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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 827/2016 & CM Nos.43373-75/2016

PR. COMMISSIONER OF INCOME TAX INT. TAXATION-3

..... Appellant

Through: Mr. Rahul Chaudhary, Advocate.

Versus

TRAVELPORT L.P. USA (FORMERLY WORLDSPAN L.P. USA)

..... Respondent

Through: Mr. Prakash Kumar and Mr. Mehvish Khan, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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19.12.2016

CM No. 43374/2016 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed off.

CM Nos.43375 & 43373/2016 (for delay)

3. These applications seek condonation of delay, which is stated to be of 58 days in re-filing and 20 days in filing the appeal. For the reasons stated in these applications, the delay is condoned and the appeal is taken on record.
4. The applications are disposed off.

ITA No. 827/2016

5. Issue notice. Mr. Prakash Kumar, Advocate accepts notice on behalf of the respondent.
6. With the consent of the parties, the appeal is taken up for final hearing.

7. The Revenue urges a substantial question as to the tenability of the impugned order of the Income Tax Appellate Tribunal (ITAT) to the extent it attributed 15% of the assessee's income to India?

8. The assessee provides online airline booking services. It is a Delaware, USA based limited partnership concern and a tax resident of the USA. Its portal provides information, reservation, transaction processing and related services for airlines, travel agencies and the other like business entities. In the relevant order, premised upon an approval report submitted by it to the Income Tax Authorities and the revenue generated in India, the Tribunal held that the assessee had a Permanent Establishment (PE) within the meaning under Article 5 of the Double Taxation Avoidance Agreement (DTAA) between India and USA. It then went on to analyze the exact income derived by the assessee from its PE. In doing so, the Assessment Officer based his conclusions and findings upon the information and materials furnished by the assessee. The net taxable income determined to be US Dollar 73,376/- upon which, after conversion, the taxable income was determined at Rs.13,24,707/-. The Commissioner of Income Tax (Appeals) [CIT (A)], before whom the assessee had urged its grievances, rejected the plea. Even the plea of the assessee to carry out on an upward refund based upon additional material furnished by it under Rule 46A was examined on merits and after a remand report, rejected.

9. In these circumstances, in the assessee's cross-appeal to the ITAT against the findings with respect to its PE, the Tribunal attributed 15% income to the assessee's India operations, following the previous judgment of this Court in *DIT Vs. Galileo International Inc. (2009) 336 ITR 264*.

10. The Revenue's limited and specific argument in this appeal is that the exact particulars with respect to the assessee's operations in respect of India were available and therefore attribution of 15% was not warranted. The learned counsel for the assessee resisted the appeal and submitted that the ITAT was correct in following the decision of *Galileo International Inc's* case (*supra*) in the circumstances.

11. It is apparent from the above discussion that the specific and limited challenge by the Revenue in this appeal is to the ITAT's order, rather mechanical adherence to the *Galileo International Inc's* case (*supra*) attribution, principally to the extent it followed 15% rule. In the present case, the AO had based his conclusions and determined the income based upon figures furnished by the assessee, as is apparent from a plain reading of the order. In the circumstances, the ITAT, in our opinion, ought not to have disturbed that order, without appropriate hearing.

12. Learned counsel submits that ITA Nos. 603 & 604 of 2016 are pending and are listed on 04.01.2017. In the circumstances and with consent of the parties, the said appeals are directed to be listed for hearing tomorrow i.e. 20.12.2016.

13. In view of the conclusions recorded by us, the present ITA No.827/2016 is disposed off with a direction to the ITAT to render specific findings on the questions discussed.

14. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

DECEMBER 19, 2016/sb