



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No. 1176/2009 & CM No. 16086/2009
ITA No. 1177/2009 & CM No. 16088/2009
ITA No. 1178/2009 & CM No. 16090/2009
ITA No. 1179/2009 & CM No. 16092/2009
ITA No. 1180/2009 & CM No. 16094/2009
ITA No. 1181/2009 & CM No. 16096/2009
ITA No. 1182/2009 & CM No. 16098/2009
ITA No. 1183/2009 & CM No. 16100/2009
ITA No. 1184/2009 & CM No. 16102/2009
ITA No. 1185/2009 & CM No. 16104/2009
ITA No. 1186/2009 & CM No. 16105/2009
ITA No. 1190/2009 & CM No. 16112/2009
ITA No. 1191/2009 & CM No. 16114/2009
ITA No. 1192/2009 & CM No. 16116/2009
ITA No. 1193/2009 & CM No. 16118/2009
ITA No. 1194/2009 & CM No. 16120/2009
ITA No. 1195/2009 & CM No. 16122/2009
ITA No. 1196/2009 & CM No. 16124/2009
ITA No. 1197/2009 & CM No. 16126/2009
ITA No. 1198/2009 & CM No. 16128/2009
ITA No. 1199/2009 & CM No. 16130/2009

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Decided on: December 21, 2009

Commissioner of Income Tax

... Appellant

through :

Ms. Rashmi Chopra, Advocate

VERSUS

Sahara Airlines Ltd.

... Respondent

through :

Mr. Percy Pardiwala, Sr. Adv.
 with Mr. U.A. Rana,
 Ms. Anuradha Sharma and
 Ms. Priyanka Dayal, Advocates

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?



A.K. SIKRI, J.

1. CM Nos. 16081/2009, 16086/2009, 16088/2009, 16090/2009, 16092/2009, 16094/2009, 16096/2009, 16098/2009, 16100/2009, 16102/2009, 16104/2009, 16105/2009, 16112/2009, 16114/2009, 16116/2009, 16118/2009, 16120/2009, 16122/2009, 16124/2009, 16126/2009, 16128/2009 & 16130/2009

These applications for filed for condoning the delay in filing the appeals. For the reasons stated therein, the delay is condoned and the applications stand disposed of.

2. ITA Nos. 1170/2009, 1176/2009, 1177/2009, 1178/2009, 1179/2009, 1180/2009, 1181/2009, 1182/2009, 1183/2009, 1184/2009, 1185/2009, 1186/2009, 1190/2009, 1191/2009, 1192/2009, 1193/2009, 1194/2009, 1195/2009, 1196/2009, 1197/2009, 1198/2009 & 1199/2009

In all these appeals, common question of law is raised which has arisen under the following circumstances :-

3. The respondent/assessee has arrangements with two companies. One is M/s. Amadeus Marketing, a Spanish company, and the other is M/s. Galileo International, an American company. The assessee has been using software supplied by these companies for reservation of tickets and making payments for using the software through the said companies. The Assessing Officer (AO) held the view that the payment made to these companies was in the nature of royalty. Thus, in respect of M/s. Amadeus Marketing, he was of the opinion that tax @ 25% under Article 13(2)(ii) of the Double Tax Avoidance Agreement (DTAA) was chargeable. Likewise, in respect of payment made to M/s. Galileo International, the tax was chargeable @ 15%



America. For this reason, the question of tax deduction arising under Section 195(2) of the Income Tax Act, 1961 (for short, the 'Act') arose.

4. Plea of the assessee was that services were rendered outside India; there was no operation in India by the aforesaid two companies and, therefore, income accrued was outside India and, thus, no tax was deductible. The Commissioner of Income Tax (Appeal) was of the opinion that the payment made was not in the nature of royalty, but was business income in the hands of the two companies. The Income Tax Appellate Tribunal (ITAT), however, has accepted the plea of the assessee and has come to the conclusion that no such TDS is deductible. These are findings of facts.
5. All these appeals are dismissed as no question of law arises. Consequently, the accompanying applications also stand dismissed.


(A.K. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)
JUDGE

December 21, 2009
nsk