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

\+ ITA 183/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION-3 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC

versus

WE ARE VOICES ENTERTAINMENT INC

..... Respondent

Through: Mr. Vishal Kalra, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 14.03.2024

CM APPL. 15732/2024

Bearing in mind the disclosures made, the delay of 57 days in refiling the appeal is condoned.

The application shall stand disposed of.

ITA 183/2024

1. The Commissioner seeks to impugn the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 25 July 2023 and has proposed the following question for our consideration:-

> "2.1 Whether the Ld. ITAT has erred in law in holding that receipts of assessee business profit and hence not chargeable to tax in India in absence of PE ignoring the fact that the Assessee himself has stated in its submission that talent booking agency services were provided outside India and that no employee or personnel ever visited India either in connection with the event or otherwise in

relation to the services provided?

2.2 Whether the Ld. ITAT was correct in law in holding that receipts of Assessee constitute business profit and hence not chargeable to tax in India in absence of PE and not other income under article 23 of Indo-US DTAA ignoring that transaction between assessee and customer does not satisfy basic attribute of business i.e. regularly, continuity, frequency and volume?"

2. We take note of the following conclusions which have come to be recorded by the ITAT:-

"7.4 Article 7(7) of the India-USA DTAA clearly defines 'business profit' to mean income derived from any trade or business including income from furnishing of services which are other than specified services (Royalties and FIS). It is not the case of the Ld. AO that the services rendered by the assessee are in the nature of FIS/royalty etc. In view of this, it cannot be said that the assessee was not engaged in business while rendering talent booking agency services to the Customer and hence the classification of the impugned receipts as 'Other Income' which is a residuary head is erroneous. Needless to say that Article 23 would apply only to items of income 'not expressly covered' or 'not dealt with' by provisions of other Articles in the relevant DTAA as held by judicial authorities in numerous decisions.

7.5 Based on the above, in our considered view the impugned receipts of the assessee from the Customer constitutes business profits and hence are not chargeable to tax in India in the absence of the PE of the assessee in India. Accordingly, ground Nos. 1, 3, 4 and 5 are decided in favour of the assessee."

3. In light of the undisputed position that the income derived was not placed either under the head of fee for included service or fee for technical service**,** we find no justification to interfere with the view as expressed by the ITAT. Article 23 would have been attracted provided it were income not expressly covered or dealt with under any other Article of the DTAA. In any case once it was conceded that the income was neither classifiable as royalty or FIS, it would constitute business income and which could not have been subjected to tax in the

absence of a PE.

4. No substantial question of law arises. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 14, 2024/*neha*