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

+ ITA 481/2017

THE COMMISSIONER OF INCOME TAX-LTU Appellant

Through: Mr. Siddhartha Sinha, SSC with
Ms. Dacchita Shahi & Ms.
Anuja Pethia, JSCs.

versus

HONDA CARS INDIA LTD. Respondent

Through: Mr. Deepak Chopra, Mr. Ankul
Goyal & Mr. Priyam
Bhatnagar, Advs.

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+ ITA 24/2019

THE COMMISSIONER OF INCOME TAX –LTU ... Appellant

Through: Mr. Siddhartha Sinha, SSC with
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versus

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Bhatnagar, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

20.05.2024

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1. We note that these appeals of the Department have framed the following questions of law for our consideration:

“2.1 Whether Id. ITAT erred in deleting the addition made by the Assessing officer under section 40(a)(i) of the Income Tax Act, 1961?”

2.2 Whether the impugned order is sustainable in law in as much as the Id. ITAT relied upon the judgment of this Hon'ble Court in



Herbalife and failed to note and appreciate that the facts of the present case are different and there has been amendment in law?

2.3 Whether learned ITAT erred in not adjudicating the issue as to, whether M/s Honda Trading Company, Japan and M/s Honda Trading Company Ltd. Thailand (to whom payments were made by Assessee without deducting tax at source) have a PE in India?

2. The principal issue which was canvassed before us pertains to the deletion of the additions made under Section 40(a)(i) of the Income Tax Act, 1961 [“Act”]. That aspect was connected with the proceedings under Section 201 of the Act which had been initiated.

3. Before us today it is admitted that the proceedings under Section 201 of the Act have been accorded a closure in terms of an order dated 10 December 2018 passed by the Income Tax Officer [“ITO”] and where it has on due consideration come to the following conclusions:

“After considering all the facts it has come to the notice that except the Honda Car Japan all other affiliates do not have Permanent Establishment in India. But reliance in this regard is placed on the Hon’ble Supreme Court ruling in the case of Honda Motor Co. Ltd. Japan S. Assistant Commissioner of Income Tax, Civil appeals no.(s) 2833 of 2018 wherein it has been held:

“it has been held that once arm's length principle has been satisfied, there can be no further profit attributable to a person even if it has a permanent establishment in India”

On perusal of details filed by the assessee and position of law, it is found that all transactions are done at arm's length, so HCIL should not be treated as an assessee-in-default in respect of payment made by it to HMJ and its affiliates under Section 201 of the Act.”

4. In view of the aforesaid, learned counsel for the appellant fairly concedes that nothing further would remain for consideration.

5. Insofar as the issue with respect to the ITAT following **Commissioner of Income Tax vs Herbalife International India Pvt. Ltd.** [Neutral Citation: 2016:DHC:3848-DB] is concerned, we



may only note that it clearly does not appear to have erred in following a binding judgment rendered by the jurisdictional High Court. We have also not been shown any decision which may have held contrary to *Herbalife International*.

6. In view of the aforesaid, these appeals fail and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 20, 2024/kk