



\$~23 to 27, 35 & 37

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

+ **ITA 732/2023, CM APPL. 63771/2023, 63772/2023 & 63773/2023**
+ **ITA 733/2023, CM APPL. 63777/2023, 63778/2023 & 63779/2023**
+ **ITA 734/2023, CM APPL. 63783/2023, 63784/2023 & 63785/2023**
+ **ITA 735/2023, CM APPL. 63807/2023, 63808/2023 & 63809/2023**
+ **ITA 736/2023, CM APPL. 63810/2023 & 63811/2023**
+ **ITA 744/2023, CM APPL. 63874/2023, 63875/2023 & 63876/2023**
+ **ITA 746/2023, CM APPL. 63887/2023, 63888/2023 & 63889/2023**

**THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -1** Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

ARIBA INC. Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

ORDER

% **11.12.2023**

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

CM APPL. 63772/2023 in ITA 732/2023

CM APPL. 63778/2023 in ITA 733/2023

CM APPL. 63784/2023 in ITA 734/2023

CM APPL. 63808/2023 in ITA 735/2023

CM APPL. 63875/2023 in ITA 744/2023

CM APPL. 63888/2023 in ITA 746/2023

1. Allowed, subject to just exceptions.



CM APPLs. 63771/2023 [Application filed on behalf of the appellant seeking condonation of delay of 54 days in filing the appeal] and **CM APPL. 63773/2023** [Application filed on behalf of the appellant seeking condonation of delay of 154 days in re-filing the appeal] **in ITA 732/2023**
CM APPLs. 63777/2023 [Application filed on behalf of the appellant seeking condonation of delay of 54 days in filing the appeal] and **CM APPL. 63779/2023** [Application filed on behalf of the appellant seeking condonation of delay of 154 days in re-filing the appeal] **in ITA 733/2023**
CM APPLs. 63783/2023 [Application filed on behalf of the appellant seeking condonation of delay of 54 days in filing the appeal] and **CM APPL. 63785/2023** [Application filed on behalf of the appellant seeking condonation of delay of 154 days in re-filing the appeal] **in ITA 734/2023**
CM APPLs. 63807/2023 [Application filed on behalf of the appellant seeking condonation of delay of 54 days in filing the appeal] and **CM APPL. 63809/2023** [Application filed on behalf of the appellant seeking condonation of delay of 154 days in re-filing the appeal] **in ITA 735/2023**
CM APPLs. 63810/2023 [Application filed on behalf of the appellant seeking condonation of delay of 54 days in filing the appeal] and **CM APPL. 63811/2023** [Application filed on behalf of the appellant seeking condonation of delay of 154 days in re-filing the appeal] **in ITA 736/2023**
CM APPLs. 63874/2023 [Application filed on behalf of the appellant seeking condonation of delay of 54 days in filing the appeal] and **CM APPL. 63876/2023** [Application filed on behalf of the appellant seeking condonation of delay of 154 days in re-filing the appeal] **in ITA 744/2023**



CM APPLs. 63887/2023 [Application filed on behalf of the appellant seeking condonation of delay of 54 days in filing the appeal] and **CM APPL. 63889/2023** [Application filed on behalf of the appellant seeking condonation of delay of 154 days in re-filing the appeal] **in ITA 746/2023**

2. These are applications filed by the appellant/revenue seeking condonation of delay in filing and re-filing the appeals.
3. According to the appellant/revenue, there is delay of 54 days in filing and 154 days in re-filing the appeals.
4. Issue notice to the respondent/assessee *via* all modes, including e-mail.
5. List the above-captioned applications on 16.01.2024.

ITA 732/2023

ITA 733/2023

ITA 734/2023

ITA 735/2023

ITA 736/2023

ITA 744/2023

ITA 746/2023

6. These appeals concern the following Assessment Years (AYs):

ITA 732/2023	AY 2009-10
ITA 733/2023	AY 2006-07
ITA 734/2023	AY 2010-11
ITA 735/2023	AY 2007-08
ITA 736/2023	AY 2005-06
ITA 744/2023	AY 2011-12
ITA 746/2023	AY 2008-09

ITA 732/2023 & connected appeals

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7. Via the above-captioned appeals, the appellant/revenue has assailed a common order dated 17.10.2022 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 there are common questions of law which arise in the above-captioned appeals. Therefore, for ease of reference, the questions of law as proposed by the appellant/revenue in ITA 732/2023 are set forth hereafter:

“(i) Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in not passing a speaking order and holding that it cannot be said that the receipts of the assessee from Ariba India can come within the purview of "royalty" as defined under Article 12(3) of the DTAA and the Assessee has been merely providing services of conducting online auctions to Ariba India and no exclusive right to use the equipment/process has been granted in favour of either Ariba India or its customers in India to qualify as "royalty"?”

“(ii) Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in holding that assessee Company does not have existence of dependent PE in India/fixed place PE or India?”

9. *Prima facie*, insofar as the proposed question no.(i) is concerned, it appears to be covered by the following judgments of the coordinate bench of this court :

(i) ***Asia Satellite Telecommunications Co. Ltd. v. DIT***, 332 ITR 340 (Delhi HC).

(ii) ***Director of Income-tax v. New Skies Satellite***, BY (2016) 382 ITR 114 (Del HC).

(iii) ***Yahoo India (P.) Ltd. v. DCIT***, 140 TTI 195 (Mumbai).

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10. As regards question no.(ii) as well, the Tribunal has ruled in favour of the respondent/assessee. The Tribunal has concluded that since in the assessment of the associated enterprises, the transfer pricing adjustments do not survive, no attribution of income *qua* the alleged PE was sustainable.

11. Mr Bhatia, however, contends that the Tribunal erred in not noticing the exceptions provided in *DIT v. Morgan Stanley and Co. Inc.*, 292 ITR 416.

12. These aspects would be examined on the next date of hearing.

13. Mr Bhatia will file written submissions, not exceeding three pages, at least three days before the next date of hearing.

13.1. The respondent/assessee will do likewise. Written submissions will be filed in the same manner as indicated above, upon service being effected on it.

14. List the appeals on 16.01.2024.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 11, 2023 / tr

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