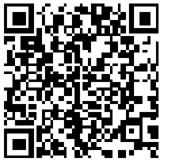

$~117 & 118

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

\+ ITA 434/2024

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

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann & Mr. Pratyaksh Gupta, JSCs.

versus

STARWOOD (M) INTERNATIONAL INC. .....Respondent

Through: Mr. Divyanshu Agrawal, Mr. Vaibhav Niti & Mr. Bhaati Sharma, Advs.

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\+ ITA 435/2024

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

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann & Mr. Pratyaksh Gupta, JSCs.

versus

SHERATON OVERSEAS MANAGEMENT CORPORATION .....Respondent

Through: Mr. Divyanshu Agrawal, Mr. Vaibhav Niti & Mr. Bhaati Sharma, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

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**ORDER**

% **13.08.2024**

**CM APPL. 46411/2024 (6 Days Delay in Refiling) in ITA 434/2024**
**CM APPL. 46417/2024 (6 Days Delay in Refiling) in ITA 435/2024**

Bearing in mind the disclosures made, the delay of six days in refilling the appeals is condoned.

Applications stand disposed of.

**ITA 434/2024 & ITA 435/2024**

1. These two appeals impugn the orders of the **Income Tax Appellate Tribunal**[1] dated 16 January 2024 [ITA 434/2024] and 13 February 2024 [ITA 435/2024] and pose the following question of law for our consideration:

> "2.1 Whether the Ld. ITAT has erred in law in holding that the entire payments received by the assessee from it Indian customers on account of Centralized Services, in the nature of sale and marketing reservation, loyalty programs etc. did not constitute Fee for Technical Services as defined u/s 9(1)(vii) of the Income Tax Act, 1961 or "Fee for included Services as defined under Article 12(4)(a) of the Income US DTAA?"

2. We note that while dealing with an identical issue, we had in ITA 213/2024 by order dated 10 April 2024 dismissed the challenge which stood raised bearing in mind the judgment rendered by the Court in **Director of Income-Tax vs. Sheraton International Inc.**[2] The question which stands posited in the present appeals stands answered in *Sheraton International* in the following terms:

> "**32.** In view of the aforesaid findings of the Tribunal that the main service rendered by the assessee to its client-hotels was advertisement, publicity and sales promotion keeping in mind their mutual interest and, in that context, the use of trademark, trade name or the stylized "S" or other enumerated services referred to in

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[1] Tribunal
[2] 2009 SCC OnLine Del 4231

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the agreement with the assessee were incidental to the said main service, it rightly concluded, in our view, that the payments received were neither in the nature of royalty under Section 9(1)(vi) read with Explanation 2 or in the nature of fee for technical services under Section 9(1)(vii) read with Explanation 2 or taxable under Article 12 of the DTAA. The payments received were thus, rightly held by the Tribunal, to be in the nature of business income. And since the assessee admittedly does not have a permanent establishment under the Article 7 of the DTAA „business income‟ received by the assessee cannot be brought to tax in India. The findings of the Tribunal on this account cannot be faulted. The Tribunal pointedly observed that there was no evidence brought on record by the Revenue to enable them to hold that the agreement was a colourable device, in particular, that the payments received were for use of trade mark, brand name and stylized mark "S". We agree with reasoning adopted by the Tribunal. Moreover, these are findings of fact which could be gone into only if a question was proposed impugning the findings of the Tribunal as perverse. We find that no such question has been proposed in the appeal. The observations of the Supreme Court in the case of K. Ravindranathan Nair vs CIT [2001] 247 ITR 178 being relevant are extracted below (page 181):

> "The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact-finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it. The only jurisdiction of the High Court in a reference application is to answer the questions of law that are placed before it. It is only when a finding of the Tribunal on fact is challenged as being perverse, in the sense set out above, that a question of law can be said to arise."

**33.** In these circumstances we are of the view that no fault can be found with the impugned judgment. No question of law, much less a substantial question of law, has arisen for our consideration. In the result the appeals are dismissed."

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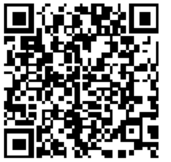

3. In view of the aforesaid, and following the reasons assigned in ITA 213/2024, these appeals shall stand dismissed.

**YASHWANT VARMA, J**

**RAVINDER DUDEJA, J**

**AUGUST 13, 2024/**kk

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