2025:DHC:5343-DB

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

% *Date of Decision : 08.07.2025*

\+ **ITA 207/2025**

COMMISSIONER OF INCOME TAX
(INTERNATIONAL TAXATION)-1, NEW DELHI .....Appellant
Through: Mr Puneet Rai, SSC, Mr Ashvini Kumar, Mr Rishabh Nangia, Mr Gibran, JSCs and Mr Nikhil Jain, Ms Srishti Sharma and Mr Pratham Aggarwal, Advocates

versus

FUJITSU LIMITED .....Respondent
Through: Mr Prakash Kumar and Ms Rashmi Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

CM APPL. 39441/2025(condonation of delay)

1. For the reasons stated in the application, the delay of 19 days in filing the captioned appeal is condoned.

2. The application stands disposed of.

ITA 207/2025 & CM APPL. 39440/2025

3. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning an order dated

14.11.2024 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.2607/Del/2022 in respect of Assessment Year [**AY**] 2019-20.

4. The respondent [**Assessee**] is engaged in providing information technology support, maintenance support and software licensing services to various group entities including its Indian Associated Enterprises (AEs).

5. The Assessee – a tax resident of Japan – had preferred the aforesaid appeal [ITA no.2607/Del/2022] before the learned ITAT against the final assessment order dated 31.08.2022 passed under Section 143(3) of the Act. The controversy before the ITAT was confined to the taxability of an amount of ₹32,97,07,175/-, which was received by the Assessee in terms of an arbitral award. The Assessee had classified the same as 'income from business' and, therefore, the same was not taxable by virtue of the article 7 of the India-Japan Double Taxation Avoidance Agreement.

6. The Assessee had filed its return of income for the AY 2019-20 declaring total income of ₹27,96,72,140/- which was offered to tax at the rate of ten percent. The Assessee's return was selected for scrutiny. During the course of assessment, the Assessing Officer [**AO**] found that the Assessee had received a sum of ₹1,83,68,283/- from its Indian affiliate [Fujitsu India Private Limited]; ₹23,33,00,374/- from another Indian affiliate [Fujitsu Consulting India Private Limited]; and ₹35,77,10,665/- from Mizuho Bank Limited.

7. On 30.09.2021, the AO passed the draft assessment order assessing the income at ₹60,93,79,312/-, which included the aforesaid receipts, as the

business income of the Assessee for the AY 2019-20.

8. The Assessee filed its objection against the draft assessment order before the Dispute Resolution Panel [**DRP**]. The Assessee filed the evidence along with the detailed submission. Since the same had not been placed before the AO, the DRP remanded the matter to the AO for verification and for passing the speaking order. Pursuant to the aforesaid direction, the AO passed the final assessment order dated 31.08.2022. The AO confirmed the quantum of the assessment of the income, but altered the head of income in which the said income was assessed.

9. The AO held that the amount in question received by the Assessee was chargeable to tax under the head 'income from other sources'. The AO reasoned that the amount received by the Assessee in terms of the arbitral award could not be considered as business income.

10. The plain reading of the assessment order indicates that the AO has merely reproduced some of the submissions as articulated in the remand report filed before the DRP. A plain reading of the remand report indicates that the AO had reasoned that the Assessee did not qualify the attributes of "regularity, continuity, frequency, and volume", which are essential for business activities. He concluded that the Assessee's case was one of the "business with India" and not the case of "business in India".

11. As noted above, the Assessee filed an appeal against the said assessment order, which was allowed by way of the impugned order.

12. The ITAT found that the arbitral tribunal had rendered the arbitral

award in favour of the Assessee regarding its claim in respect of non-payment of dues for offshore supplies. Accordingly, the learned ITAT held that the said amount was required to be considered in the hands of the Assessee as income from business. The relevant extract of the impugned order is set out below:-

> "17. It is pertinent to note that the aforesaid Arbitral Award is liable for payment of stamp duty. The details of the same are enclosed in Page 183 of the Paper Book. We find that what assessee had got by way of Arbitral Award is for non-payment of dues for offshore supplies made. Hence it had to be construed only as business income of the assessee. It is further pertinent to note that the Learned Joint Commissioner of Income Tax, Range 1(3), International Taxation, Delhi while forwarding the Remand Report of the Learned Assessing Officer had also placed reliance on the decision of Mumbai Tribunal in the case of ACIT vs Ramona Pinto in ITA No. 582/Mum/2018. The Learned AR before us placed on record the decision of Hon'ble Bombay High Court reported in 156 taxmann.com 282 dated 8-11-2023 which reversed the decision of Mumbai Tribunal referred supra. Hence the decision relied upon by the Learned Joint Commissioner of Income Tax and by the Learned DR before us does not advance the case of the revenue. Accordingly, we hold that the principal portion of the compensation received pursuant to an Arbitral Award in the sum of Rs.32,97,07,175/- would have to be construed only as business income of the assessee as it arises out of contractual obligation of the business. Undisputably there is no PE for the assessee in India. Hence in view of Article 7 of India Japan Tax Treaty, the same would not be chargeable to tax in India.
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> 18. Now coming to the taxability of interest received on the compensation arising out of an Arbitral Award in the sum of Rs.2,80,03,480/-, though the assessee

> had voluntarily offered the same to tax in the return of income, the same, in our considered opinion, would not be chargeable to tax at all, in view of the decision of Hon'ble Supreme Court in the case of CIT vs Govinda Choudhary & Sons reported in 203 ITR 881 (SC) wherein it was held that such interest is only an accretion to the asesssee's receipts from the contracts. It is obviously attributable and incidental to the business carried on by it. The Hon'ble Supreme Court specifically made an observation in Para 6 of its order that interest can be assessed under the head "income from other sources" only if it cannot be brought within one or the other of the specific heads of charge. We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to it de hors the business which is carried on by it. In our view, the interest payable to it certainly partakes of the same character as the receipts for the payment of which it was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the assessee under the award and treated as "income from other sources". Respectfully following the same, the interest portion of Rs.2,80,03,480/- also had to be treated as business income of the assessee and in the absence of PE in India, the same would not be chargeable to tax in India as per Article 7 of India Japan Tax Treaty.
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> 19. Hence we have no hesitation to hold that the compensation received by the assessee pursuant to an Arbitral Award in the total sum of Rs.35,77,10,655/- would have to be construed only as business income of the assessee and in the absence of any PE of the assessee in India, as per Article 7 of the India Japan Tax Treaty, the same would not be chargeable to tax in India. Accordingly, the Ground Nos.3 to 4.1. raised by the assessee are allowed."

13. There is no dispute that the amount awarded to the Assessee was against it claims for payment of supplies, which was accepted by the

Arbitral Tribunal. Thus, undisputedly, the receipts in the hands of the Assessee were inextricably linked to its business and were on account of its business activities. The Assessee had, essentially, raised a claim for non-payment of amounts due for supplies. And, the said claim was accepted.

14. In the aforesaid view, we find no infirmity with the decision of the ITAT in finding that the receipts in the hands of the Assessee were in the nature of income from business in its hands. And, the question whether the same were taxable had to be considered bearing in mind Article 7 of the India-Japan DTAA.

15. In view of the above, no substantial question of law arises for consideration of this Court. The appeal is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 08, 2025
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Click here to check corrigendum, if any