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

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Date of Decision : 02.04.2025+ **ITA 541/2024****THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3**

.....Appellant

Through: Mr. Ruchir Bhatia, SSC; Mr. Anant
Mann, JSC with Mr. Pratyaksh and
Ms. Aditi Sabharwal, Advocates.

versus

SIX CONTINENTS HOTELS INC.

.....Respondent

Through: Mr. Manuj Sabharwal, Advocate.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning the order dated 10.04.2024 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No. 923/DEL/2020 captioned *Six Continents Hotels Inc. v. Assistant Commissioner of Income Tax-3(1)(2), International Taxation, New Delhi*. The said appeal was preferred by the respondent [**Assessee**] against an order dated 17.12.2019 passed by the Commissioner of the Income Tax (Appeal)-43, New Delhi [**CIT(A)**] in respect of Assessment Year [**AY**] 2016-17.

2. The Assessee had during the Financial Year [**FY**] 2015-16 received a sum of ₹ 28,63,07,265/- which comprised of marketing contribution of ₹9,39,39,599/-; Priority Club receipts amounting to ₹9,84,77,567/-; Reservation Contribution amounting to ₹5,03,12,004/-; and the Holidex fee



amounting to ₹4,35,78,095/- from various Indian hotels towards the centralised marketing and reservation related services.

3. The return filed by the Assessee for the AY 2016-17 was picked up for scrutiny and the proceedings culminated in an assessment order dated 12.02.2019. The Assessing Officer [AO] held that the amounts paid by the Indian hotels for marketing contribution and reservation fees were taxable as Royalty under the Act as well as under the India-USA Double Taxation Avoidance Treaty [the DTAA]. In the alternative, the AO held that the same would be taxable as Fees for Included Services under Section 9(1)(vii) of the Act as well as under Article 12(4)(a) and Article 12(4)(b) of the DTAA. Accordingly, the said receipts aggregating to ₹28,76,19,055/- were held as chargeable to tax under the Act.

4. The Assessee appealed the said decision before the CIT(A). The learned CIT(A) did not accept the Assessee's contentions that the receipts were not in the nature of Royalty and concluded that the said fees were in connection with grant of license for the brand for which separate fees was also charged. Accordingly, the CIT(A) concluded as under:

“5.5.10 It is therefore seen that the amount is clearly taxable as FIS being ancillary and subsidiary to the receipt of license, fee. The said service being ancillary and subsidiary do not require the make available concept and are taxable under article 12(4)(a) of the India US DTAA. It is also noted that the said services are taxable as FTS u/s 9 of the Income Tax Act. The section 9 clearly states that consideration for any service which maybe of the nature of marketing or consultancy services are taxable as FTS. The ancillary and subsidiary nature of services are referred to in the definition of royalty under the domestic legislation. The said services are therefore taxable as ancillary service within the definition of royalty under the Act also.”



5. Whilst the Revenue did not appeal the said decision, the Assessee carried the matter in appeal before the learned ITAT. The said appeal was allowed by the learned ITAT following the decision in the Assessee's case in the earlier assessment years. To be noted that the Assessee's contention that the receipts, as mentioned above, are not taxable by virtue of DTAA has been sustained for the past fifteen assessment years.
6. The present appeal was listed before this court on 26.11.2024 and this court had passed the following order:

“1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1963 (hereafter the Act) impugning an order dated 10.04.2024 (hereafter the impugned order) passed by the Income Tax Appellate Tribunal (hereafter the ITAT) in ITA No.923/Del/2020.

2. The Revenue has projected several questions. However, the learned counsel appearing for the Revenue has pressed question no.2.2 as set out in the memo of appeal, which is reproduced below:

“2.2 Whether the Ld. ITAT has erred in law by holding that the marketing and reservation contribution received is not taxable as Royalty under India-US DTAA ignoring the fact that activity of providing the services of marketing and computer Reservation Systems by the Assessee company is ancillary and subsidiary to the application or enjoyment of the right of operating hotel under the brand and there is no need for making available any technical knowledge, experience, skill, know how, or processes for the amount received by the assessee, which is in the nature of fees for included services?”

3. The learned counsel appearing for the Assessee submits that the issue involved in the present appeal is covered by several decisions of this Court, as well as the decision of the learned ITAT in Assessee's own case, which has been accepted by the Revenue. He has also drawn the attention of this Court to the finding of the



learned ITAT in the impugned order to the effect that a similar view, in the Assessee's own case in respect of earlier assessment years (AYs), has been accepted and not appealed by the Revenue. He has also handed over a tabular statement showing that no appeal was preferred in respect of the decision of the learned ITAT in respect of AYs 1997-98, 2002-03 to 2005-06 as well as AYs 2012-13 to 2015-2016. In addition, it is stated that the Assessing Officer had for the AYs 2002-03 and 2006-07 to 2011-12 accepted the Assessee's contention.

4. The learned counsel appearing for the Revenue seeks time to examine the decisions in the Assessee's own case in respect of previous AYs.

5. The learned counsel appearing for the respondent is also at liberty to file his written submissions along with the authorities relied upon with an advance copy to the learned counsel appearing for the appellant.

6. List on 12.12.2024.”

7. The learned counsel appearing for the Assessee submits that he has obtained instructions and the Revenue has not filed an appeal against the decisions of the learned ITAT for the earlier assessment years. Mr. Bhatia, the learned counsel appearing for the Revenue submits that the appeals are required to be filed before the Bombay High Court and his instructions are that the Revenue has already filed the appeals, however, the same have not been listed as yet.

8. As noted above, the principal question that is required to be addressed is whether the payments received by the Assessee on account of providing certain centralised services including marketing services and reservation services can be construed as fees for technical services as defined under Section 9(1)(vii) of the Act or Fees for Included Services as covered under Article 12(4)(a) of the DTAA. Admittedly, the said issue is covered in



favour of the Assessee and against the Revenue by several decisions of this court including *Director of Income Tax v. Sheraton International Inc.:* (2009) 313 ITR 267; *The Commissioner of Income Tax-International Taxation-3 v. Sheraton International LLC:* Neutral Citation: 2023:DHC:4261-DB; *The Commissioner of Income Tax-International Taxation-3 v. Westin Hotel Management LP:* ITA 213 of 2024 decided on 10.04.2024 and *The Commissioner of Income Tax-International Taxation-3 v. Shangri-La International Hotel Management Pte Ltd. :* ITA 532 of 2023 decided on 18.09.2023.

9. In the case of *The Commissioner of Income Tax-International Taxation-3 v. Radisson Hotel International Incorporated:* Neutral Citation: 2022:DHC:004791, this court had referred to the earlier decisions and dismissed the case holding that no substantial questions of law arise for consideration by this court. The present appeal must bear the same fate.

10. In view of the above, no substantial questions of law arise for consideration before this court. Thus, the appeal is dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 02, 2025/sms

[Click here to check corrigendum, if any](#)