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

+ ITA 456/2022

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3 AppellantThrough: Mr.Ruchir Bhatia, Sr.Standing
Counsel for the Revenue.

versus

STARWOOD HOTEL AND RESORTS WORLDWIDE INC.

..... Respondent

Through: Mr.Divyanshu Agrawal, Advocate.

Through: Date of Decision: 16th November, 2022**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMOHAN, J:**

1. Present Income Tax Appeal has been filed challenging the order dated 29th April, 2022 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2011/Del./2019 for the Assessment Year 2015-16.
2. Learned Counsel for the Appellant states that the ITAT has erred in holding that the entire payments received by the Assessee from its Indian Customers on account of Centralized Services viz. sales and marketing, loyalty programs, reservation service, technological service, operational services and training programs/human resources do not constitute 'Fee for

Technical Services' as defined under Section 9(l)(vii) of the Income Tax Act, 1961 (the 'Act') or 'Fee for included services' as defined under Articles 12(4) (a) of the Indo-US DTAA.

3. He submits that the ITAT has allowed the appeals of the Assessee following the judgement of this Court in *Director of Income Tax v. Sheraton International Inc (2009) 178 taxman 84 (Del)*. He, however, states that the said decision of this Court has not been accepted by the Revenue and an appeal has been preferred against the same, which is pending adjudication before the Supreme Court being CA No. 3094/2010.

4. Admittedly, this Court in *Sheraton International Inc.* (supra) has decided the issue involved in the present appeal in favour of the Assessee. The counsel for the Revenue has not brought anything on record to distinguish the facts of present case from the facts of *Sheraton International Inc.* (supra) case.

5. Also, this Court vide judgment dated 4th November, 2022 in ITA Nos. 434/2022 and 435/2022 dismissed the appeals of the Revenue arising out of the same common impugned order.

6. Though the judgment of this Court in *Sheraton International Inc.* (supra) has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in *Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359* and *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1*, the present appeal is covered by the judgment passed by the learned predecessor Division Bench in *Sheraton International Inc.* (supra).

7. Accordingly, no substantial question of law arises for consideration in the present appeal and the same is dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the aforesaid Civil Appeal.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

**NOVEMBER 16, 2022
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