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

+ ITA 34/2024

THE COMMISSIONER OF INCOME TAX -
INTERNATIONAL TAXATION -3 Appellant

Through: Mr. Ruchir Bhatia, Senior
Standing Counsel with Ms.
Deekshu Gupta, Advocate.

versus

SARVA CAPITAL LLC Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

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18.01.2024

1. Notice. Although the respondent is stated to have been placed on advance notice, none has appeared on its behalf when the matter was called. Consequently, let the appellant take steps for service upon the said respondent through all permissible modes including via approved courier service. The respondent may file a reply, if so chosen and advised, within a period of four weeks from today.

2. Prima facie and on hearing Mr. Bhatia, learned counsel appearing in support of the appeal, we note that the Income Tax Appellate Tribunal [“**TTAT**”] has primarily rested its decision on the valid and existing Tax Residency Certificate [“**TRC**”] which was held by the respondents assessee. It has clearly failed to allude to the provisions introduced in the India Mauritius Double Taxation Avoidance Agreement [“**DTAA**”] and more particularly Articles 13(3A), 13(3B) and Article 27A. Matter requires consideration. We accordingly admit this appeal on following question of law:-



A. Whether the ITAT as erred in law, by holding that treaty benefit of India Mauritius DTAA are available to the assessee ignoring the fact that scheme of arrangement employed by assessee is a tax avoidance through treaty shopping mechanism?

3. List again on 03.05.2024.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 18, 2024

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