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TECHNOLOGY & TAX SERIES – ISSUE VIII: IMPACT AND ANALYSIS OF THE SUPREME COURT DECISION ON CHARACTERIZATION AND TAXATION OF SOFTWARE PAYMENTS

In a landmark ruling, the Supreme Court of India ("**SC**" or "**Court**") while ruling in favour of the taxpayers has put to rest the controversy on characterization of payments made by Indian residents for use / resale of computer software ("**Judgement**").[1] The SC held 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 End-user Licensing Agreements ("**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. Accordingly, the SC concluded that the person referred to in section 195 of the Income-tax Act, 1961 ("**ITA**") is not liable to withhold tax.

The SC in the batch of 103 appeals under the Judgement, while setting aside the ruling of the High Court of Karnataka in case of *CIT vs Samsung Electronics Co. Ltd*[2] ("**Samsung**") allowed the appeals from the impugned judgement. The SC also set aside the ruling of the Authority of Advance Rulings ("**AAR**") in case of *Citrix Asia Pacific Ptyl. Ltd., In Re* ("**Citrix Asia**")[3]. Lastly, the SC dismissed the appeals from the impugned judgements of Delhi High Court.[4]

BACKGROUND

The ITA contains separate rules for the taxation of residents and non-residents. As per section 4 read with section 5 of the ITA, non-residents are taxable only on India-source income i.e., only and to the extent that such income accrues or arises or is deemed to accrue or arise in India or is received or deemed to be received in India.

Section 9(1)(vi) of the ITA *inter-alia* provides that income by way of royalty payable by an Indian resident would be deemed to accrue or arise in India if the royalty is for the purpose of earning any income from any source in India. Explanation 2 to section 9(1)(vi) defines "royalty" to be a consideration for the transfer of all or any rights (including the grant of a license) in respect of any copyright. In 2012, Explanation 4 was inserted in Section 9(1)(vi), purportedly, to clarify that the "transfer of all or any rights" in respect of any right, property or information included and had always included the "transfer of all or any right for use or right to use a computer software".

Section 195 of the ITA obligates any person making a payment to a non-resident for any sum chargeable under the ITA to deduct income-tax at source ("**TDS**") at the time of payment. Further, as per the provisions of section 90(2) of the ITA, the taxability of a non-resident in India is governed by the provisions of the ITA or the tax treaty entered between India and the country of residence of the non-resident, whichever is more beneficial to such non-resident taxpayer.

The controversy surrounding the taxation of payments for software concerns the characterization of income in the hands of non-resident taxpayers as either royalties or business profits (subject to tax in India only if the profits are attributable to the recipient's permanent establishment in India). Whereas the Revenue successfully contended in some cases[5] that the consideration paid by resident Indian end-users / distributors to non-resident computer software manufacturers / suppliers software constituted "royalty", the taxpayers were successful in pleading the contrary position in some other cases.[6] The decisions of these subordinate courts were appealed by the aggrieved parties before the SC. The SC grouped these appeals into four categories based on the business model as under:

- Category 1: Software purchased directly by an end-user from a non-resident supplier.
- Category 2: Software purchased from a non-resident supplier by an Indian distributor and resold to Indian end-users;
- Category 3: Software purchased from a non-resident supplier by a non-resident distributor and resold to Indian distributors or end-users
- Category 4: Software sold as integrated hardware unit by non-resident suppliers to Indian distributors or end-users.

A summary of the arguments put forth by the counsels on behalf of the taxpayer and the Additional Solicitor General ("**ASG**") of India before the SC may be found here for Day 1, Day 2, Day 3, Day 4, Day 5 and Day 6.

OUR ANALYSIS ON FINDINGS OF THE SC

- *Findings in relation to the withholding tax provisions:*

  The SC noted the construct of ITA and basis section 90(2) of the ITA held that once a tax treaty applies, the provisions of the ITA would not apply unless they were more beneficial to the taxpayer.[7] Further, it noted that the definition of a particular term under the ITA would be applicable only when the said term is not defined in the tax treaty. The Court also held that the TDS obligation under section 195 of the ITA is inextricably linked with the charging provisions under sections 9 and 4 of the ITA read with the tax treaty. Hence, the TDS obligation on the payer would only arise if the recipient is liable to pay income tax in India.

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The Court distinguished the current dispute from its ruling in *PILCOM v. CIT, West Bengal-VII*[8], wherein it was held that the provisions of the tax treaty would have no relevance in determining the obligations of the payer under section 194E of the ITA. The Court noted that whereas *PILCOM* dealt with section 194E and similar sections which provide for tax deduction at source on specific payments that are defined under the ITA, section 195 provides that tax must be deducted at source on "any sum chargeable under the act". In order to determine the chargeability under the ITA, the payer would have to consider the provisions of the relevant tax treaty. Hence, the Court held that *PILCOM (supra)* dealt with a different nature of sections that would not have any application to the facts of the relevant case.

The observations of the SC are on point. The Court has re-iterated age old principles of taxation under ITA and interplay of ITA with tax treaties. The manner in which the Court has distinguished this case with the PILCOM ruling should provide certainty to taxpayers that the reasoning under PILCOM would not be used arbitrarily against the taxpayers. Having said this, it is unclear as to why the provisions of tax treaty, being more beneficial would not apply in the context of withholding under section 194E and similar sections. Some questions also arise given that the Court itself held that the provisions of the tax treaty would be relevant at the stage of withholding of TDS by the resident payer. The Court observed that two absurd consequences would follow if the payer were not allowed to consider the effect of the tax treaty. *Firstly*, the payer may make an excess payment, the refund of which would only be available to the recipient at the stage of its assessment. *Secondly,* the treaties impose a cap on the tax rate that the recipient could be charged with in the contracting state (India). However, the payer would have to deduct tax at the rate under the ITA which may be higher than the cap under the tax treaty. As a result, the tax deducted by the payer would be a larger sum than the tax that is ultimately payable by the recipient. On this basis, the Court held that a person making a payment to a non-resident would be liable to deduct tax only if the non-resident is liable to pay tax under section 195, and in case of such liability, the person would be liable to deduct tax at the rate in the tax treaty. While the language of section 194E and similar sections in the ITA is different from that of section 195, it is not clear why the same principles of tax treaty should not be applicable to such sections as well.

- *Classification of transaction based on provisions of the Copyright Act, 1957:*

The SC analyzed the provisions of the Copyright Act, 1957 ("**Copyright Act**") in detail while coming to the conclusion that payment for the resale / use of the computer software through EULAs / distribution agreements, is not the payment of royalty. At first, the Court noted that while the term "copyright" is not expressly defined under the definitions section, section 14 of the Copyright Act makes it clear that a copyright is an exclusive right to do or authorize the doing of certain acts in respect of work (which includes literary work and hence, computer software). Copyright is an exclusive right, which is negative in nature, being a right to restrict others from doing certain acts. A transfer of copyright would take place only when the owner of the copyright parts with the right to do any of the acts mentioned in section 14 of the Copyright Act. Such transfer is different from transfer of ownership of the material substance in which the copyright subsists, since there would no transfer of right to reproduce the copy or to do any other acts under section 14. The Court also observed that the "right to reproduce" and the "right to use" computer software are two distinct rights as the former would involve a transfer of copyright.[9] The Court held that no copyright would exist in India outside the provisions of the Copyright Act.

The Court note that the "license" that is granted vide the EULA, is not a license in terms of section 30 of the Copyright Act, which transfers an interest in all or any of the rights contained in sections 14(a) and 14(b) of the Copyright Act, but is a "licence" which imposes restrictions or conditions for the use of computer software. Use of the term "license" in an EULA / distribution agreement would not be conclusive of its real nature and the agreement must be looked into as a whole. A non-exclusive, non-transferable "license" that only enables use of the copyrighted product, with imposition of restrictive conditions on use of the product, could not be construed as a license under section 30 to do the acts enumerated in section 14 of the Copyright Act. Further, Section 52(1)(aa) of the Copyright Act provides that making a copy of the software for utilization as well as a backup copy for temporary protection by the lawful possessor would not constitute infringement of copyright. In this regard, the Court observed that it would make no difference if the end-user used general software or software customized to its specifications.

The counsel for revenue department had argued that the doctrine of first sale/principle of exhaustion would have no application as the doctrine was not statutorily recognized in section 14(b)(ii) of the Copyright Act.[10] In this regard, the SC dismissed the argument by stating that the doctrine of first sale/exhaustion doctrine has been statutorily recognized in the Copyright Act and is applicable to the case of the distributor or reseller. The shrink-wrapped copies of the computer programmes are already put in circulation by foreign, non-resident suppliers / manufacturers, since they have been sold and imported into India via distribution agreements, and are thus not hit by section 14(a)(ii) of the Copyright Act. The SC also took note of a decision by the European Court of Justice ("**ECJ**")[11] wherein the ECJ had concluded that the transfer of a copy of a computer programme, accompanied by the conclusion of an EULA constituted a "first sale… of a copy of a program" within the meaning of the EC Directive 2001/29. The SC held that the distribution right subsists with the owner of copyright to issue copies of the work to the public, to the extent such copies are not copies already in circulation, thereby manifesting a legislative intent to apply the doctrine of first sale/principle of exhaustion. On this basis, the Court held that the Copyright Act only prohibited reproduction and subsequent sale of a copy of the licensed copy, and not the resale of the copy.

The SC took note of the observations under the impugned judgements in detail. The SC set aside the ruling of AAR in case of *Citrix Asia (supra)* by stating that the license for the use of a product under an EULA cannot be construed as the license under section 30 of the Copyright Act, as such EULA only imposes restrictive conditions upon the end-user and does not part with any interest relatable to any rights mentioned in sections 14(a) and 14(b) of the Copyright Act. The SC also set aside the ruling of Karnataka High Court in case of *Samsung (supra)* on the same ground. The SC also held that the ruling of Karnataka High Court in case of *CIT v. Synopsis International Old Ltd.*[12] does not state the law clearly.

The SC upheld the ruling of AAR in case of *Dassault Systems, K.K., In Re*[13] wherein the AAR made correctly distinguished between the ownership of copyright in a work from the ownership of the physical material in which the copyrighted work may happen to be embedded. The SC also gave its blessing to decision of AAR in case of *Geoquest Systems B.V. Gevers Deynootweg, In Re.*[14] and decisions of Delhi High Court in case of *DIT v.*

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Ericsson A.B.[15], *DIT v. Nokia Networks OY*[16], *DIT vs. Infrasoft*[17] and *CIT vs. ZTE Corporation*[18].

- *Sale of goods vs license of copyrighted article:*

  The detailed and intricate analysis of the provisions of the Copyright Act by the Court is commendable. While the findings of the SC in relation to the Copyright Act are very important, it seems that the Court's findings are not entirely clear on whether the software license being granted on a physical CD is a sale of a copyrighted article i.e. sale of goods (with certain necessary rights to use software to enable the proper use of program) or a license / right to use copyrighted article. Certain observations in *Tata Consultancy Services vs State Of Andhra Pradesh*[19] make it clear that the law does not make any distinction between tangible property and intangible property. A software therefore which is has the following properties such as (a) its utility; (b) capable of being bought and sold; and (c) capable of transmitted, transferred, delivered, stored and possessed should be treated as goods irrespective of the medium it is stored on. The Court in *Tata Consutancy* and in other judgments relating to sales taxes have historically held that once the software is embedded onto a medium such as a CD it becomes a marketable good. In a world that has moved away from CDs to digital downloads, where the content and licence terms with respect to a software remain the same, drawing this distinction appears to be artificial and potentially the incorrect way of looking at categorising this transaction. If this distinction were to be drawn then a software that is licensed digitally will be treated differently from a software that is sold on a CD even though the licence terms are the same.

  The Judgment in the current case does not resolve this inconsistency wholly. It treats the consideration to be for sale of goods as some places and to be for license / right to use copyrighted article at other places. Illustratively, the SC quotes "*when, under a non-exclusive license, an end-user gets the right to use computer software in the form of a CD, the end-user only receives a right to use the software and nothing more*", at one place. This is perhaps the correct way to look at the transaction wherein the copy of the software on the CD is a good in respect of which the right to use is provided in the terms of the license. Therefore, the transaction may be more appropriately classified as a right to use a copyrighted article, irrespective of whether it is on a CD or otherwise since a right to use an intangible good should not be treated as a sale of the same good merely because it is now embedded on a physical object.

  In contrast, at another place the Court notes that "*what is paid by way of consideration, therefore, by the distributor in India to the foreign, non-resident manufacturer or supplier, is the price of the computer programme as goods, either in a medium which stores the software or in a medium by which software is embedded in hardware, which may be then further resold by the distributor to the end-user in India, the distributor making a profit on such resale.*" It clearly states that "*What is "licensed" by the foreign, non-resident supplier to the distributor and resold to the resident end-user is in fact the sale of a physical object which contains an embedded computer programmed*". The Court then treats the license terms are necessary to enable the proper use of the goods sold in such a situation.

  The Court has technically only dealt with software on a CD format or in tangible format. However, in a digital license no title is being given in relation to the software or the copy of the software or any tangible good and therefore arguably it should not be categorized as a sale. In the CD example, the Court has perhaps mistakenly conflated transfer of title to the CD/tangible property as the sale with the license or right to use of the software on the CD under the license agreement. Whether it's a sale or license should not depend on whether software is on CD or not. It should depend on whether title is being transferred in relation to the copyrighted article or good, which is the software and should not arise when there is only a right to use a good being granted under the license agreement. The software companies would also want to treat this as a license/right to use and not a sale since from a copyright protection perspective, since a sale indicates greater rights to the end-user and that is the intent with which many restrictions are laid down in the license agreement. While it may have been difficult to move away from the sales tax cases that have treated these as sale of goods in the past, this may prove to be a lost opportunity in a judgment that has otherwise brought a lot of clarity and relief to taxpayers. The Court has relied on rulings in relation to customs laws and copyright laws to classify this transaction and the potential impact of this distinction is examined in the latter part of this hotline.

- *Findings in relation to definition of royalty under the ITA vis-à-vis tax treaty:*

  The Court compared the definition of "royalties" under the relevant tax treaties with definition under the ITA. It observed that the tax treaty provides an exhaustive definition and includes any kind of payments received as consideration for the "use of" or "right to use" any copyright in a literary work. The Court observed that the definition under the ITA was wider as it included a lumpsum consideration that would not be considered income of the recipient under the head "capital gains"; expressly includes a grant of license when it speaks of "transfer of all or any rights"; and states that such transfer should be "in respect of" any copyright of a literary work. With respect to the third difference, the Court observed that the phrase "in respect of" is equivalent to "on" or "attributable to" and could not be understood as an expansion of the definition of royalty. The Court held that that there is no difference between the two definitions to the extent that the transfer of all or any rights or grant of a license for the copyright is a *sine qua non* for a transaction to constitute payment for royalty under these definitions.

  The taxpayers had argued that explanation 4 does not expand the scope of royalty under explanation 2 to section 9(1)(vi) of the ITA. The Revenue had argued that explanation 4 to section 9(1)(vi) was only clarificatory in nature and outlined the position of law that had been followed since 1976. The Court rejected the taxpayers' submission and held that explanation 4 to section 9(1)(vi) did expand the scope of royalty under explanation 2 to section 9(1)(vi). The Court also rejected the Revenue's submission and held that the position of law relating to computer software under explanation 4 could not possibly have existed since 1976. It observed that the concept of "royalty" itself was introduced in 1976 under the ITA, that the term "computer software" was introduced to section 9(1)(vi) for the first time in 1991, and that the term "computer software" in the context of a literary work under the Copyright Act was only introduced in 1994. The Court held that it would be ludicrous to expect that the amendment which introduced explanation 4 to apply retrospectively since 1976, when the concept of computer software was not even introduced to the relevant provisions. The Court extended this finding to explanation 6 to section 9(1)(vi) that was introduced through the same amendment, on the basis that technology relating to satellites, optic fibre, and similar technology was first regulated in 1995, much after the date of retrospective application in 1976.

- *Impossibility defense reinforced with respect to tax withholding obligations:*

  On the question of retrospective application, the Court also held that the payer could not be expected to do the impossible and deduct tax at source during a time when the obligation did not factually exist in the statute.[20] Hence, a person making a payment to a non-resident could not be held as an "assessee in default" for not deducting tax on payments since 1976, before the obligation to deduct tax on such transactions even existed in the statute. It is trite law that the law does not compel a man to do what he cannot possibly perform.[21] The reiteration of the principle of impossibility by the SC should also help taxpayers in arguing non-applicability of other withholding tax provisions (like section 194-O) where arguably in many situations marketplaces are not in a position to comply with the requirements therein.

- *Observations in relation to interpretation of tax treaties:*

  The SC made some very interesting observations on interpretation of tax treaties. At the outset, the SC held that tax treaties entered by India should be interpreted liberally with a view to implement the true intention of the parties.[22] The Court noted the importance of the Commentary on Article 12 of the OECD Model Tax Convention ("**OECD Model**") and held that the Commentary on OECD Model would have persuasive value with respect to the interpretation of the term "royalties". The Court held that the payers and recipients have a right to know their position and obligations under a treaty and that they could place reliance on the OECD Commentary to understand the same. Further, India's reservations to the commentary would not affect its relevance unless the reservations were incorporated into the treaties through bilateral negotiation with the respective countries. The Court noted that India had entered or amended tax treaties with different countries after expressing its reservation, yet the definition of royalty had not been changed and remained similar to the definition in the OECD Model. Hence, its reservation would not apply as it had not been incorporated in any tax treaty. Therefore, the Court has correctly relied on state practice to determine the interpretation of treaty provisions using the correct application of international law principles instead of relying upon the mere assertions of the counsel for the tax department.

  More importantly, the above observations of the SC have reinstated the sanctity of the OECD Commentary. The Court has clearly set out the relevance and importance of OECD commentary and in fact goes to say that not only due to VCLT, but in case of conflicting municipal decisions, taxpayers can rely on OECD commentary which may be helpful for tax issues which may arise in future as well. The Court observed that recommendatory changes or reservations expressed by the Indian executive would not affect the application of the tax treaties unless the changes are incorporated therein. This requirement of bilateral negotiation and incorporation of changes protects taxpayers from being adversely affected by the unilateral position taken by the Government. This should definitely bring certainty for taxpayers wherein tax treaties mostly follow mode commentary and reduce possibility of conflicts in future. The fact that the SC has held that tax treaties should be interpreted to implement the true intent of the parties can also help taxpayers in interpretation provisions of the multilateral instrument ("**MLI**"). By virtue of these observations, the explanatory statement of the MLI may have more significance now and international practice is likely to be accorded more weight if domestic courts are taking divergent views.

CONCLUSION AND NEXT STEPS

The Judgement definitely comes as a respite for the taxpayer community and settles a long-drawn historical dispute. It is likely to impact several technology companies and distributors / re-sellers in India.

- *Application of refunds:* The taxpayers should first and foremost revisit their positions for royalties paid in the past and apply for refunds, wherever possible and applicable. While the claim of refund can be substantiated basis the Judgement, the taxpayers may now have to assess applicability of equalization levy ("**EL**") on such transactions.

- *Applicability of EL:* While the Judgement settles the issue on characterization as royalty and taxability under the provisions of ITA, the taxpayers will now be posed with another question regarding the applicability of the EL on such transactions.[23] The issue is further exacerbated by the clarification proposed to be inserted by the Finance Bill, 2021 ("**Bill**"). As per the clarification proposed by the Bill, if the consideration received for sale of software is not taxable as royalty under the ITA, read with the relevant tax treaty, then such consideration could be taxable under the EL provisions. Due to the proposed amendment by the Bill, taxpayers may find themselves claiming refund of tax paid on royalty, on one hand and paying / contesting applicability of EL on the other hand.

- *Reviewing pending litigations*: Taxpayers may also consider to review their pending litigations where they are relying on treaties based on the OECD Model. The principles laid down by the SC on interpretation of tax treaties and on the sanctity of the Commentary on OECD Model, they can now further bolster their positions and strengthen their case. It is not unusual for several divergent rulings by different tax tribunals on international tax cases and this could be a good reason to reassess approaches in those cases.

- *FDI*: As elaborated above, the Court has relied on cases under Customs law, Copyright Act etc. to characterize the transaction. In this regard, Indian entities with foreign investment engaged in e-commerce with respect to 'sale of goods' may also re-check their compliance with FDI rules. Typically, e-commerce in services is not an issue under FDI rules and if an entity is dealing only with licensing or providing the right to use with respect to software in wholly digital format, it is unlikely to face any problems. However, if the entity is selling the same software on a CD format or tangible format, then whether it would amount to e-commerce in goods as an inventory model is something companies should assess and verify at the soonest as there are restrictions around the same.

- *Database Subscriptions*: Subscription to databases have sought to be classified as royalty payments by the tax department and while this ruling does not touch upon those issues, but similar principles should apply. The end user who pays for accessing databases is not paying for the 'transfer' of any underlying copyright but is rather paying for a digital service that allows them to access the database. It is therefore only a right to use the copyrighted articles on the database for a limited period of time.

- *Reliance on Treaty Benefits:* While the Court seems have indicated that there is no difference between ITA and DTAA in terms of the scope of the definition of royalty, for other businesses since this distinction was heavily reliant on copyright act they may still need to consider the availability of treaty relief as an additional protection.

- *GST:* From a GST perspective, there is unlikely to be any additional impact on domestic transactions since both supply of software on a CD as a good or supply of a software as a right to use under a license agreement would both be covered. However, from a cross border perspective, the treatment of the transaction as an OIDAR service or a sale of a good could have significant implications. Particularly, if we take the example of a digitally downloaded software that is akin to a digital good, the point of taxation rules state that GST applies only when customs is paid on the import of a good. However, no customs is imposed today on crossborder imports of digital softwares. Therefore, if classified as a sale of a good, GST is unlikely to apply. However, if the same transaction is seen as a mere right to use and is construed as a service or an OIDAR service under the terms of the license agreement, then GST is likely to apply.

– Ipsita Agarwalla, Meyyappan Nagappan & Parul Jain

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You can direct your queries or comments to the authors

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[1] 2021 SCC OnLine SC 159

[2] (2012) 345 ITR 494

[3] (2012) 343 ITR 1 (AAR)

[4] Some of the significant Delhi High Court's decisions being appealed include *Director of Income Tax v. Infrasoft Ltd.,* (2014) 264 CTR 329; *Director of Income Tax v. Ericsson A.B.*, (2012) 343 ITR 470; *CIT v. ZTE Corporation*, (2017) 392 ITR 80; *Director of Income Tax v. Nokia Networks OY*, (2013) 358 ITR 259

[5] See *CIT v. Samsung Electronics Co. Ltd.*, (2012) 345 ITR 494; *CIT v. Synopsis International Old Ltd.,* ITA No. 11-15/2008; *Citrix Systems Asia Pacific Ptyl. Ltd.* (2012) 343 ITR 1 (AAR)

[6] See *Director of Income Tax v. Infrasoft Ltd.*, (2014) 264 CTR 329; *Director of Income Tax v. Ericsson A.B.*, (2012) 343 ITR 470; *Dassault Systems K.K.*, (2010) 322 ITR 125 (AAR); *Geoquest Systems B.V. Gevers Deynootweg.*, (2010) 327 ITR 1 (AAR)

[7] The Court relied on its ruling in *Union of India v. Azadi Bachao Andolan*, (2004) 10 SCC 1.

[8] 2020 SCC Online SC 426

[9] The Court relied on its ruling in *State Bank of India v. Collector of Customs*, (2000) 1 SCC 727

[10] The ASG relied on the judgement of Single Judge of Delhi High Court in case of *John Wiley & Sons Inc. v. Prabhat Chander Kumar Jain*, IA No. 11331/2008 in CS(OS) No. 1960/2008 reported in 2010 SCC OnLine Del 2000

[11] UsedSoft GmbH v. Oracle International Corp. (Case C-128/11)

[12] ITA Nos. 11-15/2008

[13] (2010) 322 ITR 125 (AAR)

[14] (2010) 327 ITR 1 (AAR)

[15] (2012) 343 ITR 470

[16] (2013) 358 ITR 259

[17] (2014) 264 CTR 329

[18] (2017) 392 ITR 80

[19] https://indiankanoon.org/doc/153638/

[20] The Court relied on *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1; CIT v. NGC Networks (India) Pvt. Ltd., ITA No. 397/2015; *CIT v. Western Coalfields Ltd.*, ITA No. 93/2008

[21] Krishnaswamy S. Pd. v. Union of India [2006] 281 ITR 305

[22] The SC relied on the decision in case of Azadi Bachao Andolan

[23] The EL was introduced under the Finance Act, 2016. The scope of the EL was expanded by the Finance Act, 2020 to apply EL at rate of 2% on e-commerce operators on e-commerce supply or services to specified persons

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