



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.05.2010

+ **WP(C) 2970/2010, 2971/2010, 2972/2010 & 2979/2010**

ALCATAL LUCENT INTERNATIONAL ... Petitioner

- versus -

ASSTT. DIRECTOR OF INCOME TAX AND ORS ... Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr Ajay Vohra with Ms Kavita Jha and
Mr Sachit Jolly

For the Respondent : Mr Sanjeev Sabharwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

CM Nos. 5899/2010, 5901/2010, 5903/2010 & 5921/2010

Allowed subject to all just exceptions.

ITA 2970/2010 & CM 5898/2010, ITA 2971/2010 & CM 5900/2010, ITA 2972/2010 & CM 5902/2010 & ITA 2979/2010 & CM 5920/2010

1. In these writ petitions the grievance of the petitioner is that the Assessing Officer, while giving appeal effect to the orders passed by the Income Tax Appellate Tribunal, has travelled beyond what the Income Tax Appellate Tribunal had contemplated.



2. The learned counsel for the petitioner submits that in the years in question, namely, 1997-1998 to 2000-2001 (except the assessment year 1999-2000), the issue with regard to attribution of income towards sale of software stood concluded by the Income Tax Appellate Tribunal and the department has filed an appeal before this Court in respect of that issue. The learned counsel for the petitioner submitted that the Assessing Officer could not have re-agitated and gone into the issue which stood concluded by the Income Tax Appellate Tribunal. He also submitted that insofar as the assessment year 1997-1998 is concerned, an amount of Rs 100 crores towards supply of hardware had already been deleted by the Commissioner of Income Tax (Appeals) and that had become final. The Assessing Officer ought not to have included this amount once again while purportedly giving appeal effect to the Tribunal's order.

3. The learned counsel for the petitioner also submitted that the original assessment orders were passed on the basis of the finding that the petitioner had a fixed place permanent establishment in India and that finding was reversed by the Commissioner of Income Tax (Appeals). However, in the revenue's appeal before the Tribunal, the latter has held that there is a service permanent establishment. According to the learned counsel for the petitioner since the very basis or nature of the permanent establishment has changed from a fixed place PE to a service PE, the entire method of quantification must also change. This fact, according to the learned counsel for the petitioner, has not examined by the Assessing



4. We find that the orders passed by the Assessing Officer giving appeal effect to the Tribunal's order are appealable. The points sought to be agitated before us can surely be raised by the petitioner before the Appellate Authority. Because the petitioner has an alternative remedy of an appeal, we are not inclined to entertain these writ petitions. The same stand dismissed with liberty to the petitioner to prefer appeals in respect of the impugned orders.

BADAR DURREZ AHMED, J

V.K. JAIN, J

May 03, 2010
SR