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

+ ITA 338/2022

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2 Appellant

Through: Mr. Sanjay Kumar, Sr. Standing Counsel for Revenue with Ms. Easha Kadian, Advocate.

versus

NET APP B.V.

..... Respondent

Through: Mr. Nageswar Rao & Ms. Deepika Agrawal, Advocates.

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Date of Decision: 19th September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present income tax appeal has been filed challenging the order dated 20th September, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1882/Del./2017 for Assessment Year 2013-14.

2. Learned Counsel for the appellant admits that the first question of law urged in the present appeal is covered by the decision dated 02nd March, 2021 of the Supreme Court in the case of *Engineering Analysis Centre of Excellence Pvt. Ltd. Vs. CIT in Civil Appeal No(s). 8733-8734/2018*. He, however, states that the ITAT has erred in holding that no interest under Section 234B of the Income Tax Act, 1961 (the 'Act') shall be levied in case the assessee has any income chargeable to tax in India and if the same is



subject to withholding to tax, without appreciating that the obligation of the assessee to pay advance tax is independent of the obligation of the payer to deduct tax at source and such obligation of the assessee continues under Sections 190 and 191 of the Act, even in case of non-deduction at source by the payer.

3. Learned counsel for the respondent-assessee, who appears on advance notice, has handed over a copy of an assessment order dated 19th March, 2022 under Section 254 read with Section 143(3) of the Act passed in pursuance to the impugned order. The same is taken on record. The relevant portion of the said order reads as under:-

“6. As the fact matrix over the years remains the same and in view of the decision of the Hon'ble Supreme Court in the company own's case for A.Y. 2008-09 and A.Y. 2012-13, the income declared by the assessee in ITR is accepted and assessed accordingly.

7. Assessed at NIL income. Necessary forms are being issued.”

4. Keeping in view the aforesaid fact that the respondent-assessee has now been assessed at nil income, this Court is of the view that the issue of interest under Section 234B of the Act is infructuous. Consequently, no substantial question of law arises for consideration in the present appeal and the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 19, 2022

Msh/KA