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

\+ ITA 566/2024

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

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel, Mr. Anant Mann, Jr. tanding Counsel and Mr. Abhishek Anand, Advocate.

versus

RADISSON HOTEL INTERNATIONAL INCORPORATED .....Respondent

Through: Mr. Satven Sethi and Mr. Arta Trana Panda, Advocates.

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

O R D E R

% 11.12.2024

1. The Revenue has filed the present appeals under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 03.05.2024, *inter-alia* passed by the Income Tax Appellate Tribunal (hereafter *the Tribunal*) in I.T.A. No.2382/Del/2023 for Assessment Year (AY) 2020-21. The said appeals were preferred by the respondent (hereafter *the Assessee*) in respect of the final assessment order passed under Section 143(3) read with Section 144C(13) of the Act. The principal issue involved in the present case was whether the payments received by the Assessee on account of providing centralised reservation services could be constituted as

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fees for technical services as defined under Section 9(1)(vii) of the Act or fee for included services as defined under Article 12(4)(a) of the Indo-US-Double Taxation Avoidance Agreement (*"DTAA"*).

2. The Assessee had disclosed that it had received payments on account of license to use the brand and the same was surrendered to tax as royalty. In addition to the license fee, the Assessee had also received payments for other services including on account of (a) Sales and Marketing; (b) Loyalty Programs; (c) Distribution of Reservation Services; (d) Technological Services; (e) Operation Services; and (f) Human Resources/Training Courses. According to the Assessee, the payments received in respect of other services rendered were not covered under fees for technical services and therefore were not chargeable to tax under the Act.

3. The Assessing Officer (hereafter *AO*) held that the payment made for other services as mentioned above were incidental to the licensing of brand and therefore, sought to tax the same as royalty under the Indo-US-DTAA. Learned ITAT had, following its decision in the case of assessee for earlier AYs, accepted the assessee's contention that the charges for aforementioned services are not taxable as royalty under the Indo-US-DTAA. Concededly, the issue is also covered in favour of the assessee by an earlier decision of this Court in the ***Director of Income Tax vs. Sheraton International Inc., (2009) 178 taxman 84 (Del).***

4. In the aforesaid context, the Revenue has projected the following question of law for consideration by this Court:

> *"Whether Ld. ITAT has erred in law in holding that the entire payments received by the assessee from its Indian customers on account of Centralized services being ancillary and incidental to royalty income did not constitute Fee for technical services*

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as defined under 9(1)(vii) of the Income Tax Act, 1961 or Fee for included services as defined under Article 12(4)(a) of the Indo-US-DTAA ignoring that centralized services incomes is related to letting of brand name?"

5. Mr. Bhatia, learned counsel for the Revenue states at the outset that the aforesaid question is covered in favour of the Assessee by earlier decision of this Court in the ***Commissioner of Income Tax - International Taxation-3 vs. Radisson Hotel International Incorporated: 2022/DHC/ 004791*** which in turn, followed the earlier decision of this Court in ***Director of Income Tax vs. Sheraton International Inc., (2009) 178 taxman 84 (Del)*.**

6. In view of the above, no substantial question of law arises for consideration of this Court. The appeal is accordingly dismissed.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 11, 2024
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Click here to check corrigendum, if any

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