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

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Date of Decision: 24.11.2023+ **W.P.(C) 4653/2021 & CM Appl.14312/2021**

INTERTEK INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr Kamal Sawheny with Mr Nikhil
Agarwal, Mr Nishank and Ms
Harshita Agrawal, Advs.

versus

INCOME TAX OFFICER WARD INTERNATIONAL

TAXATION 2 1 1 NEW DELHI

..... Respondent

Through: Mr Zoheb Hossain, Sr Standing
Counsel with Mr Sanjeev Menon,
Standing Counsel.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)**

1. The substantive relief sought by the petitioner in the writ petition reads as follows:

“(a) Issue a writ of CERTIORARIFIED MANDAMUS or any other appropriate writ, order or direction quashing the impugned order dated 25.03.2021 disposing objections along with the impugned notice dated 10.10.2017 issued u/s 201 of the Income Tax Act, 1961 and all the consequential proceedings u/s 201 of the Income Tax Act, 1961;...”

2. As would be evident upon perusal of the prayer, the petitioner/assessee has assailed, not only the notice dated 10.10.2017 [hereafter referred to as “impugned notice”] but also the consequent letter dated 25.03.2021 [hereafter referred to as “impugned letter”], whereby, the



petitioner's/assessee's objections *qua* the impugned notice were rejected.

3. The impugned notice was issued *qua* the petitioner/assessee on account of purported failure to deduct Tax at Source (TAS) against remittance of management fees amounting to Rs. 2,06,29,647/-.

3. The disallowance was ordered by the Assessing Officer (AO) under Section 40(a)(i) of the Income-tax Act, 1961 [in short, "Act"], while framing the assessment order, under Section 143(3) of the Act, on 27.12.2016.

4. The record shows [and something which is not disputed by the respondent/revenue] that the aforementioned addition, amounting to Rs. 2,06,29,647/-, had been deleted by the Commissioner of Income Tax (Appeals) [in short, CIT(A)], *via* order dated 30.04.2019, on the ground that management fees paid by the petitioner/assessee [to its Associated Enterprises (AEs)] cannot be categorized as 'fee for technical services' (FTS), and therefore, was not liable to deduction of tax at source under Section 195 of the Act.

5. As a matter of fact, what is also not in dispute is that the Tribunal, *via* order dated 29.09.2022 had sustained the order of the CIT(A). The Tribunal held that the findings of the CIT(A) had not been rebutted. The Tribunal further held that the AO had failed to list out the 'highly technical services' that the AEs provided to the petitioner/assessee and that the AO failed to allude to the relevant clause of the agreement which demonstrates that expertise available with the AEs was 'made available' to the petitioner/assessee. Finally, it was also observed that this issue had been decided by the CIT(A) in favour of the petitioner/assessee in matters concerning AYs 2010-11 and 2014-15, decisions that were not challenged



before the Tribunal.

6. Mr Zoheb Hossain, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that the appeal against the aforementioned order of the Tribunal was not preferred because of low tax effect.

6.1 It is also not in dispute that in any event, as of today, the appeal is time-barred.

6.2 Besides this, as noticed above, the Tribunal has deleted the addition on merits.

7. Given this position, the necessary consequence would be that both the impugned notice and the impugned letter will have to be set aside.

7.1 It is ordered accordingly.

8. The writ petition is disposed of in the aforesaid terms.

9. Consequently, the pending application shall stand closed.

10. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

NOVEMBER 24, 2023/pmc