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

\+ ITA 322/2022

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2 .....Appellant

Through: Mr. Sanjay Kumar, Sr. Standing Counsel with Ms. Easha and Ms.Hemlata Rawat, Standing Counsel.

versus

L. G. ELECTRONICS INC LTD. .....Respondent

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Aowiteya Grover, Advs.

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COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2 .....Appellant

Through: Mr. Sanjay Kumar, Sr. Standing Counsel with Ms. Easha and Ms.Hemlata Rawat, Standing Counsel.

versus

L. G. ELECTRONICS INC LTD. .....Respondent

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Aowiteya Grover, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **13.09.2024**

1. These two appeals have been preferred by the Commissioner seeking to impugn the judgment rendered by the **Income Tax Appellate Tribunal**[1] dated 07 February 2022 and has proposed the following questions of law for our consideration:-

> "A. Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in quashing the final assessment order passed in the case without appreciating the facts that the final assessment order was passed in the case after due procedure under the provisions of the Income Tax Act, 1961?
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> B. Whether on the facts and circumstances of the case and in law, the Ld, ITAT erred in admitting the additional ground that AO has not followed the direction of the Ld. DRP, so the assessment order is non-est, when the assessee has not raised this ground in first round of appeal neither before Ld. IT AT nor before the Hon'ble High Court? C. Whether on the facts and circumstances of the case and in law, the Ld. ITA T erred in quashing the final assessment order passed in the case without appreciating the facts that the Hon'ble Delhi High Court vide its order dated 14.02.2020 has set-aside the case to Ld. IT AT only on limited issue of determination of existence of assessee's PE in India?
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> D. Whether on the facts and circumstances of the case and in law, the Ld. IT AT erred in holding that there is no connection between A.Y. 2014-15 and A.Y. 2007-08, where there is direct connection as factual matrix were some for both years and DRP orders for A.Y. 2013-14 relied upon the DRP order for A.Y. 2007-08 through DRP order for A.Y. 2008-09?
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> E. Whether on the facts and circumstances of the case and in law, the Ld. IT AT erred in holding that the provisions of Section 144C (13) of the Income Tax Act, 1961 has not complied in assessee's case while passing the final assessment order?
>
> F. Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in holding that the Ld. CIT has no jurisdiction power u/s 263 of the Act over the final assessment order passed in the case after direction of Ld. DRP?"

2. The Tribunal, as would be apparent from a reading of the order impugned before us in these appeals, has essentially followed the principles laid down by the Court in **Principal Commissioner of**

[1] Tribunal

Income-tax vs. Headstrong Services India Pvt. Ltd.[2] that it would be wholly impermissible for the **Assessing Officer**[3] to disregard a binding direction issued by the **Dispute Resolution Panel**[4].

3. The appellants, however, have sought to rest their case on the order under Section 263 of the **Income Tax Act, 1961**[5] passed by the Commissioner and where while dealing with the aspect of profit margin of 50%, the said authority had observed as under:-

> "11. On the issue of profit attributable to Indian PE, the Hon'ble DRP in its order 19.12.2016 for A.Y. 2007-08 at page- 17 held that charge on the wages/remuneration paid to the seconded employees at the cost-plus margin of 20% on 'salary attributed to India operations'. Hon'ble DRP justifies its decision to increase margin of 20% from 10% (as offered by the assessee's letter dated 05.12.2016) by noting that *"The assessee has agreed to the issue of PE and the attribution because salary is charged to the PE. The rate offer is not reasonable as the extent of activities performed are substantially more than the quantum conceded by the assessee".*
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> 12. Also, the Hon'ble DRP in subsequent order dated 08.05.2018 for A.Y. 2014-15 upheld this view at para-4(f) of its order. Thereafter, DRP in its order dated 04.06.2019 for A.Ys. 2015-16 and 2016-17 further reiterated this view at para-3.5. The Hon'ble DRP directed profit margin of "50% as offered by the assessee following its Ruling of AY 2007-08. But the assessee has wrongly interpreted the Hon'ble DRP's rejection of 50% attribution in its order dated 04.06.2019 for A.Ys. 2015-16 and 2016-17. In these year cases, the AO has wrongly interpreted the direction of DRP order of AY 2007-08 to pass the final orders and subsequently, routinely followed its earlier order while passing "final order" to keep attribution rate of 25%. Since, such interpretation was erroneous and prejudicial to the Revenue as discussed in para2 and 5 (supra) the current revision proceedings initiated. Therefore, it is very clear from above facts that the Hon'ble DRP in its order for A.Ys. 2015-16 and 2016-17 has only reiterated the view taken previously and followed consistently the same view subsequent to its first Ruling relating to AY 2007-08. Therefore, the submission of the assessee is contrary to the findings given by the DRP for AY 2007-08 and for subsequent AYs under consideration."

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[2] 2020 SCC OnLine Del 1709
[3] AO
[4] DRP
[5] Act

4. Despite being provided repeated opportunities, the appellants were unable to establish any error or mistake in the DRP having replicated the profit margin as adopted and concluded for **Assessment Year**[6] 2007-08 in the subsequent AYs.

5. Consequently, the appeals fail and shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 13, 2024
ns

[6] AY