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

\+ EFA(OS) 26/2016

UNIVERSAL TRACTOR HOLDINGS LLC ..... Appellant
Represented by: Mr.Dharmendra Rautray and Ms.Tara Shahani, Advs.

versus

ESCORTS LIMITED ..... Respondent
Represented by: Mr.Balbir Singh, Sr. Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% 25.10.2016

CM No.39405/2016

Allowed.

CM No.39406/2016

Allowed.

EFA(OS) 26/2016

1. Considering the nature of the issue raised in the appeal we sought assistance of Mr.Balbir Singh, senior counsel and a tax expert.

2. Impugned order dated September 08, 2016 reads as under:

> *"The learned counsel for the judgment debtor submits that the amount awarded has been deposited in this court and therefore the judgement debtor be discharged. The judgement debtor is directed to file a calculation sheet indicating the manner in which the amount awarded have been discharged. Let the same be filed within a period of four weeks from today.*

The decree holder is at liberty to withdraw the deposited sum subject to compliance of all regulatory provisions. The decree holder is also at liberty to approach the Income Tax Authorities for a certificate enabling the remittance of the amount deposited in this court without deduction of withholding tax.

List on 28.02.2017."

3. Learned senior counsel Mr.Balbir Singh submits that the signature tunes of the impugned order flows from Sub-Section 2 of Section 195 of Income Tax Act, 1961, which reads as under :

(2) Where the person responsible for paying any such sum chargeable under this Act under this Act other than salary to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

4. The decretal amount lying in deposit with the Delhi High Court has interest accrued thereon and as per the decree has to be paid to the appellant. The person responsible for paying the payment, as contemplated by Sub-Section 2 of Section 195 of Income Tax Act, 1961, would therefore be the High Court.

5. Conscious of the fact that if an application is filed before the income tax authorities, seeking an order enabling the remittance of the amount without deduction or withholding tax, by the Registrar General of this Court it may lack proper prosecution but if the appellant were to do so the prosecution of the application will be better, the order has been passed.

6. Mr.Balbir Singh, learned senior counsel informs that a cell has been

created in the Income Tax Department where foreign entities not having a PAN Card can apply for a determination contemplated by Sub-Section 2 of Section 195 of the Income Tax Act, 1961.

7. As per learned counsel for the appellant the decretal amount is by way of damages and as per law declared by various courts such receipt of money is treated as a capital receipt and not a revenue receipt and therefore not exigible to income tax.

8. Since this aspect has not been considered by the learned Single Judge, we dispose of the appeal directing that whether or not the judgments which appellant seeks to rely upon entitles the appellant to a declaration that the decretal amount is receivable by the appellant as a capital receipt and not a revenue receipt, shall be decided by the learned single judge and an order shall be passed.

9. Hence, we find no reason to interfere with the impugned order.

10. No costs.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

OCTOBER 25, 2016
VLD