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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
ITA 700/2016

PRINCIPAL COMMISSIONER OF INCOME TAX – 7 ... Appellant

Through: Mr Dileep Shivpuri, Sr. Standing
Counsel, Sh. Sanjay Kumar, Jr. Standing Counsel
and Mr Vikrant A. Maheshwari, Advs.

versus

M/S ROHDE & SCHWARZ INDIA PVT. LTD. Respondent
Through: None.

+ ITA 701/2016 and CM No. 37485/2016

PRINCIPAL COMMISSIONER OF INCOME TAX - 7... Appellant

Through: Mr Dileep Shivpuri, Sr. Standing
Counsel, Sh. Sanjay Kumar, Jr. Standing Counsel
and Mr Vikrant A. Maheshwari, Advs.

versus

M/S ROHDE & SCHWARZ INDIA PVT. LTD. .. Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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07.11.2016

The Revenue urges two questions of law:

- ii. The first relates to payment towards tile etc. According to the Revenue this is in the form of capital expenditure for which depreciation can be granted only to the extent of 25%.

This Court notices that the ITAT had applied the ratio and various decisions to say the decision of the Supreme Court such as *Empire Jute Co Ltd vs CIT* [1980] 124 ITR 1, etc. to hold that the expenditure was, in fact, revenue. Besides, the amounts are insignificant and both cumulative and for each year, its effect is well below the tax prescribed limit both cumulative and for each year.

ii. The second question urged is that the payment towards “Frame Relay Charges” falls within the mischief of Section 9 (1)(vii) of Income Tax Act and to the extent the assessee was under an obligation to deduct tax thereon. It was liable by virtue of Section 40(a). The disallowance by the AO was sought to be justified. The ITAT in this regard relied upon the decision of this Court in *CIT vs. Estel Communications Ltd.* 318 ITR 185. The question is sought to be distinguished by the Revenue on the ground that what was in issue in *Estel* (*supra*) was payment towards Internet bandwidth and whereas what is in issue in the present case is “Frame Relay Charges”.

This Court is of the opinion that the judgment in *Estel* (*supra*) would apply because Frame Relay—according to the technical definition (<http://searchenterprisewan.techtarget.com/definition>) is a kind of activity akin to Internet Service and is described as “Frame Relay puts data in a variable-size unit called a frame and leaves any necessary error correction (retransmission of data) up to the endpoints, which speeds up overall data transmission”.

In other words, Frame Relay Service is an efficient Data Transmission and a part of the Internet Service provided by the

concerned service provider. Therefore, the conclusion of the ITAT warranted in the circumstances of the case.

No question of law arises. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 07, 2016

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