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

\+ ITA 232/2025

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3

.....Appellant

Through: Mr. Ruchir Bhatia, SSC, Mr. Anant Mann, JSC and Mr. P. Gupta, JSC for appellant.

versus

TURNER BROADCASTING SYSTEM ASIA PACIFIC INC.

.....Respondent

Through: Mr. Rohan Khare and Mr. Priyam Bhatnagar, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% **04.08.2025**

CM APPL. 41244/2025 (Condonation of delay in re-filing)

1. For the reasons stated in the instant application, the delay of 1070 days in re-filing the above captioned appeal is condoned. The same is allowed.

2. The present application is disposed of.

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3. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 challenging the order dated 08.12.2021 in ITA No. 4325/DEL/2018 which is for the assessment year 2014-2015.

4. At the outset, Mr. Ruchir Bhatia submits that the issue in hand is covered by the judgment of this Court in respect of the very same assessee

for the assessment years 2020-21 and 2021-22, whereby, this Court has decided the ITA 76/2025 and ITA 77/2025, vide order dated 26.03.2025 by stating in paras 12 onwards as under:-

> *"12. It is material to note that in respect of the attribution of income which is chargeable to tax under the Act, the competent authorities of the United States of America and India had taken recourse to Mutual Agreement Procedure [MAP] whereby the issues regarding applicability of the DTAA were resolved by negotiations. Admittedly, the assessee had accepted the outcome of MAP in respect of the prior assessment years.*
> *13. There is no cavil that the nature of the revenue which is now sought to be taxed in AY 20-21 and AY 21-22 was similar to the revenue that was subject matter of MAP. It is correct that the issues determined under MAP are in relation to the specific assessment years and such determination cannot be extrapolated to other assessment years. However, the nature of income in the hands of the assessee remains the same. Undisputedly, the receipts in the earlier assessment years, which were subject of resolution under MAP, arise from the same agreement(s). In the given facts, this court cannot be oblivious to the fact that the Revenue had accepted income of the assessee as business income.*
> *14. Thus, in the peculiar facts of the present case, we are of the view that no substantial questions of law arise for consideration of this court.*
> *15. Accordingly, the present appeals are dismissed. However, we clarify that the wider question of law is left open to be decided in an appropriate case."*

5. For parity of reasons, in the peculiar facts of this case, we are of the view that the following substantial questions of law which have been projected by the appellant/Revenue do not call for consideration of this Court in this appeal.

> *"2.1 Whether in the facts and in the circumstances of the case*

and in law, the ITAT has erred in holding that the distribution revenue earned by the Assessee is not taxable as royalty under section 9(l)(vi) of the Act and Article 12 of the DTAA between India and the USA but is taxable as business income?

2.2 Whether on facts and in the circumstances of the case and in law, the Ld. ITAT is correct in determining the income of the assessee company in assessment year under consideration by following the resolution made under Mutual Agreement Procedure (MAP) in respect of earlier years in assessee's own case, even as the resolution under MAP is limited only to assessment years under consideration in MAP and does not apply to other assessment years in its own case, even under identical facts."

6. Accordingly, the present appeal is dismissed. However, we clarify that the wider question of law is left open to be decided in an appropriate case.

V. KAMESWAR RAO, J

VINOD KUMAR, J

AUGUST 04, 2025

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