1420/2013 (IV-A)
C.A. No. 1404/2013 (IV-A)
C.A. No. 2304/2013 (IV-A)
C.A. No. 2305/2013 (IV-A)
C.A. No. 2306/2013 (IV-A)
C.A. No. 2307-2308/2013 (IV-A)
C.A. No. 4666-4667/2013 (IV-A)
C.A. No. 6764/2013 (IV-A)
C.A. No. 8976/2018 (IV-A)
C.A. No. 8977-8988/2018 (IV-A)
SLP(C) No. 28867/2016 (XIV)
SLP(C) No. 28868/2016 (XIV)
C.A. No. 10673/2016 (XIV-A)
SLP(C) No. 29571/2016 (XIV)
C.A. No. 10674/2016 (XIV-A)

SLP(C) No. 36782/2016 (XIV)
SLP (C) No. 37580/2016 (XIV)
C.A. No. 3402/2017 (IV-A)
C.A. No. 4419/2012 (IV-A)
C.A. No. 10097/2013 (IV-A)
C.A. No. 9486/2017 (XIV-A)
C.A. No. 8711/2018 (XIV-A)
C.A. No. 8722/2018 (XIV-A)
C.A. No. 8725/2018 (XIV-A)
C.A. No. 8724/2018 (XIV-A)
C.A. No. 9551/2018 (XIV-A)

SLP(C) No. 450/2019 (XIV)
 C.A. No. 2006/2019 (IV-A)
 IA No. 124352/2019 - CONDONATION OF DELAY IN FILING)
 SLP(C) No. 6736/2020 (XIV)
 (IA No.37514/2020-CONDONATION OF DELAY IN FILING)

Date : 02-03-2021 These matters were called on for pronouncement of Judgment today.

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Hon'ble Mr. Justice Rohinton Fali Nariman pronounced the reportable Judgment of the Bench comprising His Lordship, Hon'ble Mr. Justice Hemant Gupta and Hon'ble Mr. Justice B. R. Gavai.

Leave is granted in the Special Leave Petitions.

The operative portion of the Judgment is reproduced as under :-

" CONCLUSION

168. Given the definition of royalties contained in Article 12 of the DTAA's mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the Income Tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright. The provisions contained in the Income Tax Act (section 9(1)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessee, have no application in the facts of these cases.

169. Our answer to the question posed before us, is that the amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any

income taxable in India, as a result of which the persons referred to in section 195 of the Income Tax Act were not liable to deduct any TDS under section 195 of the Income Tax Act. The answer to this question will apply to all four categories of cases enumerated by us in paragraph 4 of this judgment.

170. The appeals from the impugned judgments of the High Court of Karnataka are allowed, and the aforesaid judgments are set aside. The ruling of the AAR in Citrix Systems (AAR) (supra) is set aside. The appeals from the impugned judgments of the High Court of Delhi are dismissed."

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(NISHA TRIPATHI)
BRANCH OFFICER

(Signed reportable Judgment is placed on the file)