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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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\+ ITA 1310/2009

DIRECTOR OF INCOME TAX ..... Appellant

Through: Mr. Rahul Chaudhary, Senior Standing Counsel with Mr. Anup Kesari, Advocate.

versus

ERICSSON AB. ..... Respondent

Through: Mr. Percy Pardiwala, Senior Advocate With Ms. Ananya Kapoor, Mr. Sumit Lalchandani, Mr. Sanat Kapoor, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **13.05.2016**

1. This appeal by the Revenue is directed against an order dated 12th September 2008 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4764/Del/2003 for the Assessment Year ('AY') 1998-99.

2. At the time of admission of appeal, the following questions were framed on 9th December 2009:

> "1. Whether in law, the Tribunal was justified in holding that the assessee did not have a permanent establishment in India?
>
> 2. Whether in law, the Tribunal was justified in deleting the levy of interest charged under Section 234B of the Income Tax Act, 1961?

> 3. Whether the ITAT erred in holding that the supply of hardware was effected outside India and consequently, the income from thereof did not accrue in India?"

3. It appears that the Assessee also had filed a cross appeal against the order of the Commissioner of Income Tax (Appeals) ['CIT(A)'] for the same AY 1998-99 which appeal was disposed of earlier by the ITAT by a separate order. The Revenue's appeal against the said order of the ITAT in the Assessee's appeal was heard by this Court along with the Revenue's appeal for AY 1997-98 and the judgment was delivered in ***Director of Income Tax v. Ericsson A.B (2012) 343 ITR 470(Del)***. Therefore as far as the facts concerning the AY 1998-99 involving this very Assessee is concerned, it has already been taken into account by the Division Bench of this Court in the abovementioned decision.

4. It is seen that the Division Bench in the above decision rendered a categorical finding in para 49 that the Assessee did not have any business connection in India and therefore there was no need to examine the question whether it had any permanent establishment ('PE') in India during the relevant period. Mr. Pardiwala, learned Senior Advocate for the Respondent, informs the Court that the Revenue's Special Leave Petition against the above judgment is pending in the Supreme Court.

5. In view of the judgment in ***Director of Income Tax v. Ericsson A.B*** (*supra*), whereby this Court declined to examine the question whether the Assessee has a PE in India, question (1) framed in the present appeal also does not arise for consideration.

6. As far as question (2) concerning the deletion of interest charged is concerned, the Court finds that this question was answered in favour of the Assessee and against the Revenue in the aforementioned decision of this Court in ***Director of Income Tax v. Ericsson A.B*** (*supra*). Therefore, question (2) is answered likewise in the present appeal as well.

7. Question (3) is answered in favour of the Assessee and against the Revenue in terms of para 37 of the decision in ***Director of Income Tax v. Ericsson A.B*** (*supra*).

8. The appeal is accordingly dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 13, 2016
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