$~10

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

\+ ITA 266/2024

PR. COMMISSIONER OF INCOME TAX (CENTRAL), GURUGRAM .....Appellant

Through: Mr. Sanjay Kumar, Ms. Monica Benjamin & Ms. Easha Kadian, Advs.

Versus

NECTAR LIFE SCIENCES LTD. .....Respondent

Through: Ms. Radhika Suri, Sr. Adv. with Mr. Abhinav Narang, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **14.01.2025**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 01.08.2022 (hereafter *the impugned order*) rendered by the Income Tax Appellate Tribunal (hereafter *ITAT*) in ITA No.761/Chd/2011 in respect of the assessment year (AY) 2006-07. The Revenue has projected the following question of law for consideration of this Court:

> "A. Whether in the facts and circumstances of the case and in law, the Hon'ble ITAT was right in dismissing the appeal of the revenue on the issue of taxability of dividend received by the assessee from its Sri Lankan Subsidiary in view of the provisions of sub-section 3 of Section 90 of the Income Tax Act, 1961 as well as in view of notification No. 91/2008 of CBDT?

2. The controversy involved in the present appeal relates to the taxability of the income received by the respondent (assessee) by way of dividend from its subsidiary company incorporated in Sri Lanka.

3. Mr. Sanjay Kumar, the learned counsel appearing for the Revenue referred to paragraph 41 of the impugned order which records that the

assessee had claimed exemption of the amount of dividend received from its Sri Lankan subsidiary company under Section 10(34) of the Act. He submits that Section 10(34) of the Act is inapplicable as it applies to the companies covered under Section 115-O of the Act, which in turn refers to domestic companies. He, however, does not dispute that the issue regarding taxability of dividend is in favour of the assessee by virtue of the decision of the Supreme Court in ***Deputy Commissioner of Income Tax v. Torqouise Investment & Finance Ltd.: [2008] 300 ITR 1***. He states that the said decision was rendered in the context of Indo Malaysian Double Taxation Avoidance Agreement, which is *pari materia* to the Indo-Sri Lankan Double Taxation Avoidance Agreement.

4. The learned senior counsel appearing for the assessee further submits that in subsequent assessment years (being AYs 2007-08 and 2008-09) the Revenue has accepted that the dividend from its Sri Lankan subsidiary company is not taxable and no addition in this respect has been proposed by the Assessing Officer in those years.

5. Since it is not disputed that the dividend received by the assessee from its Sri Lankan subsidiary company, is not taxable, no substantial question of law arises for consideration of this Court in the present appeal.

6. The appeal is accordingly dismissed.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 14, 2025

'gsr'

Click here to check corrigendum, if any