$~79 to 86

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

\+ **ITA 282/2022**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION-3 ..... Appellant
Through: Mr. Aseem Chawla, Sr. SC

Versus

TURNER BROADCASTING ASIA PACIFIC INC.

..... Respondent
Through: Mr. Rohan Khare and Ms. Priyam Bhatnagar, Advocates

80

\+ **ITA 327/2022**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION-3 ..... Appellant
Through: Mr. Aseem Chawla, Sr. SC

Versus

TURNER BROADCASTING ASIA PACIFIC INC.

..... Respondent
Through: Mr. Rohan Khare and Ms. Priyam Bhatnagar, Advocates

81

\+ **ITA 333/2022**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION-3 ..... Appellant
Through: Mr. Aseem Chawla, Sr. SC

Versus

TURNER BROADCASTING ASIA PACIFIC INC.

..... Respondent
Through: Mr. Rohan Khare and Ms. Priyam Bhatnagar, Advocates

82

+ **ITA 388/2022**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION-3 ..... Appellant

Through: Mr. Aseem Chawla, Sr. SC

Versus

TURNER BROADCASTING ASIA PACIFIC INC.

..... Respondent

Through: Mr. Rohan Khare and Ms. Priyam Bhatnagar, Advocates

83

+ **ITA 528/2022**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 ..... Appellant

Through: Mr. Aseem Chawla, Sr. SC

Versus

TURNER BROADCASTING SYSTEM ASIA PACIFIC INC.

..... Respondent

Through: Mr. Rohan Khare and Ms. Priyam Bhatnagar, Advocates

84

+ **ITA 529/2022**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 ..... Appellant

Through: Mr. Aseem Chawla, Sr. SC

Versus

TURNER BROADCASTING SYSTEM ASIA PACIFIC INC.

..... Respondent

Through: Mr. Rohan Khare and Ms. Priyam Bhatnagar, Advocates

85

+ **ITA 443/2023**

THE COMMISSIONER OF INCOME TAX -

INTERNATIONAL TAXATION -3 ..... Appellant
Through: Mr.Ruchir Bhatia, Sr.SC.

Versus

TURNER BROADCASTING SYSTEM ASIA PACIFIC INC.

..... Respondent
Through: Mr. Rohan Khare and Ms. Priyam Bhatnagar, Advocates

86
+ **ITA 445/2023**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 ..... Appellant
Through: Mr.Ruchir Bhatia, Sr.SC.

Versus

TURNER BROADCASTING SYSTEM ASIA PACIFIC INC.

..... Respondent
Through: Mr. Rohan Khare and Ms. Priyam Bhatnagar, Advocates

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **28.03.2024**

1. The Revenue has instituted the instant appeals and has proposed the following questions of law for our consideration:-

> "2.1 Whether on the facts and in the circumstances of the case, the ld. ITAT has erred in holding that the distribution revenue earned by the appellant assessee cannot be taxed as royalty, as per section 9(1)(vi) of the Act and Article 12 of the DTAA between India and the USA but as a business income?
>
> 2.2 Whether on the facts and in the circumstances of the case, the ld. ITAT is correct in determining the income of the assessee company in the current assessment year by following the Income

determined in resolution made under Mutual Agreement Procedure (MAP) in respect of earlier years in assessee's own case even though the resolution under MAP is limited to only those assessment years under consideration in MAP and do not apply to other assessment years in its own case even under identical facts?"

2. We however take note of our order of 14 December 2022 and which is extracted hereinbelow:-

"2. Issue notice.

2.1 Mr Deepak Chopra accepts notice on behalf of the respondent/assessee.

3. We may note, that it is Mr Chopra's contention, that apart from anything else, the issue which arises for consideration in the instant case, i.e., as to whether the revenue received on account of advertising and distribution rights should be treated as royalty, is inter alia, covered by the judgment rendered by the Supreme Court in **Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT** (2021) 432 ITR 471 (SC).

4. Mr Chopra has also emphasized the fact, that after the Mutual Agreement Procedure (MAP) was entered into between the Governments of India and United States via their respective the competent authorities in April-June 2007, 10% of advertising and subscription revenue received during relevant previous years was taken to be net profit chargeable to tax.

5. Mr Chopra informs us, that thereafter, the respondent/assessee has consistently offered 10% of the advertising and subscription revenue for levy of tax.

6. We are also informed, that the appellant/revenue has accepted the regime put in place by MAP in Assessment Years (AYs) 2007-2008 and 2008-2009.

6.1 Mr Chopra says, that the assessment orders, insofar as these assessment years were concerned, were passed under Section 143(3) of the Income Tax Act, 1961 [in short "Act"].

7. Insofar as the above-captioned matters are concerned, we are told by learned counsel for the parties, that they relate to AYs 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2015-2016.

8. Mr Shlok Chandra, who appears on behalf of the appellant/revenue, informs us that the appellant/revenue has also

lodged an appeal concerning AY 2014-2015, which is yet to be listed.

9. We may note that the appellant/revenue has not filed its written submissions in the above-captioned matters.

9.1 Mr Chandra will file the written submissions, not exceeding three pages, within the next two weeks.

9.2 Mr Chandra will also ensure that the appeal for AY 2014-2015 is listed by the next date of hearing.

10. List the above-captioned matters on 28.02.2023, at the end of the Board in the category of "After Notice Miscellaneous Matters".

3. The fact of the Mutual Agreement Procedure having been adhered to by respective parties and consequent to the adjudication completed therein, the assessee having agreed to pay 10% of advertising and subscription revenue is not disputed. As would be manifest from a reading of paragraph nos. 4 to 6 of our order dated 14 December 2022, the aforesaid practise is also stated to have been accepted by the Revenue for Assessment Years 2007-08 and 2008-09.

4. In view of the aforesaid and bearing in mind the principles of consistency, we find no justification to entertain the challenge.

5. Accordingly, while we dispose of these appeals, we leave the questions of law which are sought to be canvassed open to be addressed in appropriate proccedings.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 28, 2024
p'ma