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

+ ITA 434/2022

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

Through: Mr. Ruchir Bhatia, Senior Standing  
Counsel for Revenue.

versus

WESTIN HOTEL MANAGEMENT LP ..... Respondent

Through: Mr. Divyanshu Agrawal, Ms. Ritika  
Chawla & Mr. Vaibhav Niti,  
Advocates.

+ ITA 435/2022 & CM APPL. 47203/2022 (for exemption)

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

Through: Mr. Ruchir Bhatia, Senior Standing  
Counsel for Revenue.

versus

SHERATON OVERSEAS MANAGEMENT  
CORPORATION ..... Respondent

Through: Mr. Divyanshu Agrawal, Ms. Ritika  
Chawla & Mr. Vaibhav Niti,  
Advocates.

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Date of Decision: 04<sup>th</sup> November, 2022

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMOHAN, J (Oral):**

**CM APPL. 47203/2022 (for exemption) in ITA 435/2022**

Exemption allowed, subject to all just exceptions.

Accordingly, the present application is disposed of.

**ITA 434/2022**

**ITA 435/2022**

1. Present Income Tax Appeals have been filed challenging the common order dated 29<sup>th</sup> April, 2022 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2013/Del./2019 for Assessment Year ('AY') 2015-16 and ITA No. 2012/Del./2019 for AY 2015-16.
2. Learned Counsel for the Appellant states that the ITAT has erred in holding that the entire payments received by the Assessee from its Indian Customers on account of Centralized Services viz. sales and marketing, loyalty programs, reservation service, technological service, operational services and training programs/human resources do not constitute 'Fee for Technical Services' as defined under Section 9(1)(vii) of the Income Tax Act, 1961 or 'Fee for included services' as defined under Articles 12(4) (a) of the Indo- US DTAA.
3. He states that the ITAT has allowed the appeals of the Assessee following the judgement of this Court in *Director of Income Tax v. Sheraton International Inc (2009) 178 taxman 84 (Del)*. He, however, states that the said decision of this Court has not been accepted by the Revenue and an appeal has been preferred against the same, which is pending adjudication before the Supreme Court.

4. The counsel for the Revenue has not brought anything on record to distinguish the facts of present case with the facts involved in *Sheraton International Inc. (supra)*.

5. Admittedly, this Court in *Sheraton International Inc. (supra)* has decided the issue involved in the present appeals in favour of the Assessee.

6. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in *Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359* and *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1*, the present appeals are dismissed being covered by the judgment passed by the learned predecessor Division Bench in *Sheraton International Inc. (supra)*.

7. However, it is clarified that the order passed in the present appeals shall abide by the final decision of the Supreme Court in the Civil Appeal No.3094/2010.

**MANMOHAN, J**

**MANMEET PRITAM SINGH ARORA, J**

**NOVEMBER 04, 2022/msh**