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

+ **ITA 727/2018**

JOHNSON MATTHEY PUBLIC LIMITED COMPANY

..... Appellant

Through: Mr Percy J. Pardiwalla, Senior
Advocate with Mr Prakash Kumar,
Advocate.

versus

**COMMISSIONER OF INCOME TAX, INTERNATIONAL
TAXATION -2, NEW DELHI**

..... Respondent

Through: Mr Abhishek Maratha, Sr. Standing
Counsel with Mr Parth Semwal,
Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

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24.11.2023

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

1. We have heard learned counsel for the parties, at some length.
2. The record shows that notice was issued by the coordinate bench on 13.07.2018, which was limited to the issue concerning the taxability of income earned by the appellant/assessee, in the form of guarantee commission.
3. The record also shows that the court, on 06.03.2019, framed the following question of law:

ITA 727/2018

page 1 of 3



“Whether, on the facts and in the circumstances of the case & in law, the Income Tax Appellate Tribunal erred in dismissing the additional ground raised by the assessee contending that since the source of guarantee for its Associated Enterprises to foreign banks is outside India, the parental corporate guarantee charges of Rs.1,49,15,090/- received from the Indian Subsidiaries cannot be held taxable in India?”

4. Having heard learned counsel for parties, according to us, another question of law emerges from the orders passed by the statutory authorities.

5. The appellant/assessee had raised an alternative plea, which is that the guarantee commission should be treated as ‘interest’ under Article 12(5) of the ‘Agreement For Avoidance Of Double Taxation And Prevention Of Fiscal Evasion With United Kingdom Of Great Britain And Northern Ireland’ [in short, “Indo-UK DTAA”]. All throughout, i.e., at every stage, the plea of the appellant/assessee, raised in this behalf, has been rejected.

6. *Prima facie*, we are of the view that the alternative plea requires examination. The reason we say so is that the appellant/assessee executed a corporate guarantee, which, in essence, is a tripartite agreement between the principal debtor, creditor, and guarantor. The fact that the guarantee had been issued, envisaged that the appellant/assessee bore a liability towards the creditor, which was coextensive with that of the principal debtor i.e., the Indian subsidiary.

7. Thus, having regard to the aforesaid, we are inclined to frame the following additional question of law:

“Whether the Income Tax Appellate Tribunal/DRP/AO erred on fact and in law in concluding that guarantee commission, amounting to Rs. 1,49,15,090/-, received by the appellant/



assessee, did not come within the ambit of the expression ‘interest’, as found in Article 12(5) of the Indo-UK DTAA?”

8. We may note that though the appellant/assessee has filed the order of the Tribunal rendered by the Mumbai Bench in the matter of *Capgemini SA vs ADIT (International Taxation) 1(2)*, ITA 7198/Mum/2012, and 888 (Mum) of 2016 [something which is referred to in our order dated 15.12.2022]. Mr Maratha has not been able to inform us as to whether an appeal was preferred by the respondent/revenue *qua* the said order.

9. Mr Maratha says that a short accommodation be given for the said purpose.

9.1 The request is acceded to.

10. Furthermore, Mr Maratha will file written submissions, not exceeding three (3) pages each, at least three (3) days before the next date of hearing.

11. List the matter on 06.02.2024.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

NOVEMBER 24, 2023/as

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