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

+ **ITA 80/2023**

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

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

WESTIN HOTEL MANAGEMENT LPRespondent

Through: Mr Divyanshu Agrawal with Ms
Pooja Mittal, Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

14.02.2023

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

1. This appeal concerns Assessment Year (AY) 2016-2017.
2. The challenge in the appeal is laid to the order dated 21.07.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"]. The Tribunal *via* the impugned order has ruled in favour of the respondent/assessee.
 - 2.1 The Tribunal, in short, has held that centralized fee earned by the respondent/assessee is not taxable. The centralized fee concerns various aspects, such as sales and marketing, loyalty programs, reservation service, technological service, operational services and training programs/human resources.

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2.2 According to the Tribunal, such fees cannot be treated as ‘Fee for included services’ either under Article 12(4)(a) or 12(4)(b) of the India-US Tax Treaty.

3. The issue stands covered by the judgment of the coordinate bench in *Director of Income Tax v. Sheraton International Inc* (2009) 178 taxman 84 (Del).

4. Furthermore, in the respondent/assessee’s case for other AYs, the coordinate bench has followed the same approach i.e., accepted the ratio of the judgment in *Sheraton International Inc*.

5. In view of the above, according to us, no substantial question of law arises for our consideration.

5.1 Accordingly, the appeal is closed.

6. In view of the fact that the appellant/revenue has preferred an appeal *qua* the judgment rendered by the division bench of this court in *Sheraton International Inc*, it is made clear that if the appellant/revenue were to succeed in the said matter, parties will abide by the final decision rendered by the Supreme Court.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 14, 2023 / tr

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