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

+ **ITA 700/2023 & CM Nos.62871-72/2023**

COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -1

..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing
Counsel.

versus

ERICSSON, AB SWEDEN

..... Respondent

Through: Ms Sumisha, Adv. for Mr Vishal
Kalra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

% **06.12.2023**

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

CM No.62871/2023

1. Allowed, subject to just exceptions.

**CM No.62872/2023 [Application filed on behalf of the appellant seeking
condonation of delay of 460 days in re-filing the appeal]**

2. This is an application filed on behalf of the appellant/revenue, seeking
condonation of delay in re-filing the appeal.

2.1 According to the appellant/revenue, there is a delay of 460 days in re-
filing the appeal.

3. Ms Sumisha, who appears on behalf of the respondent/assessee, says
that she would have no objection if the delay in re-filing is condoned.

ITA 700/2023

page 1 of 3



3.1 It is ordered accordingly.

4. The application is, accordingly, disposed of.

ITA 700/2023

5. This appeal concerns Assessment Year (AY) 2004-05.

6. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 27.10.2021 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

7. The appellant/revenue has proposed the following questions of law:

“(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?”

8. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, cannot but accept that insofar as the proposed question of law no. (ii) is concerned, it stands covered against the appellant/revenue by virtue of the decision rendered by the Supreme Court in ***Engineering Analysis Centre of Excellence (P.) Ltd. v. Commissioner of Income Tax & Anr.***, (2022) 3 SCC 321.

8.1 Therefore, no substantial question of law arises for consideration so far as the proposed question of law no. (ii) is concerned.

9. Thus, notice in the appeal shall be issued to the respondent/assessee, confined to the proposed question of law no. (i).



10. Accordingly, issue notice.
- 10.1 Ms Sumisha accepts notice on behalf of the respondent/assessee.
11. Learned counsel for the parties will file written submissions, not exceeding three pages each, at least five days before the next date of hearing.
12. List the matter on 10.04.2024.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 6, 2023

aj

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