



% 19.11.2009

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Present: Mr. M.S. Syali, Sr. Advocate with Ms. Mahua Kalra, Adv. for the appellant.
Ms. Rashmi Chopra, Adv. for the respondent.

+ CM No.16601/2009

For the reasons stated in this application, delay in refiling the appeal is condoned.

CM stands disposed of.

ITA No. 1227/2009

Mr. M.S. Syali, learned Senior counsel appearing for the appellant, has drawn our attention to Paras 19 and 20 of the judgment of the Income Tax Appellate Tribunal, which is appealed against. He points out that in Para 19, the Tribunal has quoted the provisions of Clause 2 of Article 24 of the Double Taxation and Avoidance Agreement between India and U.K. and even highlighted the portion as per which, an amount not exceeding that portion of Indian tax which such income bears to the entire income chargeable to Indian tax is refundable. After extracting the aforesaid Clause in Para 19, in Para 20, the Tribunal has observed that the case of the appellant herein is covered by Article 24 of the DTAA and in view thereof "the credit may have to be given but in an



amount not exceeding that portion of Indian tax, which such bears to the entire income chargeable to Indian tax". His submission is that even after making these observations, the discussion on this aspect abruptly comes to an end and the Tribunal proceeds to discuss the effect of the order passed under Section 154 of the Income Tax Act in the subsequent Para 21.

Without commenting upon the other aspects dealt with by the Tribunal, we would like the Tribunal to deal with this aspect specifically and take the observations made in Para 22 to its logical conclusion. In spite of what is stated in Para 20, if the appellant is not entitled to the refund under Article 24 of the DTAA of the Act, no reasons for that is given. For this reason alone, we remit the case back to the Tribunal to decide this aspect conclusively giving its reason.

Party shall appear before the Tribunal on 17.12.2009.

This appeal is disposed of in the aforesaid terms.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

November 19, 2009

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