$~106 and 107

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

\+ ITA 426/2025

\+ ITA 427/2025

COMMISSIONER OF INCOME TAX (EXEMPTIONS), DELHI

.....Appellant

Through: Mr. Abhishek Maratha, SSC, Mr. Apoorv Agarwal, Mr. Parth Samwal, JSCs and Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms. Muskaan Goel, Mr. Himanshu Gaur and Mr. Nischay Purohit, Advs.

versus

ERNET INDIA

.....Respondent

Through: Mr. Rohit Jain, Mr. Aniket D. Agrawal and Mr. Abhisek Singhvi, Advs.

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

O R D E R

% **17.09.2025**

CM APPL. 58662/2025 & CM APPL. 58663/2025 at ITA 426/2025.
CM APPL. 58664/2025 & CM APPL. 58665/2025 at ITA 427/2025.

1. For the reasons stated in the applications, the delay of 217 days in filing and 553 days in re-filing ITA no. 426/2025 and ITA no. 427/2025, is condoned.

2. The applications stand disposed of.

ITA 426/2025 and ITA 427/2025

3. This appeal lays a challenge to an order dated 27.01.2023 passed by

the Income Tax Appellate Tribunal (ITAT) in two appeals being ITA nos. 1309 and 1310/Del/2022, relating to Assessment Years 2016-17 and 2017-18, whereby the Tribunal has dismissed the appeals filed by the Revenue by stating in paragraphs 10 and 11 as under :

> *"10. We have heard the rival submissions of the parties and perused the records. It is observed that in Ahmedabad Urban Development Authority 's case (supra) , the Hon 'ble Supreme Court has discussed the case of the assessee before us in paras 206, 207 and 208 of their judgment. The Hon'ble Supreme Court observed in these paras as under:*
>
> > *"206 . ERNET is a not - for profit society , set up under the aegis of the Union Government. At one time, government functionaries, including the late President, APJ Abdul Kalam , were members, on account of their ex officio capacity. The objects of this assessee are to*
> >
> > > *"3.1. 1 To advance the cause of computer communication in the country in all its aspects and dimensions with a view to provide rapid nationwide development of the sector and technological and economic growth of the country.*
> > >
> > > *3.1.2 To develop, design, setup and operate nationwide state of the art computer communication infrastructure with international connectivity directed towards research and development, advancement of high quality, education create and host content, express creative and academic potential via intranet and intranet peer to peer connectivity among educational and research institutions in the country and the world and make available the communication infrastructure to users in academic research and development institutions, Govt organizations in line with national priorities. "*
> >
> > *207. ERNET's networks are a mix of terrestrial and satellite- based wide area network. It provides services through its 15 Points of Presence (PoPs) located across the country . All those are equipped to provide access to*

Intranet, Internet and Digital Library through trial leased circuits and radio links to the user institutions. The PoP at STPI Bengaluru provides Intranet and Internet access through Satellite. ERNET .provides, services, namely, Network Access Services , Network Applications Services, Hosting Services, Operations Support Services und Domain Registration Services under smet.tn, ac.tn, edu.tn & res.tn domains. Funded through government grants, its projects support educational networks and development of internet infrastructure in numerous other segments of society.

208. Having regard to the nature of ERNET's activities, it cannot be said that they are in the nature of trade, commerce or business , or service, towards trade , commerce or business . It has to receive fees, to reimburse its costs. The materials on record nowhere suggest that its receipts (in the nature of membership fee, connectivity charges , data transfer differential charges, and registration charges) are of such nature as to be called as fees or consideration functions ERNET performs are vital to the development of online educational business , trade or commerce , or service in relation to it. The functions ERNET performs are vital to the development of online educational and research platforms. For these reasons, it is held that the impugned judgment , which upheld the ITAT's order, does not call for interference ."

11. The judgement of the Hon 'ble Supreme Court in Ahmedabad Urban Development Authority (supra) has been followed by the Hon'ble Delhi High Court while sustaining the order (supra) of the Tribunal in assessee 's own case for AY 2012 - 13, 2013- 14 , 2014-15 and 2015- 16. Since the facts remain the same in AY 2016 - 17 and 2017 - 18 under consideration , respectfully following the decisions (supra) we hold that the appeals of the Revenue are devoid of any merits deserving rejection."

4. Mr. Apoorv Aggarwal has drawn our attention to Annexure A-6 which is a judgment of a coordinate Bench of this Court dated 19.12.2022. Two appeals filed by the Revenue being ITA 538/2022 and 539/2022 were decided, whereby the coordinate Bench by relying upon the judgment of

which reference has been made by the ITAT in the aforesaid order that is ***Assistant Commissioner of Income Tax (Exemptions) v. Ahmadabad Urban Development Authority (2022) 449 ITR 1 (SC)*** has dismissed the appeals filed by the Revenue.

5. For parity of reasons, we also dismiss these appeals filed by the Revenue in favour of the respondent assessee, as no substantial question of law arises for consideration.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 17, 2025

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