$~45

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

% *Date of decision: 10.09.2026*

Date of uploading: 17.09.2026

\# **CNR No. DLHC010364002023**

\+ W.P.(C) 12114/2023 & CM APPL. 47591/2023

ELSEVIER BV .....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Aditya Vohra & Mr. Tanmay Dhakras Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar & Mr. Rishabh Nangia, JSCs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

REPORTABLE

DINESH MEHTA, J. (*ORAL*)

1. The petitioner is a company incorporated in Netherlands and having tax residence of Netherlands. During the Assessment Year under consideration, the petitioner received subscription fee from Indian subscribers for providing host of information stored on its database on subject/topics relating to Science & Technology and Health Sciences.

2. The petitioner moved an application under Section 245Q(1) of the Income Tax Act, 1961 (hereinafter referred to as '*the Act of 1961*') before the Authority for Advance Rulings *(hereinafter referred to as 'AAR')* in May 2013 seeking adjudication of a question about the taxability of its receipts from Indian subscribers of its E-books and E-journals.

3. The AAR, vide its order dated 03.02.2020, passed under Section 245R

of the Act of 1961 held that the amount which the petitioner had received from Indian customers cannot be termed as royalty as per Article 12 of the India-Netherlands Double Taxation Avoidance Agreement (hereinafter referred to as *'DTAA'*) and thus is not taxable as per the DTAA. The AAR held that such receipts were in the nature of business income.

4. While holding so, the AAR had issued a direction that the Assessing Officer (hereinafter referred to as *'AO'*) shall ascertain as to whether the petitioner-assessee has a Permanent Establishment (PE) in India, obviously, in order to determine as to whether the income which the petitioner has earned in India is liable to tax under the Act of 1961 as per Article 7 of DTAA.

5. The petitioner had filed its return of income for AY 2016-17 on 30.03.2017, declaring 'nil' income. Petitioner's case was selected for scrutiny and an assessment order under Section 143(3) of the Act of 1961 was passed on 24.11.2021.

6. During the course of assessment proceedings, the AO had issued various questionnaires and elicited host of information from the petitioner and came to a conclusion that the petitioner did not have any permanent establishment in India.

7. The matter did not rest here and the petitioner came to receive a notice dated 31.03.2023 under Section 148A(b) of the Act of 1961, *inter-alia*, alleging that he has received the information that the remitter, Syngene International Limited has remitted a sum of Rs.1,91,58,479/- as professional fee, yet not deducted tax on those remittance and the petitioner having received such amount has not filed Return of Income, thus, income has escaped assessment.

8. The petitioner filed a reply to the notice and submitted that the

petitioner's assessment had been made under Section 143(3) of the Act and a categorical finding about absence of Permanent Establishment has been recorded and that in petitioner's own case the AAR had held (vide order dated 03.02.2020) that the receipts in question are not royalty and are in the nature of business income, therefore, no tax under the Act of 1961 read with DTAA is attracted. The petitioner also raised objection about the notice being time barred as there had been no suppression or concealment by the petitioner.

9. Regardless of such objection, the Assessing Officer was not satisfied with the petitioner's contention and rejected petitioner's objection cursorily, vide order dated 28.04.2023 passed under Section 148A(d) of the Act and issued notice of even date under Section 148 of the Act of 1961.

10. Mr. Ajay Vohra, learned Senior Counsel appearing for the petitioner submitted that the impugned proceedings under Section 148 of the Act of 1961 are clearly void without jurisdiction, besides being arbitrary. He submitted that since the AAR vide its order dated 03.02.2020 had recorded a categorical finding that the amount received by the petitioner in relation to subscription of e-magazine, e-article, etc. was not royalty and was in the nature of business income, hence, such receipts cannot be treated to be royalty.

11. He further submitted that as per Section 245R of the Act of 1961, the findings of the AAR are binding on the AO and the AAR had clearly directed the AO to see as to whether the petitioner is having a Permanent Establishment in India, and pointed out that during the course of scrutiny assessment, the AO had not only issued questionnaire but had also gathered relevant information and recorded a categorical finding (in his order dated 24.11.2021) that the petitioner does not have any Permanent Establishment.

He vehemently argued that on any of the two counts, the AO cannot allege that there has been escapement of income.

12. Learned Senior Counsel argued that the proceedings not only suffer from change of opinion, but are also fundamentally void and a colourable exercise of powers under Sections 147/148 of the Act of 1961, available with the AO.

13. Mr. Puneet Rai, learned Senior Standing Counsel, on the other hand, submitted that during the course of subsequent proceedings (for AY 2020-21), the AO found that the petitioner has a permanent establishment as the operations are carried out by an entity known as RELX India – a company which is acting as an agent of the petitioner-company and on the basis of the nature of the transaction undertaken by said RELX India, petitioner is having dependent agent PE in India.

14. Learned Senior Standing Counsel for the respondent further argued that while passing order under Section 143(3) of the Act of 1961, the AO has not recorded any finding about existence of PE in India and therefore, the proceedings in question have rightly been initiated against the petitioner.

15. Heard learned counsel for the parties and perused the material.

16. Indisputably, the amount which the petitioner company had received from Indian subscriber has been held not to be royalty by the AAR. While doing so, the AAR had also categorically held that such receipts are business income and in absence of any permanent establishment, the same cannot be subjected to tax under the Act of 1961. The order of the AAR did not end here; the Authority had simultaneously directed the AO to conduct an inquiry in relation to existence of permanent establishment in India. It will not be out place to reproduce relevant/operative part of the order dated 03.02.2020

passed by the AAR:

> *"54. In view of foregoing the questions raised in the Application are answered as under:*
>
> *1. The receipt by the applicant from the Indian subscribers and customers for e-books/e-journals/e-articles is not taxable as 'Royalty' as per Article 12 of the Double Tax Avoidance Agreement (the DTAA) but is in the nature of 'Business Income'.*
> *2. Assessing Officer may ascertain whether Permanent Establishment (PE) exists in India or not.*
> *3. The Indian subscribers are not required to withhold any tax on the payment made to the applicant under section 195 of the Act."*

17. That apart, not only the petitioner's case was selected for scrutiny assessment during the course of the proceedings under Section 143(3) but the AO had also conducted detailed inquiry and had seemingly recorded a finding in third line of page 129 of the paper book (internal page 4 of the assessment order).

18. A perusal of the order dated 24.11.2021 passed under Section 143(3) of the Act of 1961 for very same Assessment Year shows that the assessing officer has assessed the petitioner at returned income. While doing so, he has not dilated upon or recorded a finding about the existence of petitioner's PE in India. But if the petitioner's reply dated 23.04.2021 (Annexure F) is taken into account, it leaves no manner of doubt that pointed questions relevant for existence of PE were put to the petitioner and it had given detailed explanation/reply. A simple look at paragraph nos.15, 16, 17, 18, 19 and 20 of the reply (which contains corresponding questions as well) demystify any such doubt that whether inquiry about PE was made by the AO or not.

19. Hence, even if one finds some substance in what Mr. Puneet Rai has

contended that the inscription “The receipts are held to be in the nature of business income and in absence of PE not taxable in India” is prone to doubt, and it may be reproductions of AAR’s finding, because apart from this line the assessment order dated 24.11.2021 does not contain any finding or observation about the existence of PE. On ultimate analysis, it transpires that after inquiry, the AO did not find existence of any Permanent Establishment in India.

20. Be that as it may. Since there was direction by the AAR and the most important issue which was required to be examined by the AO in the proceedings under Section 143(3) of the Act of 1961 was, with regards existence of PE, even if for the sake of argument it is assumed that AO had failed to record such a finding, he himself is to be thanked. He cannot undertake the exercise under Section 148 of the Act of 1961 for his own fault, folly or failure, because the same would fall foul to the scope of Section 148 of the Act of 1961 and hit at the root of basic fabric of tax adjudication *viz*, certainty and finality of the assessment proceedings.

21. In any case, the notice under Section 148 of the Act of 1961 is also liable to be quashed as the AO has invoked extended period of limitation (beyond four years), in spite of the fact that there is no concealment or failure on the part of the assessee to disclose true and correct facts. All the facts, including nature of subscription and the existence of agent, namely, Syngene International Limited was very much in the knowledge of the AO, which were duly disclosed by the petitioner and discussed by the AO in the scrutiny assessment. The invocation of extended period of limitation was thus fundamentally void because, the jurisdiction fact “failure on the part of the assessee” was absent.

22. That otherwise also, the impugned notice is liable to be quashed on the ground of limitation contemplated in Section 149(1)(b) of the Act of 1961, as the six-year window under the said section expired on 31.03.2023, whereas the subject notice under Section 148 came to be issued only on 28.04.2023. Moreover, the impugned notice does not satisfy the pre-condition provided in the first proviso to Section 147 which was in force at the time of the relevant assessment year, according to which unless there is failure or omission on the part of the assessee to disclose fully and truly all material facts, no action can be taken after the expiry of four years from the relevant assessment year.

23. In the instant case, the facts including nature of subscription and the existence of agent, namely, Syngene International Limited was very much in the knowledge of the AO, and the same were duly disclosed by the petitioner and discussed by the AO during the scrutiny assessment. The invocation of extended period of limitation was thus fundamentally void because, the jurisdiction fact "failure on the part of the assessee" was absent. The relevant provisions are reproduced as under:

> ***"Section 147***
> ***Income escaping assessment.***
> ***147.*** *If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*
> ***Provided*** *that where an assessment under sub-section (3)*

of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Section 149
Time limit for notice.
149. *(1) No notice under section 148 shall be issued for the relevant assessment year,—*
(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);
(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;
(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.
Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.
(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.
(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance

of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012."

24. For the reasons aforesaid and in view of the discussion foregoing, we are of the view that the proceedings initiated against the petitioner under Section 148 of the Act of 1961 are illegal, arbitrary and beyond the scope of Section 148 of the Act of 1961. The notice dated 28.04.2023 is hereby quashed.

25. While allowing the writ petition, we hereby make it clear that we have quashed the notice only on the jurisdictional ground(s) and not recorded any finding or observation about existence or otherwise of Permanent Establishment of the petitioner in India. The AO and the petitioner shall, therefore, be free to take their respective stance and independent view of the issue, if such issue crops up in any other subsequent year.

26. Petition stands allowed in the aforesaid terms. Pending application also stands disposed of.

DINESH MEHTA
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

SEPTEMBER 10, 2026/*sid*