

Accrual of income in India - Royalty receipts - income earned from licensing/sale of software and subscription received against cloud services offered by assessee - scope of Indo-USA DTAA

SC ORDER, COMMISSIONER OF INCOME TAX, (INTERNATIONAL TAXATION) - 2
VERSUS MOL CORPORATION, SPECIAL LEAVE PETITION (CIVIL) DIARY NO(S).
5669/2024

Dated.- March 11, 2024

Held Following the earlier order passed by this Court in the Case of Commissioner of Income Tax V/s. M/s. Gracemac Corporation dated 03.07.2023, which had followed the earlier judgment of this Court in the case of Engineering Analysis Centre of Excellence Private Limited vs. Commissioner of Income Tax and Anr. reported in (2022) 3 SCC 321, this Special Leave Petition is also dismissed.

DELHI HIGH COURT,

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) -2 VERSUS MOL CORPORATION

As would be evident the first two questions of law [i.e., A and B] relate to income earned from licensing/sale of software while the third question [i.e., C] relates to subscription received against cloud services offered by the respondent/assessee.

The Tribunal has ruled that neither income earned from licensing of software products nor subscription fee earned for providing cloud services, could be construed as royalty.

Reference Supreme Court rendered in Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT 432 ITR 471 (SC).

COMMISSIONER OF INCOME TAX VERSUS M/S. GRACEMAC CORPORATION,
[2023] 456 ITR 135 (SC)