$~23 to 29

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

\+ W.P.(C) 9752/2015

GLAXOSMITHKLINE BIOLOGICALS SA..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Neeraj Jain, Mr. Aditya Vohra, Advs.

versus

DEPUTY COMMISSIONER OF INCOME-TAX & ANR.

..... Respondent

Through: Mr. Sunil Agarwal, Sr. SC with Mr. Shivansh Pandya, Mr. Utkarsh Tiwari, Advs.

24

\+ W.P.(C) 2218/2016

GLAXOSMITHKLINE BIOLOGICALS SA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Neeraj Jain, Mr. Aditya Vohra, Advs.

versus

DEPUTY COMMISSIONER OF INCOME-TAX

..... Respondent

Through: Mr. Sunil Agarwal, Sr. SC with Mr. Shivansh Pandya, Mr. Utkarsh Tiwari, Advs.

25

\+ W.P.(C) 11756/2016

GLAXO SMITHKLINE BIOLOGICALS SA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Neeraj Jain, Mr. Aditya Vohra, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX(INTERNAITONAL TAXATION), & ANR.

..... Respondent

Through: Mr. Sunil Agarwal, Sr. SC with Mr. Shivansh Pandya, Mr. Utkarsh Tiwari, Advs.

26

\+ W.P.(C) 11780/2016

GLAXOSMITHKLINE BIOLOGICALS SA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Neeraj Jain, Mr. Aditya Vohra, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) & ANR.

..... Respondent

Through: Mr. Sunil Agarwal, Sr. SC with Mr. Shivansh Pandya, Mr. Utkarsh Tiwari, Advs.

27

\+ W.P.(C) 11785/2016

GLAXOSMITHKLINE BIOLOGICALS SA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Neeraj Jain, Mr. Aditya Vohra, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME-TAX(INTERNATIONAL TAXATION) & ANR.

..... Respondent

Through: Mr. Sunil Agarwal, Sr. SC with Mr. Shivansh Pandya, Mr.

Utkarsh Tiwari, Advs.

28

\+ W.P.(C) 11786/2016

GLAXOSMITHKLINE BIOLOGICALS SA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Neeraj Jain, Mr. Aditya Vohra, Advs.

versus

ASSISTANT COMMISSIONER OF INCOMETAX (INTERNATIONAL TAXATION) & ANR.

..... Respondent

Through: Mr. Sunil Agarwal, Sr. SC with Mr. Shivansh Pandya, Mr. Utkarsh Tiwari, Advs.

29

\+ W.P.(C) 12002/2016

GLAXO SMITHKLINE BIOLOGICALS SA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Neeraj Jain, Mr. Aditya Vohra, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION),-1 & ANR.

..... Respondent

Through: Mr. Sunil Agarwal, Sr. SC with Mr. Shivansh Pandya, Mr. Utkarsh Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

<u>O R D E R</u>

% **11.01.2024**

1. These writ petitions assail the validity of the order dated 21 July

2015 passed by the Authority for Advance Rulings ["**AAR**"] who has in terms thereof reviewed an earlier order pursuant to which applications for advance rulings had been admitted. The facts surrounding the presentation of the present writ petitions and the questions which are canvassed stand succinctly captured in our order of 07 December 2023 which is reproduced hereinbelow:-

> "1. A challenge is laid to the order dated 21.07.2015 passed by respondent no. 2, i.e., Authority for Advance Rulings ("AAR").
>
> 2. A perusal of the impugned order shows that the petitioner's application, under Section 245Q(1) of the Income-tax Act, 1961 [in short, "Act"], was not decided on merits.
>
> 3. Instead, the AAR *via* the impugned order, decided to reverse its order, dated 15.10.2010, whereby. The petitioner's application was admitted. The reason given by the AAR reversing its decision was that on i.e., 15.10.2010, there was a jurisdictional bar, under Section 245(R)(2), in the petitioner's application being admitted.
>
> 4. Mr. Ajay Vohra, learned senior advocate, says that the AAR was required to consider, broadly, the following two issues *qua* the application filed before it:
>
> (1) <u>First, whether the petitioner had a permanent establishment (PE) in India.</u>
>
> <u>(2) Second, if the AAR concluded that the petitioner had a PE in India, whether any part of its income which accrued outside India, could be attributed to the PE.</u>
>
> 5. This submission has been advanced by Mr. Vohra *dehors* his averment that the AAR had no power vested in it to review the order dated 15.01.2010, whereby, petitioner's application was admitted.
>
> 6. Mr. Vohra says that, perhaps, the matter can be remanded to the Interim Board, which is the successor of the AAR, for adjudication on the merits of the application.
>
> 7. Mr. Sunil Aggarwal, learned senior standing counsel, says that he will obtain instructions in the matter…."

2. Mr. Aggarwal, learned counsel appearing for the respondents,

on instructions submits that the respondents would have no objection in case the matter is remanded back to the Board for Advance Rulings ["**Board**"] for fresh adjudication.

3. As we read and go through the facts as encapsulated in our order of 07 December 2023, we find that undisputedly the application before the AAR had been admitted on 15 January 2010. It is that order which was subsequently reviewed by another Bench of the AAR purporting to base the same on a reading of Section 245R(2) of the Act.

4. Mr. Vohra points out that the aforesaid provision was clearly not applicable since no proceedings before any Assessing Authority insofar as the petitioner is concerned were pending at the relevant time. He also draws our attention to the view as taken by the AAR in **Hyder Consulting Ltd. vs. Commissioner of Income Tax** [1999 SCC Online AAR-IT 1] wherein it was held as under:-

> "**6.** At the time of hearing, counsel for the applicant stated that the reference made by the Government of Orissa was in terms of section 195(2) of the Income-tax Act which calls upon the Assessing Officer to determine the appropriate proportion of the payments chargeable to tax. The applicant is aggrieved that the Income-tax Officer (TDS), Bhubaneswar, has arrived at tax rate of 42.85 per cent. The application was made by the Government of Orissa on January 20, 1998, and has been pending ever since though the tax was being deducted at the aforesaid rate.
>
> **7.** It was argued by learned counsel that the matter may not be considered as a pending proceeding in terms of the proviso (a) to section 245R(2) as it is not the applicant who has referred the matter to the Income-tax Officer (TDS). Therefore, the matter was not pending in the applicant's case before any income-tax authority, and the applicant was within its right to come up before the authority. We agree that the application is maintainable since no application from the applicant itself is pending before the Department."

5. In view of the aforesaid and the stand as struck by the respondents, we allow the instant writ petition and set aside the order

dated 21 July 2015 passed by the AAR. The applications of the writ petitioner shall now stand restored to be considered by the Board afresh and in accordance with law.

6. Insofar as the proceedings under Section 148 of the Act are concerned and which form the subject matter of challenge of W.P.(C) 11756/2016, W.P.(C) 11780/2016, W.P.(C) 11785/2016, W.P.(C) 11786/2016 & W.P.(C) 12002/2016, the Section 148 notices dated 30.06.2010 and 27 March 2015 and the subsequent orders passed thereto would be placed in abeyance since the matter would stand revived before the Board in light of the remand.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 11, 2024/neha