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

\+ ITA 145/2021 & CM APPL. 32801/2021

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2, DELHI ..... Appellant

Through Mr. Sanjay Kumar, Advocate with Ms. Easha Kadiyan, Advocate.

versus

PT LP DISPLAY INDONESIA ..... Respondent

Through Mr. Deepak Chopra, Advocate and Mr. Ankul Goyal, Advocate.

% Date of Decision: 21st September, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

The hearing has been done by way of video conferencing.

1. Present appeal has been filed challenging the order dated 20th October, 2020 passed by the Income Tax Appellate Tribunal [for short 'ITAT'] in ITA No. 1846/Del/2014 whereby the appeal of the respondent-assessee was allowed for Assessment Year 2005-06.

2. The questions of law proposed by the appellant-revenue in the present appeal are as under:-

A. *"Whether on facts and in the circumstances of the case, the Ld. ITAT erred in law in quashing the assessment proceedings in the case of assessee without appreciating the facts the assessee has a business connection in India under Section 9(1)(i) of the Income Tax Act, 1961 and has a PE, in the form of M/s L.G. Electronics India Ltd. under Article 5(1) & 5(2) of DTAA between India and Indonesia?*

B. *Whether on facts and in the circumstances of the case, the Ld. ITAT erred in law in holding that no income is attributable to the assessee PE in India?*

C. *Whether on facts and in the circumstances of the case, the Ld. ITAT erred in law in setting aside re-opening of assessment under Section 147 of the Act by the AO?"*

3. Learned counsel for the appellant states that the ITAT erred in holding that the re-opening of assessment under Section 147 of the Income Tax Act, 1961 (for short 'the Act') was bad in law. He submits that under Section 147 of the Act, it is well settled that at the time of re-opening what is required is the reasonable belief of the Assessing Officer ('AO') that income has escaped assessment and there is no requirement to establish actual escapement of income.

4. He states that the ITAT erred in relying upon the order dated 4th September, 2018 passed by Commissioner Income Tax (Appeal) [for short 'CIT(A)'] passed in the case of LG Electronics India Limited [for short 'LGEIL'] and the judgment dated 14th March, 2018 passed by the Supreme Court in ***Honda Motors Co. Ltd. V. SDIT in Civil Appeal Nos. 2833 to 2840 of 2018*** to hold that the basis for initiating reassessment proceedings was bad in law on the grounds that at the

time of formation of belief for initiating such proceedings on 30th March, 2011, the AO could not have the benefit of 'hindsight' i.e., the subsequent appellate order as well as the decision of Hon'ble Supreme Court.

5. Learned counsel for the appellant-revenue states that the ITAT erred in not appreciating that the total income of a person, who is a non-resident in terms of Section 5(2) of the Act to the extent it is received or deemed to be received in India, or accrued or arisen or deemed to have accrued or arisen in India is taxable in India. He states that Section 9(1) of the Act prescribes that all income accruing or arising, whether directly or indirectly through or from any business connection in India shall be deemed to accrue or arise in India. He further states that the ITAT erred in holding that the transactions between the assessee and LGEIL were at arm's length.

6. Admittedly, during the pendency of the present proceedings, the Supreme Court quashed another set of re-assessment proceedings initiated in the case of foreign AEs consequent to TDS survey conducted under Section 133A of the Act in the case of ***LGEIL*** and ***Honda Motors Co. Ltd.*** The Supreme Court in the case of ***Honda Motors Co. Ltd.*** being ***C.A No. 19659/2017*** had held that in view of the fact that the Dispute Resolution Panel had found that there is no Permanent Establishment ('PE') in India, the judgment of the Allahabad High Court was set aside and the appeals were allowed.

7. This proposition was also followed by the Supreme Court in Civil Appeal No.781/2018 in the case of L.G Group of Companies by virtue of which all the Special Leave Petitions (SLPs) filed by the

Associated Enterprises ('AEs') including the SLP filed by the PT LP Display Indonesia for the Assessment Year 2007-08 were allowed on the basis of finding of the Dispute Resolution Panel (DRP) that the AEs do not have PE in India.

8. In the present case also re-assessment proceedings under Section 147/148 of the Act had been initiated against the respondent-assessee vide notice dated 30th March, 2011 on the ground that all AEs of LG Korea had PE in India in the form of LGEIL. Admittedly, in one of the proceedings filed by the LGEIL challenging the order passed under Section 201(1) of the Act for Assessment Years 2005-06 to 2010-11, the CIT(A) vide consolidated order dated 4th September, 2018 held that none of the AEs, apart from LG Korea, had PE in India. The said order has not been appealed against by the Department and hence the finding has become absolute.

9. It is also not understood as to how the appellant-Revenue can contend that the respondent-assessee does not have PE in India for the purpose of 201 proceedings in the case of LGEIL but would have a PE as far as its own taxability is concerned for the same Assessment Year.

10. This Court is of the opinion that if the present appeal is entertained, it would amount to sitting in an appeal over the judgment and order passed by the Supreme Court in Civil Appeal No. 781/2018.

11. In fact, this Court is of the opinion that in view of subsequent events post issuance of re-assessment notice in the present case, namely, the Supreme Court judgment in Civil Appeal No. 781/2018, the proceedings initiated by the appellant-Revenue has become

infructuous and accordingly *ex debito justitiae*, it is the duty of the Court to take such action as is necessary in the interest of justice, which includes disposing of infructuous litigation [See: ***Shipping Corpn. of India Ltd. v. Machado Bros. and Ors., (2004) 11 SCC 168***].

12. Consequently, the present appeal raises no substantial questions of law. Accordingly, the appeal alongwith application being bereft of merit is dismissed.

13. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 21, 2021
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