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

\+ **W.P.(C) 15488/2024 & CM APPL. 65004-05/2024**

MCI INTERNATIONAL LLC (FORMERLY KNOWN AS MCI INTERNATIONAL, INC) .....Petitioner

Through: Mr Ajay Vohra, Sr Advocate with Mr Rajeev Mishra, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX AND ANR .....Respondents

Through: Mr Indruj Singh Rai, SSC, Mr Sanjeev Menon and Mr Rahul Singh, JSCs and Mr Anmol Jagga, Advocate.

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

O R D E R

% **07.11.2024**

1. Issue notice. The learned counsel for the respondents accepts notice.

2. The petitioner is a tax resident of the United States of America and has furnished the copy of the tax residency certificate along with the present petition. The petitioner during the financial year relating to the assessment year (AY) 2018-19 received a sum of ₹13,67,35,419/- as communication charges. The petitioner claims that the said charges were for the services rendered overseas and the petitioner does not have any establishment in India.

3. The assessing officer (AO) on the basis of the information that the payments have been made by M/s Bharti Airtel Limited (an Indian company) to the petitioner for communication charges issued a notice dated 13.08.2024 under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*), *inter alia,* stating that the amount of ₹13,67,35,419/-paid by M/s

Bharti Airtel Limited is in the nature of fee for technical services as contemplated under the provisions of Section 9(1)(vii) of the Act. The petitioner was called upon to furnish a reply on or before 21.08.2024.

4. It is the petitioner's case that it received the said notice through courier on 27.08.2024 and, therefore, did not have any opportunity to respond to the same. In absence of any response from the petitioner, the AO proceeded to pass an order dated 30.08.2024 under Section 148A(d) of the Act for reopening of the assessment for the AY 2018-19. Accordingly, the AO also issued the notice dated 30.08.2024 under Section 148 of the Act for initiating the re-assessment proceedings for the AY 2018-19.

5. We find merit in the contention that the petitioner was not afforded full opportunity to respond to the notice dated 13.08.2024. The same was received by the petitioner after the period to respond to it had expired.

6. In the given facts, we consider it apposite to set aside the notice dated 30.08.2024 issued under Section 148 of the Act as well as the order dated 30.08.2024 passed under Section 148A(d) of the Act. The petitioner is at liberty to file a response to the notice under Section 148A(b) of the Act with the AO within the period of one week from date. The AO shall consider the same and pass an appropriate order as he deems fit in accordance with law.

7. The petition is disposed of in the aforesaid terms. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 07, 2024

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Click here to check corrigendum, if any