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

+ ITA 421/2024

THE COMMISSIONER OF INCOME TAX –
INTERNATIONAL TAXATION -1

.....Appellant

Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Mann, Mr. Pratyaksh
Gupta, Advs.

versus

AAPC SINGAPORE PTE LTD.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **05.08.2024**

1. The Principal Commissioner calls in question the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 29 December 2023 and posits the following questions of law for our consideration: -

“2.1 Whether on the facts and circumstances of the case and in law, Ld. ITAT erred in allowing the appeal of the assessee ignoring the fact that the assessee has artificially split the interdependent and interlacing activities under different heads to reduce the tax liability?

2.2 Whether on the facts and circumstances of the case and in law, Ld. ITAT erred in not considering the provision as per Clause (vi) of section 9(1) of the Act the service rendered by the assessee in connection with the sale or right to use any trademark also falls within the scope of Royalty?

2.3 Whether on the facts and circumstances of the case and in law, Ld. ITAT erred in not considering the principle of treating the receipts from activities ancillary or subsidiary to main activity of enjoyment or use of information as Royalty/FTS is recognized in the DTTA with Singapore under Article 12(4) (a)?



2.4 Whether on the facts and circumstances of the case and in law, Ld. ITAT erred in not considering the various payments in form of splitted agreement made to Assessee by India hotels are required to be treated as one for use of Brand or for use of commercial information in respect of Brand and accordingly taxable as Royalty?

2.5 Whether on the facts and circumstances of the case and in law, Ld. ITAT erred in not considering the payment for use of such assets including brand name and the Industrial and commercial information would fall within the definition of Royalty under Article 12(3) of the DTAA which is utilized by the Assessee by Assessee company in building image of its hotels all over the world?

2.6 Whether on the facts and circumstances of the case and in law, Ld. ITAT erred in not considering the provisions contained therein in Clause (i) of the Explanation 2 of section 9 (1)(vi) make it very clear that any consideration received for use or right to use any trademarks is to be considered as Royalty?"

2. As we go though the judgment rendered by the Tribunal, we find that it has essentially rested its view on the decision rendered by this Court in **Director of Income-Tax vs. Sheraton International Inc.** [2009 SCC OnLine Del 4231].

3. We note that while dealing with an identical controversy, we had in ITA 213/2024 relying upon the judgment of the Court in *Sheraton International* held as follows:-

“3. Dealing with the question which stands posited, the Court in *Sheraton International* had held us under:-

"32. In view of the aforesaid findings of the Tribunal that the main service rendered by the assessee to its client-hotels was advertisement, publicity and sales promotion keeping in mind their mutual interest and, in that context, the use of trademark, trade name or the stylized "S" or other enumerated services referred to in the agreement with the assessee were incidental to the said main service, it rightly concluded, in our view, that the payments received were neither in the nature of royalty under Section 9(1)(vi) read with Explanation 2 or in the nature of fee for technical services under Section 9(1)(vii) read with Explanation 2 or taxable under Article 12 of the DTAA. The payments



received were thus, rightly held by the Tribunal, to be in the nature of business income. And since the assessee admittedly does not have a permanent establishment under the Article 7 of the DTAA business income" received by the assessee cannot be brought to tax in India. The findings of the Tribunal on this account cannot be faulted. The Tribunal pointedly observed that there was no evidence brought on record by the Revenue to enable them to hold that the agreement was a colourable device, in particular, that the payments received were for use of trade mark, brand name and stylized mark "S". We agree with reasoning adopted by the Tribunal. Moreover, these are findings of fact which could be gone into only if a question was proposed impugning the findings of the Tribunal as perverse. We find that no such question has been proposed in the appeal. The observations of the Supreme Court in the case of K. Ravindranathan Nair vs CIT [2001] 247 ITR 178 being relevant are extracted below (page 181):

"The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact-finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it. The only jurisdiction of the High Court in a reference application is to answer the questions of law that are placed before it. It is only when a finding of the Tribunal on fact is challenged as being perverse, in the sense set out above, that a question of law can be said to arise."

33. In these circumstances we are of the view that no fault can be found with the impugned judgment. No question of law, much less a substantial question of law, has arisen for our consideration. In the result the appeals are dismissed."

4. Accordingly, and following the reasons assigned therein, we dismiss the present appeal."



4. Following the aforesaid, we find no merit in the instant appeal.
No substantial question of law arises.
5. The appeal shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 5, 2024/neha