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

- + ITA 960/2019
- + ITA 1002/2019 and C.M. No. 54099/2019
- + ITA 1003/2019 and C.M. No. 54100/2019
- + ITA 1004/2019 and C.M. No. 54101/2019
- + ITA 1005/2019 and C.M. No. 54132/2019
- + ITA 1006/2019 and C.M. No. 54133/2019
- + ITA 1008/2019 and C.M. No. 54291/2019
- + ITA 1009/2019 and C.M. No. 54292/2019
- + ITA 1010/2019 and C.M. No. 54296/2019

LG ELECTRONICS INC., KOREA

..... Appellant

Through: Mr. Ajay Vohra, Sr. Adv. with Mr.
Amit Shrivastava and Mr. Ankul,
Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX

..... Respondent

Through: Mr. Raghvendra Singh and Ms. Easha
Kadian, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

14.02.2020

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We have heard learned counsels for the parties. The following



questions of law arise and are framed in the present appeal for our consideration:

“A. Whether the IT AT was correct in law in exercising the power of remand to DRP on facts and circumstances of the present case?”

B. Whether being the final fact finding authority, the ITAT abdicated its duty to give finding on merits of the appeal?”

C. Whether in the facts and circumstances of the present case, remand by the IT AT was not warranted when all necessary facts and evidences were before the IT AT and the matter was heard in great detail on merits?”

The short grievance of the appellant, in the present appeal, is that the learned Tribunal was not justified in remanding the matter back to the DRP to examine the issue whether the appellant had conceded that it had a permanent establishment in India. The Tribunal, while passing the impugned order, directed in paragraph 88 as follows:

“88. In view of above facts, we set aside all the appeals of the assessee back to the file of the learned dispute resolution panel with a direction to first ascertain the fact about the admission of the assessee with respect to acceptance of the assessee of the existence of the permanent establishment. If it is found that there is an admission on part of the assessee about the existence of the permanent establishment, then, the learned dispute resolution panel will decide the issue in accordance with the law considering the above admission. However, if it is found that there is no admission on this aspect, then to decide the issue of existence of the permanent establishment and consequent profit attribution thereto with respect to each of the assessment years. Needless to say, the learned Dispute Resolution Panel will afford reasonable opportunity of hearing to the assessee. The learned dispute resolution panel, then, will direct the learned assessing officer to pass the final assessment order incorporating its direction in accordance with the law.



Under those circumstances, in absence of any admission about the existence of the PE by the assessee, all issues, with respect to the existence of the permanent establishment as well as the profit attribution thereto would be open before the learned dispute resolution panel."

Mr. Vohra, learned senior counsel for the appellant has submitted that the Tribunal being the last fact finding authority should have examined, firstly, the issue whether there was any concession made by the appellant with regard to existence of PE in India on its own, since the same was a matter of record and, if no such concession was made to proceed to determine the issue with regard to existence/ non-existence of the PE of the appellant in India. The Tribunal should have proceeded to determine the liability towards taxation of the appellant only after determination of the aforesaid aspects:

We find that the Tribunal in its very detailed order recorded the rival submissions of the parties. In this background, in our view, there was no purpose of remanding the matter back to the DRP on a small aspect, namely whether the appellant had made any concession with regard to the existence of its PE in the India. The same was a matter of record, if at all. The Tribunal could have decided the said issue and all other issues arising from answer to the said issue, or in consequences thereof. We, therefore, answer the question framed in favour of the appellant. We set aside the impugned order in so far as the operative direction contained in paragraph 88 is concerned. We, however, make it clear that the Tribunal shall limit its consideration to the aforesaid aspects, since the aspect of issuance of notice under Section 147/148 stands concluded against the assessee.



The appeals stand disposed of in the aforesaid terms.
All rights and contentions of the parties are left open.
The parties shall appear before the Tribunal on 24.03.2020.


VIPIN SANGHI, J


SANJEEV NARULA, J

FEBRUARY 14, 2020
N.Khanna