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

Date of order: 10.04.2019

\+ ITA 938/2018

THE COMMISSIONER OF INCOME TAX-
INTERNATIONAL TAXATION-2 ..... Appellant

versus

INTELSAT CORPORATION ..... Respondent

\+ ITA 939/2018

THE COMMISSIONER OF INCOME TAX –
INTERNATIONAL TAXATION-2 ..... Appellant

versus

INTELSAT CORPORATION ..... Respondent

\+ ITA 963/2018

THE COMMISSIONER OF INCOME TAX-
INTERNATIONAL TAXATION-2 ..... Appellant

versus

INTELSAT CORPORATION, ... Respondent

Counsel for the appellant:

Mr. Mr. Ruchir Bhatia, Senior Standing Counsel

Counsel for the respondent:

Mr. Sanchit Jolly, Mr. Siddharth Joshi, Advocates

O R D E R

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S. RAVINDRA BHAT, J. (ORAL)

1. In these cases the question urged is with respect to the interpretation of Section 9(1)(vi), Explanation (2)(iii) and (iva) of the

Income Tax Act, 1961, as well as Article 12(3) of the Indo US Double Taxation Avoidance Agreement (DTAA). The ITAT held that the payments received by the assessee, were not royalty. In doing so, it followed the previous ruling of this Court in *Director of International Taxation vs. New Skies Satellite BV*, (2016) 382 ITR 114 (Del) wherein this Court had applied the ruling in *M/s. Asia Satellite Telecommunications Co. Ltd. vs. DIT*, 2011 332 ITR 340 (Del).

2. The counsel for the Revenue endeavoured to submit that neither in *Asia Satellite Telecommunications (supra)* nor in *New Skies Satellite (supra)*, this court directly considered the effect and purport of Explanation (2)(iii) to Section 9(1)(vi) of the Income Tax Act, 1961, which speaks of claim of right to use of any patent, invention, model, design, secret formula, process or trademark or similar property. It is submitted that in these circumstances, the judgments cannot be considered as an authority on the payouts received for use or right to use natural, scientific or commercial equipment and that the entire issue requires consideration.

3. The provisions of the Indo-US DTAA, especially Article 12(3) is identical to the substantive Section 9(1)(vi), Explanation 2(iii) and (iva) of the Income Tax Act, 1961. Article 12(3) treats the entire subject matter in a composite manner. This Court is of the opinion that the Revenue's arguments are unfounded because the judgment in *New Skies Satellite (supra)* specifically dealt with the provision, which the revenue relies upon, i.e. sub-clauses (iii) and (iva) of Explanation (2) to Section 9(1)(vi). This discussion is evident from paras 11, 14 and 28 in *New Skies Satellite* (supra). In these

circumstances, the principle enunciated in *Asia Satellite Telecommunications (supra)* and applied in *New Skies Satellite (supra)*, i.e. if the substance or content of subject matter dealt with and interpretation given, in a particular statute or identical subject matter, also needs similar treatment, in the context of the principle of international taxation. The only departure or exception would be if the contracting states agree to alter the terms of the treaty. *New Skies Satellite (supra)* also held that the mere change in law with retrospective application would not in any manner be treated as an act curative to the judgment of the court.

4. In these circumstances and also having considered the fact, that the Revenue's review petition in respect of the assessee was rejected, by a previous order of this Court (in ITA 530/2012 and 545/2012, on 15.03.2013), no question of law arises.

5. Even if the amount were taxable, this would be covered by the judgment of this court in *Director of Income Tax, International Taxation vs. GE Packaged Pover Inc*, (2015) 373 ITR 65.

6. The appeals are accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

APRIL 10, 2019
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