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

+ **ITA 346/2022**

COMMISSIONER OF INCOME TAX (INTERNATIONAL
TAXATION)-2

..... Appellant

Through: Ms.Easha Kadian, Advocate for
Mr.Sanjay Kumar, Sr.Standing
Counsel for the Revenue.

versus

INTELSAT CORPORATION

..... Respondent

Through: Mr.S.S.Tomar with Mr.Vishal Kalra,
Advocates.

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..... Appellant

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Date of Decision: 21st September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA



J U D G M E N T

MANMOHAN, J (Oral):

1. Present income tax appeals have been filed challenging the order dated 13th December, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4946/Del./2017 for the Assessment Year 2014-15 and the order dated 11th October, 2021 in ITA No. 3199/Del./2018 for the Assessment Year 2015-16.
2. Learned counsel for the Appellant states that the ITAT has erred in holding that the amount received by the Intelsat Corporation, USA for lease of transponder facility are not chargeable to tax under section 9(1)(vi) of the Income Tax Act, 1961 ('the Act') read with Article 12(3) of the DTAA between India and USA as royalty. She states that the ITAT has erred in not appreciating that amount received by Intelsat Corporation, USA represented income by the way of royalty as defined in Explanation 2 read with Explanation 5.6 to Section 9(1)(vi) of the Act as well as Article 12(3) of the India-USA DTAA. She further states that the ITAT has erred in not appreciating that the transmission of signals/data through satellite transponder would fall within the meaning of word process, as appearing in Clauses (i), (ii) & (ii) of explanation 2 of Section 9(1)(vi) and Article 12(3) of the DTAA between India and USA.
3. Admittedly, the questions of law urged in the present appeal are covered by the decision of this Court in assessee's own case in ITA 900/2019 pertaining to the Assessment Year 2013-14, wherein this Court dismissed an appeal of the Revenue on similar grounds relying on the decisions in *M/s Asia Satellite Telecommunications Co. Ltd. Vs. DIT (2011) 332 ITR 340 (Del)* and *Director of International Taxation Vs. New*



Skies Satellite BV, (2016) 382 ITR 114 Del.

4. Learned Counsel for the Appellant states that the Revenue has not accepted the aforesaid decisions and has preferred SLPs against the same.
5. Though the appeals in the aforementioned cases are pending adjudication, yet there is no stay of the said judgments till date.
6. Consequently, in view of the judgments of the Supreme Court in *Kunhayammed and Others Vs. State of Kerala And Another, (2000) 6 SCC 359* and *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1*, the issues raised in the present appeals are covered by the judgment passed by the learned predecessor Division Bench.
7. Accordingly, no substantial question of law arises for consideration in the present appeals and the same are dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 21, 2022

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