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

\+ ITA 814/2005

DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) NEW DELHI ..... Appellant

Through Mr. Asheesh Jain, Sr. Standing Counsel, Mr. Shahrukh Ejaz & Ms. Lakshmi Gurang, Advocates.

versus

M/S B.C.C. FUBA INDIA LIMITED ..... Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

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

% **01.02.2018**

The present appeal by the Revenue, which relates to Assessment Year 1992-93, arises from the order of the Income Tax Appellate Tribunal in ITA No.4229/Del/98 in the case of BCC Fuba India Limited was admitted for hearing vide order dated 5th December, 2007 on the following substantial question of law:-

> "Whether the Income Tax Appellate Tribunal was correct in law in holding that two installment of lump sum payment made by the Assessee to the German Company could not be treated as Royalty?"

2. The respondent-assessee had made lumpsum payment of Deutsche Mark 3,00,000 in three equal instalments to M/s Fuba Hans Kalbe and

Company, Germany. Issue arose whether tax was liable to be deducted on the aforesaid amount.

3. The respondent-assessee had applied for no objection certificate for making payment to M/s Fuba Hans Kalbe and Company, Germany before the Income Tax Officer, Company Ward 1(2). The respondent-assessee was allowed to make the payment with a direction that they would be treated as a representative assessee of M/s Fuba Hans Kalbe and Company, Germany.

4. The respondent-assessee filed an appeal before the Commissioner of Income Tax (Appeals), who allowed the same. This order records that the respondent-assessee had already paid Deutsche Mark 1,00,000 in the previous year on which tax of Rs.2,32,500/- was deducted and deposited. Similarly, on the next instalment on Deutsche Mark 1,00,000, the respondent-assessee had deducted tax at source of Rs.2,39,000/-. For reasons set out in the order of the Commissioner of Income Tax (Appeals), the appeal was allowed.

5. Revenue preferred second appeal before the Tribunal, which has been dismissed by the impugned order.

6. Revenue has not filed appeal paper book. Copy of the agreement between the respondent-assessee and M/s Fuba Hans Kalbe and Company, Germany has not been placed on record. In the absence of the said document, we are handicapped and find it difficult to consider and decide whether the payment made was "royalty" or not and, therefore, tax at source should have been deducted. In the absence of the agreement, it is not possible to answer the said question.

7. It is also noticed that the tax effect in the present case would be rather low for TDS of Rs.2,32,500/- was deducted on the first instalment of

Deutsche Mark 1,00,000 and Rs.2,39,000/- was deducted on second instalment of Deutsche Mark 1,00,000. Details of TDS deducted on the third instalment are not available. Going by the aforesaid figure, it will be less than Rs.3,00,000/-. In other words, the tax effect in the present case would be below Rs.20 lacs.

8. In view of the aforesaid position, we do not answer the substantial question of law. Appeal filed by the Revenue would be treated as disposed of for the purpose of record. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 01, 2018
VKR