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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 489/2015

PR.COMMISSIONER OF INCOME TAX-5 Appellant
Through: Mr. Rohit Madan, Senior Standing
counsel with Mr. Akash Vajpai, Advocates.

versus

LE PASSAGE TO INDIA TOURS & TRAVELS PVT.
LTD. Respondent

AND

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ITA 491/2015

PR.COMMISSIONER OF INCOME TAX-5 Appellant
Through: Mr. Rohit Madan, Senior Standing
counsel with Mr. Akash Vajpai, Advocates.

versus

LE PASSAGE TO INDIA TOURS & TRAVELS PVT.
LTD. Respondent

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
10.08.2015

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1. In these appeals under Section 260A of the Income Tax Act, 1961 ('Act')
against the order dated 19th December 2014 passed by the Income Tax



Appellate Tribunal ('ITAT') in ITA Nos. 210/Del/2012 and 498/Del/2012 for the Assessment Years ('AYs') 2007-08 and 2008-09, the first question projected by the Revenue is whether the ITAT has erred in deleting disallowance of Rs.2,77,62,022 made by the Assessing Officer ('AO') under Section 40 (a) (i) of the IT Act in AY 2007-08 on the ground that the services rendered by the agents to the Assessee were in the nature of fee for technical services.

2. On the said issue, the ITAT has analysed the agreements in question entered into by the Assessee with the foreign entities (agents) and concluded that the services rendered by the 'agents' were purely in the nature of advancement of the business of the Assessee which could not be categorised as managerial/technical or consultancy services. Consequently, it was held that the consideration paid by the Assessee to such agents could not be classified as fee for technical services.

3. The Court finds that the view taken by the ITAT on the interpretation of clauses of the agreements in question was a plausible one. It is also consistent with the decision of this Court in *DIT v. Pan Alfa Auto Elektrik Ltd. [2014] 272 ITR 117 (Del)* and the decision dated 29th May 2015 in ITA



325 of 2014 (*CIT v. M/s. Grup ISM*). Consequently, this Court finds no substantial question arises for determination on this issue.

4. The second issue sought to be projected is whether the payments could have been made by the Assessee to the foreign entities towards tour expenses without deduction of TDS. The CIT (A) has held against the Revenue on this issue. Where the recipient of the payment is not liable to tax in India, the question of deducting tax at source on payments made to such entity does not arise.

5. The appeals are accordingly dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

AUGUST 10, 2015/dn