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% 06.04.2009

Present: Mr. C.S.Aggarwal, Sr. Adv. with Mr. Prakash Kumar,
Adv. for the Assessee in ITA Nos.404/08, 409/08,
419/08, 368/08, 390/08.
Mr. Sanjeev Sabharwal, Adv. for the Revenue in ITA
Nos.180/08, 186/08, 194/08, 196/08, 276/08.

+ ITA Nos.404/08, 409/08, 419/08, 180/08, 186/08, 194/08,
196/08, 276/08, 368/08, 390/08

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We have heard learned counsel for the parties in great detail.

We note that in the Order of the learned ITAT dated 15.10.2003 an additional ground sought to be urged by the Appellant was in fact allowed to be taken, to be decided during the final determination of the Appeals. This question reads as follows:-

“Whether on the facts and in the circumstances of the case in law, the supervision fees earned on account of the supply of equipment could be taxed as “fees for technical services”, even though they are integral and incidental to the supply of equipment, since the supervision fees received by it on account of the supply of equipment are inextricably and essentially linked to the supply of equipment, and hence, should in all fairness partake the same character as the supply of the equipment, as it is nothing else but a supply of equipment simpliciter”.



However, the additional ground admitted by ITAT was not decided. Accordingly, the matter is remanded back to the ITAT to undertake the *de novo* inquiry/investigation without being influenced by any of the views already expressed. The impugned Order is accordingly set aside.

We are of the view that the question, as formulated by ITAT, is verbose. The question ought to read as follows:

"2.1 Whether in the facts and circumstances of the case "fees for technical services" (FTS) received by the Assessee from Maruti Udyog Limited was taxable under Articles 12(2) or 12(5) read with Article 7(3) of the Indo-Japan Double Taxation Avoidance Agreement".

It is agreed by both counsel that the ITAT will decide the question as formulated by us hereinabove. In doing so, the ITAT will be at liberty to remand the matter to the file of the Assessing Officer if it is of the view that this course would serve the ends of justice.

Appeals are disposed of accordingly.

VIKRAMAJIT SEN, J.

RAJIV SHAKDHER, J.