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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ ITA 375/2022

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL  
TAXATION 2 DELHI ..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing  
Counsel for Revenue.

versus

NEW SKIES SATELLITE BV ..... Respondent

Through: Ms. Ananya Kapoor & Mr. Salil  
Kapoor, Advocates.

% Date of Decision: 28<sup>th</sup> 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 appeal has been filed challenging the impugned order dated 30<sup>th</sup> September, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5054/Del./2019 for Assessment Year 2016-17.
2. Learned counsel for the Appellant states that the ITAT has erred in holding that receipts of the assessee, earned from providing satellite transmission services do not fall within the term 'royalty' under the India-Netherlands DTAA even after insertion of Explanation 5 and 6 to section 9(1)(vi) of the Income Tax Act, 1961 by Finance Act, 2012 and without considering the position of India on OECD commentary on this issue.
3. Admittedly, the question of law urged in the present appeal is covered

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by the decision of this Court in assessee's own case in *Director of Income Tax vs. New Skies Satellite BV (2016) 382 ITR 114*.

4. Learned counsel for the Appellant states that the Revenue has not accepted the aforesaid decision and has preferred a Special Leave Petition against the same being Civil Appeal No.1380/2016.

5. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date.

6. Consequently, in view of the judgments passed by 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 present appeal is covered by the judgment passed by the learned predecessor Division Bench in *New Skies Satellite BV (supra)*.

7. Accordingly, no substantial question of law arises for consideration in the present appeal and the same is dismissed.

8. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the aforesaid Civil Appeal.

**MANMOHAN, J**

**MANMEET PRITAM SINGH ARORA, J**

**SEPTEMBER 28, 2022/msh**