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

+ Rev. Pet. No.658 of 2011 in ITA No.1278 of 2010; Rev. Pet. No.663 of 2011 in ITA No.1280 of 2010; Rev. Pet. No.662 of 2011 in ITA No.1281 of 2010; Rev. Pet. No.659 of 2011 in ITA No.1282 of 2010 & Rev. Pet. No.660 of 2011 in ITA No.1284 of 2010

% Decision Delivered On: 27th July, 2012

1) Rev. Pet. No.658 of 2011 in ITA No.1278 of 2010

ROLLS ROYCE SINGAPORE PVT. LTD. . . . Appellant

through : Mr. Mukesh Butani, Advocate
with Mr. H. Raghvendra Rao
and Mr. Arijit Prasad,
Advocates.

VERSUS

ASSISTANT DIRECTOR OF INCOME TAX . . . Respondent

through: Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

2) Rev. Pet. No.663 of 2011 in ITA No.1280 of 2010

ROLLS ROYCE SINGAPORE PVT. LTD. . . . Appellant

through : Mr. Mukesh Butani, Advocate
with Mr. H. Raghvendra Rao
and Mr. Arijit Prasad,
Advocates.

VERSUS

ASSISTANT DIRECTOR OF INCOME TAX . . . Respondent



through: Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

3) Rev. Pet. No.662 of 2011 in ITA No.1281 of 2010

ROLLS ROYCE SINGAPORE PVT. LTD. . . . Appellant

through : Mr. Mukesh Butani, Advocate
with Mr. H. Raghvendra Rao
and Mr. Arijit Prasad,
Advocates.

VERSUS

ASSISTANT DIRECTOR OF INCOME TAX . . . Respondent

through: Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

4) Rev. Pet. No.659 of 2011 in ITA No.1282 of 2010

ROLLS ROYCE SINGAPORE PVT. LTD. . . . Appellant

through : Mr. Mukesh Butani, Advocate
with Mr. H. Raghvendra Rao
and Mr. Arijit Prasad,
Advocates.

VERSUS

ASSISTANT DIRECTOR OF INCOME TAX . . . Respondent

through: Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

5) Rev. Pet. No.660 of 2011 in ITA No.1284 of 2010

ROLLS ROYCE SINGAPORE PVT. LTD. . . . Appellant

through : Mr. Mukesh Butani, Advocate
with Mr. H. Raghvendra Rao



and Mr. Arijit Prasad,
Advocates.

VERSUS

ASSISTANT DIRECTOR OF INCOME TAX . . . Respondent

through: Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

CORAM :-

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE M.L. MEHTA**

A.K. SIKRI, Acting Chief Justice (ORAL)

1. Many appeals, both filed by the assessee as well the Revenue Department, were disposed of vide common judgment dated 30.8.2011. Five appeals were filed by the assessee and the remaining appeals by the Revenue. Appeals of the Revenue were dismissed; so were that of the assessee. In the five appeals filed by the assessee, review petitions have been preferred primarily on the ground that some questions of law raised by the assessee on which its appeals were admitted have not been addressed in the judgment. Gist of the submissions of the assessee in this behalf was taken note of in order dated 03.2.2012 wherein it was recorded that ITA 1278/2010 was treated as lead matter. The appeal was admitted on 7 questions of law framed as 'a' to 'g'. Question no.1 pertains to the business connection of the appellant in India and Question Nos. 'b', 'c' and 'd' relate to Permanent Establishment viz. whether ANR as its agent could be treated as Permanent Establishment. It was submitted by Mr. S. Ganesh, learned Sr. Counsel appearing for the appellant/review



petitioner that in para 35 of the judgment, his submission is recorded that the issue of Arm's Length Price be decided first and in case it is held that the payment of commission to ANR was an Arm's Length Price, the question of business connection or PE would be rendered academic. Taking note of this submission, in Para 36 Question Nos. 'a' to 'd' are answered in favour of the Revenue. The grievance of the review petitioner is that there was no concession made by the appellant on this question of law and in fact what was argued that this question may not arise for consideration. Otherwise, it is argued, as per the appellant the questions of business connection and PE also survive. It is further submitted that on question no. 'e', the matter is referred back to the Assessing Officer, therefore the aforesaid finding qua Question no. 'a' to 'd' recorded against the appellant in para 36 may cause prejudice to the appellant. In respect of Question no. 'g', it is argued that even if this Court has held that payment of US\$ 40,000 per annum made by the review petitioner to ANR is not to be treated as arm's length price, the next step is to determine as to what would be the reasonable arm's length price at the hands of ANR/PE and not the profits earned by the assessee. He submitted that this aspect is over looked.

2. After going through the judgment in the light of the submissions, we find it to be factually correct. We, thus, allow these Review Petitions. Since the aforesaid questions which have not been dealt with are to be gone into, matters are fixed for arguments on those aspects before the regular Roster Bench on 24th August, 2012.



3. The Review Petitions stand disposed of.

ACTING CHIEF JUSTICE

**(M.L. MEHTA)
JUDGE**

JULY 27, 2012

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