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

+ ITA 28/2025

PERNOD RICARD INDIA PRIVATE LIMITEDAppellant

Through: Mr. Anmol Anand and Ms. Priya
Tandon, Advocates

versus

COMMISSIONER OF INCOME TAXRespondent

Through: Mr. Anurag Ojha, SSC with Ms.
Hemlata Rawat and Mr. V.K.
Saksena, JSCs

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

ORDER
06.02.2025

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CM APPL. 7034/2025

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

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3. Admit on the following substantial questions of law:-
 - A. Whether in terms of section 90(2) of the Act, the applicable income-tax rate on dividends paid by the Appellant to its non-resident shareholder i.e., Peri Mauritius would be 5% (inclusive of surcharge and cess) as per Article 10(2)(a) of the Double Taxation Avoidance Agreement between India and Mauritius instead of 12.5% (plus surcharge and cess) as provided for in section 115-O of the Act for



Assessment Year 2005-06?

B. Without prejudice, whether the Tribunal erred in not appreciating that since in view of Article 23(4)(b) of the Double Taxation Avoidance Agreement between India and Mauritius, levy of dividend distribution tax was specifically covered within Article 3(1)(d) of the Double Taxation Avoidance Agreement between India and Mauritius, therefore, the lower rate of tax i.e., 5% (inclusive of surcharge and cess) as provided for under Article 10(2) of the Double Taxation Avoidance Agreement between India and Mauritius should apply instead of 12.5% (exclusive of surcharge and cess) as provided under section 115-O of the Act?

4. Issue notice. On behalf of the respondent Mr. Anurag Ojha, learned SSC accepts notice.
5. List on 05.05.2025.
6. Matter to be tagged with ITA 405/2024.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

FEBRUARY 6, 2025

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