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

+ **ITA 76/2025**

THE COMMISSIONER OF INCOME  
TAX - INTERNATIONAL TAXATION -3

.....Appellant

versus

TURNER BROADCASTING SYSTEM ASIA PACIFIC INC.

.....Respondent

+ **ITA 77/2025**

THE COMMISSIONER OF INCOME  
TAX - INTERNATIONAL TAXATION -3

.....Appellant

versus

TURNER BROADCASTING SYSTEM ASIA PACIFIC INC.

.....Respondent

Present: Mr Ruchir Bhatia, SSC, Mr Anant Mann, JSC Ms  
Aditi Sabharwal and Mr Abhishek Anand,  
Advocates for the Revenue.

Mr Rohan Khare and Mr Priyam Bhatnagar,  
Advocates for the Assessee.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE TEJAS KARIA**

**ORDER**

% **26.03.2025**

**CM APPL. 17529/2025 (condonation of delay) in ITA 76/2025;**

**CM APPL. 17534/2025 (condonation of delay) in ITA 77/2025**

1. For the reasons stated in the application, the delay of eighteen days in filing the above captioned appeals stand condoned.

2. The applications stand disposed of.

**ITA 76/2025 and ITA 77/2025**

3. The Revenue has filed the present appeals under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning a common order passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.2432/DEL/2023



and 3717/DEL/2023.

4. The said appeals were preferred by the respondent [assessee] against the order passed by the Dispute Resolution Panel [DRP] and the final assessment order passed under Section 143(3) read with Section 144C (13) of the Act in respect of Assessment Year [AY] 2020-21 and 2021-22.

5. The assessee is a tax resident of United States of America within the meaning of Article 4 of the India-United States of America Double Tax Avoidance Agreement [DTAA] and had furnished its Tax Residency Certificate.

6. The assessee had entered into an agreement with Warner Media India Private Limited which was effective from 01.04.2011. In terms of the said agreement the assessee had granted the said company the rights to sell advertisement and distribution of television and interactive platforms including Cartoon Network, Cartoon Network HD (CN HD+) and POGO. In terms of the agreement, Warner Media India Private Limited retained fifty per cent of the revenue from the sale of advertisement inventory in respect of all channels and the balance was to be remitted to the assessee.

7. The assessee had during the financial years relevant to AY 2020-21 and AY 2021-22 received advertisement revenue amounting to ₹85,00,00,000/- and 52,00,00,000/- respectively. It has also earned distribution revenue amounting to ₹125,00,00,000/- and 78,00,00,000/- for the respective financial years relevant to AY 2020-21 and 2021-22.

8. The Assessing Officer [AO] held that the said revenues were in the nature of royalty and accordingly, taxed the distribution revenues at ten per cent in terms of Article 12 of the DTAA and Section 9(1)(vi) of the Act. The advertisement revenues were taxed at 15 per cent of the net realized revenue,



which were held as attributable to the assessee's Permanent Establishment [PE] in India.

9. The learned ITAT, following its earlier decision in respect of AY 2009-10 to 2017-18, allowed the appeals and rejected the Revenue's contention that the income received from distribution of rights was royalty

10. It is material to note that the appeals preferred by the Revenue against the said orders passed by the learned ITAT in respect of AYs 2009-10 to 2017-18 were rejected by this court by a common order dated 28.03.2024 passed in ITA 282/2022, ITA 327/2022, ITA 333/2022, ITA 388/2022, ITA 528/2022, ITA 529/2022, ITA 443/2023 and ITA 445/2023.

11. In the aforesaid context, the Revenue has projected the following questions for consideration of this court:

1. Whether in the facts and in the circumstances of the case and in law, the ITAT has erred in holding that the distribution revenue earned by the Assessee is not taxable as royalty under section 9(1)(vi) of the Act and Article 12 of the DTAA between India and the USA but is taxable as business income?

2. Whether on facts and in the circumstances of the case and in law, the Ld. ITAT is correct in determining the income of the assessee company in assessment year under consideration by following the resolution made under Mutual Agreement Procedure (MAP) in respect of earlier years in assessee's own case, even as the resolution under MAP is limited only to assessment years under consideration in MAP and does not apply to other assessment years in its own case, even under identical facts?

12. It is material to note that in respect of the attribution of income which



is chargeable to tax under the Act, the competent authorities of the United States of America and India had taken recourse to Mutual Agreement Procedure [MAP] whereby the issues regarding applicability of the DTAA were resolved by negotiations. Admittedly, the assessee had accepted the outcome of MAP in respect of the prior assessment years.

13. There is no cavil that the nature of the revenue which is now sought to be taxed in AY 20-21 and AY 21-22 was similar to the revenue that was subject matter of MAP. It is correct that the issues determined under MAP are in relation to the specific assessment years and such determination cannot be extrapolated to other assessment years. However, the nature of income in the hands of the assessee remains the same. Undisputedly, the receipts in the earlier assessment years, which were subject of resolution under MAP, arise from the same agreement(s). In the given facts, this court cannot be oblivious to the fact that the Revenue had accepted income of the assessee as business income.

14. Thus, in the peculiar facts of the present case, we are of the view that no substantial questions of law arise for consideration of this court.

15. Accordingly, the present appeals are dismissed. However, we clarify that the wider question of law is left open to be decided in an appropriate case.

**VIBHU BAKHRU, J**

**TEJAS KARIA, J**

**MARCH 26, 2025**

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*Click here to check corrigendum, if any*