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

+ **ITA 679/2023**

COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -1

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

ERICSSON, AB SWEDEN

..... Respondent

Through: Mr Vishal Kalra, Advocate.

+ **ITA 683/2023**

COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -1

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

ERICSSON, AB SWEDEN

..... Respondent

Through: Mr Vishal Kalra, Advocate.

+ **ITA 684/2023**

COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -1

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

ERICSSON, AB SWEDEN

..... Respondent

Through: Mr Vishal Kalra, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

ORDER

% **04.12.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

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CM APPL. 62181/2023 in ITA 679/2023

CM APPL. 62194/2023 in ITA 684/2023

1. Allowed, subject to just exceptions.

CM APPL. 62182/2023 [*Application filed on behalf of the appellant seeking condonation of delay of 460 days in re-filing the appeal*] in **ITA 679/2023**

CM APPL. 62191/2023 [*Application filed on behalf of the appellant seeking condonation of delay of 460 days in re-filing the appeal*] in **ITA 683/2023**

CM APPL. 62195/2023 [*Application filed on behalf of the appellant seeking condonation of delay of 460 days in re-filing the appeal*] in **ITA 684/2023**

2. These are applications filed by the appellant/revenue, seeking condonation of delay in re-filing the appeal.

3. Although the period of delay is substantial i.e., 460 days, most of it appears to have been explained by reference to a judgment of the Supreme Court rendered in SMW(C) 3 of 2020, titled *In Re: Cognizance for Extension of Limitation*.

4. Having regard to the same, Mr Vishal Kalra, learned counsel, who appears on behalf of the respondent/assessee, says that he would have no objection if the delay in re-filing is condoned.

5. It is so directed. The above-captioned applications are accordingly disposed of.

ITA 679/2023

ITA 683/2023

ITA 684/2023

6. These appeals concern Assessment Years (AY) 2002-03 [ITA 679/2023], AY 1999-2000 [ITA 683/2023] and AY 2000-01 [ITA 684/2023].

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7. Via the above-captioned appeals, the appellant/revenue seeks to assail a common order dated 27.10.2021 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

8. Mr. Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that common questions of law are proposed for consideration by this court in the above-captioned appeals.

8.1 Mr. Bhatia thus submits that the proposed questions of law in ITA 679/2023 be picked up for scrutiny, for the sake of convenience.

9. Accordingly, the questions of law as proposed in ITA 679/2023, which as noticed above, according to Mr. Bhatia, are common to the remaining appeals, are set forth hereafter:

(i) *Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT is correct in holding that Ericsson AB has no business connection in India in respect of supply of GSM System by Ericsson AB to Cellular Operators in India and there is no Permanent Establishment (PE) in the form in India in subject A.Y. and therefore no attribution of profit is required?*

(ii) *Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT is correct in holding that receipts of assessee from sale of software is not taxable as Royalty under the Act and India -Sweden DTAA?”*

10. Mr. Bhatia submits that he cannot but accept that the proposed question of law no.(ii) is covered by the decision of the Supreme Court rendered in ***Engineering Analysis Center of Excellence Pvt. Ltd. v. CIT***, 2021 SCC OnLine SC 159. However, as regards the proposed question of law no.(i), Mr Bhatia contends that the CIT(A) has delved into facts which ought to have established that the respondent/assessee had a fixed place PE

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in India.

10.1 It is Mr. Bhatia's contention that this exercise was conducted pursuant to a remand order passed by a coordinate bench of this court in the assessee's case, which is reported as *DIT v. Ericson AB 2016 65 taxmann.com 43 (Delhi)*.

11. Accordingly, issue notice confined to the proposed question of law no.(ii).

11.1 Mr Kalra accepts notice on behalf of the respondent/assessee.

12. As far as proposed question of law no.(ii) is concerned, in our view, it is correctly indicated to the court that the issue is covered by the judgment in the *Engineering Analysis* case. It is for this reason that issuance of notice is confined to proposed question of law no.(i).

13. Counsel for the parties will file written submissions, not exceeding three pages each, at least five days before the next date of hearing.

14. Mr Bhatia will also place before the court the record that was made available to the statutory authorities.

15. List the above-captioned appeals on 10.04.2024.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 4, 2023 / tr

[Click here to check corrigendum, if any](#)

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