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

+ **ITA No. 477/2017**

+ **ITA No. 478/2017**

PR. COMMISSIONER OF INCOME TAX-06 ..... Appellant  
Through: Mr. Rahul Chaudhary, Sr. Standing  
Counsel with Ms. Lakshmi Gurung, Advocate.

Versus

MODI APOLLO INTERNATIONAL  
GROUP (P) LTD. .... Respondent

Through: Mr. Neeraj Jain, Advocate with  
Mr. Aniket D. Agrawal, Mr. Aditya Vohra,  
Advocates.

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**31.07.2017**

**C.M. No. 22517/2017 (exemption) in ITA No. 477/2017**

1. Allowed, subject to all just exceptions

**ITA Nos. 477/2017 & 478/2017**

2. These are two appeals by the Revenue against the common order dated 30<sup>th</sup> November, 2016 by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 223/Del/2011 and ITA No. 5396/Del/2013 for the Assessment Years ('AY') 2007-08 and 2009-10 respectively.

3. At the outset, it requires to be noted that there are concurrent findings by both the Commissioner of Income Tax (Appeals) ['CIT(A)'] as well as the



ITAT against the Revenue on the two main issues urged in these appeals. The first is whether a payment made by the Assessee to Apollo International Inc., USA (AII) for evaluation of reports and course content was fee for technical services (FTS) and subject to TDS under Section 195 of the Act. The second concerns the deletion of the addition made by the Assessing Officer (AO) on account of royalty payment to AII by holding it to be capital in nature.

4. The concurrent findings of the CIT (A) and the ITAT are that there was no element of profit embedded in the reimbursement for the evaluation undertaken and, therefore, it was not FTS. The ITAT also noted that no technical expertise/services were required to render assistance for identification of candidates for admission. On the second issue it was found that the payment of royalty was with reference to the gross fee collected and there was no capital element involved in it.

5. Having heard the learned counsel for the Revenue, the Court is satisfied that the above concurrent findings suffer from no legal infirmity. No substantial question of law arises for consideration.

6. The appeals are dismissed but in the circumstances, no order as to costs.

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S. MURALIDHAR, J.

A handwritten signature in black ink, written in a cursive style, positioned above the name Prathiba M. Singh, J.

PRATHIBA M. SINGH, J.

**JULY 31, 2017/ 'anb'**

*ITA Nos.477/2017, 478/2017*