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

\+ ITA 128/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -2 .....Appellant

Through: Mr. Anant Mann, JSC for Mr. Ruchir Bhatia, SSC.

versus

INTER CONTINENTAL HOTELS GROUP (ASIA PACIFIC) PTE. LTD. .....Respondent

Through: Mr. Manuj Sabharwal, Mr. Drona Negi and Mr. Ayush Kumar, Advs.

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\+ ITA 140/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -2 .....Appellant

Through: Mr. Anant Mann, JSC for Mr. Ruchir Bhatia, SSC.

versus

INTER CONTINENTAL HOTELS GROUP (ASIA PACIFIC) PTE. LTD. .....Respondent

Through: Mr. Manuj Sabharwal, Mr. Drona Negi and Mr. Ayush Kumar, Advs.

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

**O R D E R**

% **06.08.2024**

**CM APPL. 10535/2024 (21 Days Delay) & CM APPL. 10537/2024 (28 Days Delay in Refiling) in ITA 128/2024**

**CM APPL. 11733/2024 (21 Days Delay) & CM APPL. 11734/2024 (28 Days Delay in Refiling) in ITA 140/2024**

Bearing in the mind the disclosures made, the delay of 21 days in filing the appeals and the delay of 28 days in re-filing the appeals is condoned.

Applications shall stand disposed of.

**ITA 128/2024 & ITA 140/2024**

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal ['**Tribunal**'] dated 23 June 2023 and poses the following questions of law for our consideration:-

> "2.1 Whether on the facts and circumstances of the case, the Ld. ITAT erred in holding that Management Support Services charges received by the assessee from Intercontinental Hotel Group India Pvt. Ltd. (IHG) do not fall within the purview of FTS as per Article 12(4) of India Singapore DTAA?
>
> 2.2 Whether on the facts and circumstances of the case, the Ld. ITAT erred in not appreciating the fact that Management Support Services rendered by the Assessee to IHG are ancillary and subsidiary to the license agreement and taxable as FTS as per Article 12(4)(a) of India-Singapore DTAA?"

2. Insofar as issues emanating from the Management Support Services charges and whether they would fall within the purview of Fees for Technical Services ['**FTS**'] as per Article 12(4) of the India-Singapore Double Taxation Avoidance Agreement ['**DTAA**'] is concerned, the same undisputedly stands answered against the appellant in terms of the judgment rendered by us inter partes in ITA 366/2024, and which pertained to Assessment Year ['**AY**'] 2017-18. We thus find no justification to entertain this appeal on that score.

3. Mr. Mann, learned counsel appearing for the appellants, has, however, submitted, that in the facts of the present case, the appellants had sought to canvass the case that the services would fall under

Article 12(4)(a) of the DTAA, by virtue of being ancillary and subsidiary to the application or enjoyment of right, property or information.

4. It becomes apparent from a bare reading of Paras 3 and 4 of Article 12 that Para 4(a) is essentially concerned with royalty. Undisputedly, and as is manifest from the facts which stand recorded in the order of the Tribunal itself, the instant appeal is concerned only with the Management Support Services Agreement. The license agreement for the use of brand name was admittedly separate and distinct. Learned counsel for the appellant has been unable to draw our attention to any facet of the Management Support Service Agreement to which the aspect of royalty would be attracted.

5. In that view of the matter, we find that the argument addressed is thoroughly misconceived.

6. The appeals fail and shall stand dismissed.

**YASHWANT VARMA, J.**

**RAVINDER DUDEJA, J.**

**AUGUST 06, 2024/**RW