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

+ ITA 14/2025

SONY INDIA PRIVATE LIMITED

.....Appellant

Through: Mr. Nageswar Rao and Mr. Parth,
Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 24(1),
NEW DELHI

.....Respondent

Through: Mr. Ruchir Bhatia, SSC with Mr.
Anant Mann, JSC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **29.01.2025**

CM APPL. 5464/2025 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. This application stands disposed of.

ITA 14/2025

3. Having heard Mr. Nageswar Rao, learned counsel appearing for the appellant, we find that this appeal raises questions which would merit consideration.
4. We take note of the judgment handed down by the Special Bench of the Income Tax Appellate Tribunal in *Deputy Commissioner of Income Tax v. Total Oil India P. Ltd. [(2023) 104 ITR (Trib) 1]*, as also the fact of similar challenge pending in number of writ petitions, including W.P. (C) 13962/2021.



5. We consequently admit this appeal on the following questions of law:-

A. Whether Hon'ble Tribunal ought not to have directed mark-up of *ad hoc* 20% on receipts of reimbursement from Associated enterprise of ₹50,44,669/- in the garb of determining arm's length price of reimbursement?

B. Without prejudice to above, whether direction to mark-up receipt of reimbursement by 20% is excessive, perverse and unlawful especially considering arm's length mark-up determined (although unjustified in itself) by Ld. TPO by reference to pure marketing companies is only 12.25%?

C. Whether the DDT prescribed under section 115-O of the Income Tax Act, 1961 is in substance and effect a tax on dividend income of non-resident shareholders where recipient shareholders are residents of Netherlands entitled to the more beneficial rate of 10% under Article 10 of DTAA between India and Netherlands?

6. List on 05.05.2025 along with W.P. (C) 13962/2021 and connected matters.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

JANUARY 29, 2025

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