41 to 44

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

% *Decision delivered on: 04.05.2023*

+ **ITA 254/2023 & CM Nos.22662-63/2023**

THE COMMISSIONER OF INCOME TAX – INTERNATIONAL TAXATION -1 ..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing Counsel.

versus

AMADEUS IT GROUP SA ..... Respondent

Through: Ms Kavita Jha and Mr Udit Naresh, Advs.

+ **ITA 255/2023 & CM Nos.22686-87/2023**

THE COMMISSIONER OF INCOME TAX – INTERNATIONAL TAXATION -1 ..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing Counsel.

versus

AMADEUS IT GROUP SA ..... Respondent

Through: Ms Kavita Jha and Mr Udit Naresh, Advs.

+ **ITA 256/2023 & CM Nos.22688-89/2023**

THE COMMISSIONER OF INCOME TAX – INTERNATIONAL TAXATION -1 ..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing Counsel.

versus

AMADEUS IT GROUP SA ..... Respondent

Through: Ms Kavita Jha and Mr Udit Naresh, Advs.

+ **ITA 257/2023 & CM APPL. 22690/2023**

THE COMMISSIONER OF INCOME TAX – INTERNATIONAL TAXATION -1 ..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing Counsel.

versus

AMADEUS IT GROUP SA ..... Respondent

Through: Ms Kavita Jha and Mr Udit Naresh, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.22662/2023 in ITA 254/2023
CM No.22686/2023 in ITA 255/2023
CM No.22688/2023 in ITA 256/2023

1. Allowed, subject to just exceptions.

CM No.22663/2023 in ITA 254/2023
CM No.22687/2023 in ITA 255/2023
CM No.22689/2023 in ITA 256/2023
CM No.22690/2023 in ITA 257/2023 ***[Applications filed on behalf of the appellant seeking condonation of delay of 300 days in re-filing the appeals]***

2. These are the applications moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeals.

2.1 According to the appellant/revenue, there is a delay of 300 days.

3. Ms Kavita Jha, who appears on behalf of the respondent/assessee, says that she does not oppose the prayer made in the applications.

4. Accordingly, the delay is condoned.

5. The applications are disposed of.

ITA 254/2023
ITA 255/2023
ITA 256/2023
ITA 257/2023

6. The above-captioned appeals preferred by the appellant/revenue concern Assessment Year (AY) 2013-14 [ITA No.257/2023]; AY 2014-15 [ITA No.256/2023]; AY 2015-16 [ITA No.254/2023] and AY 2016-17 [ITA No.255/2023].

6.1 These appeals assail a common order dated 29.01.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

7. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that the following questions have been, broadly, proposed in support of the above-captioned appeals:

(a) Whether in the facts and in circumstances of the case, the Tribunal erred in law in adopting a percentage figure pegged at 15% for determination of profit attributable to the PE of the appellant/assessee in India?

(b) Whether in the facts and in circumstances of the case, the Tribunal erred in law in holding that booking fee received by the appellant/assessee is taxable as business income, and not as royalty?

(c) Whether in the facts and in circumstances of the case, the Tribunal is correct in law in holding that payments, which are subject to withholding tax under Section 195 of the Income Tax. Act, 1961 [in short, the "Act"] are not liable for interest under Section 234B of the Act?

8. Mr Bhatia, however, fairly says that all three questions are covered by the following decisions:

8.1 Insofar as the proposed question (a) is concerned, it is covered by the decision of the Supreme Court rendered in a bunch of appeals, being Civil Appeal Nos. 6511-6518/2010, titled ***Director of Income Tax, New Delhi v. Travelport Inc.***, dated 19.04.2023. Accordingly, the said question does not arise for our consideration, as it stands covered by the aforementioned decision of the Supreme Court.

8.2 Insofar as the proposed question (b) is concerned, once again, Mr Bhatia confirms that the said question raised by the appellant/revenue is covered by a decision rendered by a coordinate bench on 08.02.2016, in ITA No.473/2012, titled ***Director Of Income Tax vs New Skies Satellite Bv & Ors.*** Accordingly, this question also does not arise for our consideration, as it also stands covered by the aforesaid decision of the court.

8.3 Insofar as proposed question (c) is concerned, Mr Bhatia says that although on account of the amendment introduced via Finance Act, 2021, (with effect from 01.04.2012), the decision of the Supreme Court rendered in ***Director Of Income Tax, New Delhi v. Mitsubishi Corporation,*** (2021) 130 Taxman.com 276 SC may not apply, but on facts, since the additions have not been sustained, the addition qua interest under Section 234B of the Act may not survive.

9. It cannot but be accepted by Mr Bhatia that the following observations returned by the Tribunal would lead to the conclusion that addition *vis-a-vis* interest under Section 234B of the Act, could not have been made:

> *"33. Ld. AR for the tax payer contended that in the absence of any liability for payment of advance tax since tax is deductible at source of the income of the taxpayer held liable to tax in India, the levy of interest u/s 234B is not warranted.*

34. Provisions contained below section 209(1)(d) of the Act introduced by Finance Act, 2012 w.e.f 01.04.2012 would apply only in a situation where persons responsible for tax has paid or credited such income without deduction of tax. ***In the instant case, since the income has been received by the taxpayer after deduction of tax at source, the proviso is not applicable as has been held by the coordinate Bench of the Tribunal in BG International Ltd. vs. DCIT in ITA No.31/DDN/2020 order dated 31.12.2020, Even otherwise, when no addition sustains section 234B would not apply****. So, ground no.21 of ITA Nos.2007/Del./2017, 3494/Del./2018, 7970/Del./2018 & 7047/Del./2019 for Assessment Years 2013-14, AY 2014-15, AY 2015-16 & AY 2016-17 respectively is determined in favour of the taxpayer."*

[Emphasis is ours]

10. Given this position, we are of the view that none of the questions of law, as proposed, arise for our consideration.

11. The appeals are, accordingly, closed.

12. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 4, 2023/aj