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

\+ W.P.(C) 17561/2022

HUAWEI INTERNATIONAL PTE LTD .....Petitioner

Through: Ms Kavita Jha, Sr. Advocate with Mr Himanshu Aggarwal, Advocate.

versus

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

Through: Mr Vipul Agrawal with Ms Sakshi Semwal and Mr Akshat Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

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

% **26.03.2025**

1. The petitioner has filed the present petition, *inter alia*, praying as under:

> "a) Issue a writ of certiorari or writ, order or direction in the nature of certiorari, or any other appropriate writ, order or direction under Article 226 / 227 of the Constitution of India quashing:
>
> (i) Notice dated 15.04.2021 issued under section 148 [as it existed prior to substitution vide Finance Act, 2021, w.e.f. 01.04.2021, and now deemed to be notice under section 148A(b)];
>
> (ii) Letter/ notice dated 27.05.2022 providing so-called "information" forming the basis of the impugned proceedings under section 148/148A, pursuant to the judgment of the Hon'ble Apex Court in the case of *Union of India vs. Ashish Agarwal [2022] 444 ITR 1 (SC)*;
>
> (iii) Impugned order dated 27.07.2022 passed under

section 148A(d) and consequential notice of even date issued under section 148 of the Act;

in the case of the Petitioner for assessment year 2014-15, and all actions/ proceedings consequential thereto."

2. The principal contention advanced by the petitioner is that the impugned order passed under Section 148A(d) of the Income Tax Act, 1961 [**the Act**] was beyond the period of limitation. However, the learned Senior Counsel appearing for the petitioner fairly states that the said issue does not arise in the present case. She, however, submits that the Revenue has proceeded on an erroneous premise that the income received by the assessee is chargeable to tax in India as royalty. She seeks leave to rely on the decision in the case of ***Engineering Analysis Centre of Excellence Pvt. Ltd. v. Commissioner of Income Tax & Anr. : (2021) 432 ITR 471 SC*** and on the strength of the said decision contends that the Revenue's stand is erroneous.

3. A draft assessment order has been passed treating the income of the petitioner as royalty and the petitioner had filed objections in this regard before the Dispute Resolution Panel, which have since been disposed of. The final assessment order dated 30.03.2024 has been passed under Section 143(3) read with Section 144C(13) of the Act. In the given circumstances, we do not consider it apposite to enter into the controversy whether the amounts received by the petitioner are chargeable to tax under the Act as royalty. Accordingly, the present petition is disposed of.

4. We clarify that all rights and contentions of the parties are reserved. We further direct that in the event the petitioner files an appeal before the Income Tax Appellate Tribunal, within a period of four weeks from date, the same would be considered on merits uninfluenced by the question of delay.

The interim orders passed by this court are also extended for a further period of four weeks.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 26, 2025/tr

Click here to check corrigendum, if any