



§~37 & 38

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

% *Date of decision: 31.08.2023*

+ **ITA 489/2023 and CM APPL. 44806/2023**

+ **ITA 490/2023 and CM APPLs. 44809-10/2023**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL  
TAXATION -1 ..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing  
Counsel.

versus

AMADEUS IT GROUP SA ..... Respondent

Through: Ms Kavita Jha with Mr Udit Naresh,  
Advocates.

**CORAM:**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**HON'BLE MR JUSTICE GIRISH KATHPALIA**

[Physical Hearing/Hybrid Hearing (as per request)]

**RAJIV SHAKDHER, J.: (ORAL)**

**CM APPL. 44809/2023 in ITA 490/2023**

1. Allowed, subject to just exceptions.

**CM APPL. 44806/2023 in ITA 489/2023** [*Application filed on behalf of  
the appellant seeking condonation of delay of 170 days in re-filing the  
appeal*]

**CM APPL. 44810/2023 in ITA 490/2023** [*Application filed on behalf of  
the appellant seeking condonation of delay of 170 days in re-filing the  
appeal*]

2. These are applications filed by the appellant/revenue seeking



condonation of delay in re-filing the appeal.

3. According to the appellant/revenue, there is a delay of 170 days in re-filing the appeal.

4. Counsel for the respondent/assessee says that she would have no objection if the delay is condoned.

5. For the reasons given in the applications, the delay in re-filing the appeals is condoned.

6. The applications are disposed of.

**ITA 489/2023**

**ITA 490/2023**

7. These are appeals concerning Assessment Year (AY) 2017-18 [in ITA 489/2023] and AY 2019-20 [in ITA 490/2023].

8. These appeals seek to assail a common order dated 13.09.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

9. Mr Ruchir Bhatia, learned senior standing counsel who appears on behalf of the appellant/revenue, informs us that the questions of law proposed in these appeals are also similar.

10. Therefore, for disposal of the aforementioned appeals, the questions of law as set out in ITA 489/2023 are extracted hereafter:

*"2.1 Whether in the facts and in the circumstances of the case, the Ld. ITAT erred in law in adopting a figure of 15% for determination of profit attributable to the PE of the Assessee in India?"*

*2.2 Whether in the facts and in the circumstances of the case the Ld. ITAT erred in law in allowing the appeal of the assessee on the issue of income from royalty under the head income from Alten Suite?"*

*2.3 Whether in the facts and in the circumstances of the case*



*the Ld. ITAT erred in law in determination of booking fee received by the assessee is taxable as business income and not under the head Royalty?*

*2.4 Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in attributing only 15% of the revenue as income accruing/arising in India without appreciate the legal position that there is no legal basis to attribute profit to the PE under Article 7 of India-Spain DTAA on the basis*

*of function performed, asset used or risk assumed?*

*2.5 Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in not appreciating the fact and law that FAR analysis as a basis of attribution of profit to PE have been rejected by India by making specific reservation which is stated in Para 1.1 of reservation of non-OECD Countries in OECD Model Tax Convention?*

*2.6 Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in not appreciating the fact that allocation of income under Article 9 between AEs is different from attribution of profit to PE under Article 7 as the former applies FAR analysis whereas the latter is not?*

*2.7 Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in not appreciating the legal position that Indian DTAA's adopt formulary apportionment for determination of Arm's Length profit of the PE by following 'relevant business entity' approach instead of "functionally separate entity approach and the IT rule 10 is accordingly designed to determine the profit attributable to the PE?"*

11. Mr Bhatia does not dispute the fact that the proposed questions 2.1 to 2.3 are covered by the decision rendered on 04.05.2023 in a bunch of appeals, one of which is numbered as ITA 254/2023, titled ***The Commissioner of Income Tax-International Taxation-1 v. Amadeus IT Group SA*** 2023: DHC: 4326-DB.



12. Having regard to the said order, no substantial question of law arises insofar as the aforementioned proposed questions are concerned.
13. As regards the remaining proposed questions i.e., those set out in 2.4 to 2.7, Mr Bhatia says that Functions, Assets and Risks Analysis [in short, “FAR analysis] should not have been applied in ascertaining attribution of profit.
14. According to Mr Bhatia, the statutory authorities have taken recourse to rule 10 of the Income Tax Rules, 1962 [in short, “Rules”].
15. On being queried, Mr Bhatia does concede that this aspect was not urged before the statutory authorities. Since this aspect was not argued before the statutory authorities, we are of the opinion that in these appeals, the questions of law as proposed in paragraphs 2.4 to 2.7 cannot be entertained.
16. Consequently, the above-captioned appeals are closed.
17. Parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**AUGUST 31, 2023 / tr**