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

\+ ITA 399/2024

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) -1 .....Appellant

Through: Mr. Anant Mann, JSC, Mr. Abhishek Anand and Mr. Pranjal Singh, Advs. for Mr. Ruchir Bhatia, SSC.

versus

ESS ADVERTISING (MAURITIUS) SNC ET COMPAGNIE (FORMERLY KNOWN AS ESPN STAR SPORTS MAURITIUS SNC ET COMPAGNIE) .....Respondent

Through: Mr. Porus F. Kaka, Sr. Adv. with Mr. Divesh Chawla, Mr. Ashok Mathur, Mr. Saurabh Jain and Ms. Sandy Sharma, Advs.

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\+ ITA 400/2024

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) -1 .....Appellant

Through: Mr. Anant Mann, JSC, Mr. Abhishek Anand and Mr. Pranjal Singh, Advs. for Mr. Ruchir Bhatia, SSC.

versus

ESS ADVERTISING (MAURITIUS) SNC ET COMPAGNIE (FORMERLY KNOWN AS ESPN STAR SPORTS MAURITIUS SNC ET COMPAGNIE) .....Respondent

Through: Mr. Porus F. Kaka, Sr. Adv. with Mr. Divesh Chawla, Mr. Ashok Mathur, Mr. Saurabh Jain and Ms. Sandy Sharma, Advs.

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+ ITA 402/2024

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

Through: Mr. Anant Mann, JSC, Mr. Abhishek Anand and Mr. Pranjal Singh, Advs. for Mr. Ruchir Bhatia, SSC.

versus

ESPN STAR SPORTS (MAURITIUS) SNC ET COMPAGNIE NOW KNOWN AS ESS ADVERTISING (MAURITIUS) S.N.C. ET COMPAGNIE .....Respondent

Through: Mr. Porus F. Kaka, Sr. Adv. with Mr. Divesh Chawla, Mr. Ashok Mathur, Mr. Saurabh Jain and Ms. Sandy Sharma, Advs.

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

O R D E R

% 18.09.2024

CM APPL. 42831/2024 (759 Days Delay in Refiling) in ITA 399/2024

Bearing in the mind the disclosures made, the delay of 759 days in re-filing the appeal is condoned.

The application shall stand disposed of.

CM APPL. 42838/2024 (759 Days Delay in Refiling) in ITA 400/2024

Bearing in the mind the disclosures made, the delay of 759 days in re-filing the appeal is condoned.

The application shall stand disposed of.

CM APPL. 42944/2024 (720 Days Delay in Refiling) in ITA 402/2024

Bearing in the mind the disclosures made, the delay of 720 days in re-filing the appeal is condoned.

The application shall stand disposed of.

ITA 399/2024, ITA 400/2024 & ITA 402/2024

1. The Principal Commissioner has in the main appeal posited the following questions for our consideration:-

> "2.1 Whether on the facts and in the circumstances of the case and in law, the ld. ITAT is correct in holding that the purported PE if remuneration on arm's length as subsidiary company, no further attribution of profit be made on foreign company, considering subsidiary company as dependent agent PE?
>
> 2.2 Whether on the facts and in the circumstances of the case and in law, the ld. ITAT is correct in holding that no further attribution of profit be made on foreign company even if the TP analysis did not adequately reflect the FAR home by the enterprise, for additional functions/risks performed by it as DAPE?
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> 2.3Whether on the facts and in the circumstances of the case and in law, the ld. ITAT is correct in holding that subsidiary company is earning profit through its agency activity only and not through its activity in the form of DAPE of Foreign Company? "

2. Having heard Mr. Mann, learned counsel who appears in support of these appeals and Mr. Kaka, learned senior counsel who represents the respondent assessee, we find that the issues which are sought to be canvassed in these appeals stand conclusively answered in light of the judgment rendered by us in **The Commissioner of Income Tax-International Taxation 1 vs. ESPN Star Sports Mauritius S.N.C.ET Compagnie** [ITA 333/2023 decided on 13 February 2024].

3. In connected ITA 402/2024, the additional questions which are sought to be canvassed pertain to business connection and taxability under Section 9(1) of the Income Tax Act, 1961 ['**Act**']. Dealing with the aspect of Permanent Establishment and whether any further attribution could be made once it was found that the remittances were accounted for, we had while disposing of *ESPN Star Sports* held as follows:-

> "14. Insofar as the issue of fixed place PE is concerned, the same clearly stands concluded against the appellants by virtue of the findings of fact returned by the ITAT. The case of a DAPE appears to have been raised in the backdrop of Article 12(4)(i) of the India Mauritius DTAA. However, the contract stipulations would unerringly point towards a manifest absence of a right having been conferred or an authority granted to conclude contracts in the name of ESS Distribution (Mauritius). The ITAT has found that the Indian entities stood conferred with an independent right to enter into contracts with cable operators for channel distribution and that ESS Distribution (Mauritius) was not privy to those agreements. In terms of those agreements, it is the Indian entities which bear associated distribution costs and expenses. The agreements unequivocally establish that ESS Distribution (Mauritius) is in no manner connected with the contracts executed by the Indian entities with cable operators and other intermediaries. Even the right to initiate legal action by the latter is available to be exercised only against the Indian entities.
>
> 15. As far as the additional issue of profit attribution is concerned, we note that since there is no PE, the issue of profit attribution would clearly not arise. This issue, in any case, stands concluded in light of the judgment rendered by the Supreme Court in **Commissioner of Income Tax vs. E-Funds IT Solution Inc**."

4. We consequently find no ground to interfere with the orders impugned. The appeals fail and shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 18, 2024/RW