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

+ **ITA 89/2004**

**SIKKIM JANSEVA PRATISTHAN PRATISTHAN P. LTD.**

..... Appellant

Through: Mr. Jehangir Mistri, Sr. Adv. with Ms.  
Vasantiben Patel, Mr. Shailendra Swarup, Ms.  
Aparajita Swarup, Ms. Bindu Saxena, Advs.

versus

**THE COMMISSIONER OF INCOME TAX** ..... Respondent

Through: Mr. Ashok K. Manchanda, Mr. Aditya,  
Advs. for ITD.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**ORDER**

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**02.08.2018**

This Court had by orders dated 08.02.2005 and 15.02.2018 framed questions of law.

The questions framed – in the course of the proceedings before the lower court, broadly indicate that the parties proceeded on the premise that the assessee/company was a foreign company. At the outset, learned senior counsel appearing on behalf of the assessee submitted that the jurisdiction in question which is also a pure question of law arises i.e. with respect of the interpretation of Section 115A of the Income Tax Act, 1961 (hereafter referred to as 'the Act'). According to the learned senior counsel, the assessee, a Sikkim based

company incorporated under the relevant statute of Sikkim [the Registration of Companies (Sikkim) Act, 1961] was continued in force by virtue of Article 371 F(k) of the Constitution of India. Thus, it fell well within the description of an Indian Company as per Section 22(26)(i) of the Act which states that a company incorporated by any law relating to companies “applicable” in “any part” of India clearly applied. Thus, it was submitted that being an Indian Company under Section 115A, under the Act, the assessee could not be treated as a foreign company with respect to the dividend income that it declared – at least for the concerned years (AYs 1987-88 and 1989-90). It was also argued that the Indian Income Tax Act was brought into force or extended to the territory of Sikkim w.e.f. 01.04.1990 and thus for the previous two assessment years, since the assessee was incorporated under the laws of Sikkim which continued in force in India (from 26.04.1975), it could not have been treated as a foreign company and its dividend income thus had to receive appropriate treatment.

Counsel for the Revenue points out that the question now sought to be urged was never argued before the Tribunal or even raised before this Court. It was urged that for the concerned years (AYs 1987-88 and 1988-89), the assessee in fact accepted that it was a foreign company and accordingly proceeded to contest the assessments having regard to such position. It was urged that therefore this Court should not examine the appeal from that point of view but rather proceed to adjudicate on the questions framed.

This Court has carefully considered the submissions. Although, the Court's jurisdiction under Section 260A of the Act is circumscribed, no doubt by what are expressly framed questions of law. Nevertheless, it is also equally well established that the Court can re-formulate the questions framed originally and is in no way constrained if additional questions do arise for its consideration. In the Court's opinion, the question as to the applicability of Section 2(26) and its interplay with Section 115A are very substantial and go into the root of the matter. They strike at the very applicability of the Income Tax Act to the assessee and the treatment accorded to it, in the proceedings drawn by the Revenue. Given these facts, the most appropriate course in this Court's opinion, would be to relegate for fresh consideration the question as to the applicability of the Income Tax Act in the context of whether the assessee, as was at the relevant time, an Indian Company, within the meaning under Section 2(26) having regard to the express provisions of Article 371F(k) of the Constitution of India and the other relevant provisions such as Section 115A. We clarify that no opinion has been expressed on the other questions of law which have not been addressed and would arise for consideration at a later date, depending on who is aggrieved.

In the light of the foregoing discussion, the appeal is disposed of with a direction to the ITAT to hear the parties on the issue as to whether the assessee was, at the relevant time, an Indian company and therefore, entitled to be treated as such having regard to the other provisions of law and the Income Tax Act and further if the assessee

was in fact declaring its global income, as such. All rights and contentions of the parties are reserved. The parties are directed to be present before the ITAT on 20.08.2018. The ITAT shall endeavour to complete its proceedings and render its final order for all the relevant four Assessment Years (1987-88 to 1991-92), within four months.

The appeal is disposed of in the above terms.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**AUGUST 02, 2018/akv**