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

\+ ITA 406/2024

COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION-2, NEW DELHI .....Appellant

Through: Mr Sunil Agarwal, Senior Standing Counsel with Mr Shivansh B. Pandya, Mr Viplav Acharya and Mr Utkarsh Tiwari, Advocates.

versus

M/S NANJING ELECTRIC GROUP CO. LTD. .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **14.11.2024**

CM APPL. 43642/2024

1. For the reasons stated in the application, the same is allowed.

2. The application stands disposed of.

ITA 406/2024

3. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 impugning an order dated 22.08.2022 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the Tribunal*) in ITA No.1726/Del/2021 captioned *DCIT v. M/s Nanjing Electric Group Co. Ltd.* in respect of assessment year (AY) 2013-14.

4. The dispute involved is centred around the addition in respect of income relating to off-shore supplies made by the respondent (Assessee).

The Assessing Officer had sought to tax the same alleging that the Assessee had a permanent establishment (PE) in India and attributed 35% of the global net profit to the said PE. Accordingly, the taxable income was determined at ₹3,84,68,416/- instead of Nil as declared by the Assessee. It is noted that before the Tribunal, the learned counsel for the Revenue had conceded that the appeal may be decided based on the Tribunal's decision in the earlier assessment year – AY 2009-10.

5. The learned ITAT had noted that the issue whether the assessee had a PE in India had been considered by the Tribunal in the case of the assessee for the AY 2009-2010 (ITA No.6175/Del/12), which was decided on 22.02.2013. In the said case, the ITAT had held that the assessee did not have a PE in India.

6. The Revenue had appealed the ITAT's order dated 22.02.2013 in ITA No.6175/Del/2012 before this Court. However, the same was dismissed by an order dated 06.11.2013 passed in ITA No.488/2013. This Court had held that the issue was squarely covered by the earlier decisions in favour of the Assessee. The said order is set out below:

> "In view of the decisions of the Delhi High Court in Director of Income Tax (New Delhi) v. L.S. Cables Limited, ITA Nos. 704, 706 and 707 of 2011 decided on 30.9.2011 and Director of Income Tax v. L.G. Cables Limited; 2011 (2) AD (Delhi) 286 in ITA No.703/2009 decided on 24.12.2010, the present appeal has to be dismissed as the issues raised are already covered and decided by this Court in the aforesaid two decisions.
>
> Appeal is dismissed."

7. In view of the above, no substantial question of law arises in the

present appeal. This Court is also informed that the tax effect in the present case is below the threshold as specified by the Central Board of Direct Tax (CBDT) in the Notification dated 19.09.2024.

8. Accordingly, the present appeal is dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 14, 2024
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Click here to check corrigendum, if any