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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **ITA 125/2023**

THE COMMISSIONER OF INCOME TAX, INTERNATIONAL  
TAXATION-1, NEW DELHI ..... Appellant  
Through: Mr Puneet Rai, Sr. Standing Counsel.

versus

CARGILL INCORPORATED ..... Respondent  
Through: Mr Kamal Sawhney, Advocate.

**CORAM:**  
**HON'BLE MR JUSTICE RAJIV SHAKDHER**  
**HON'BLE MS JUSTICE TARA VITASTA GANJU**

**ORDER**

% **06.03.2023**

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

**CM APPL. 10704/2023**

1. Allowed, subject to just exceptions.

**ITA 125/2023 and CM APPL. 10705/2023** [*Application filed on behalf of the appellant seeking condonation of delay of 198 days in filing the appeal*]

2. This appeal concerns Assessment Year (AY) 2014-15.

3. The appellant/revenue seeks to assail the order dated 16.02.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

4. The short issue raised on behalf of the appellant/revenue is: whether Corporate IT recharge services should be treated as royalty?

5. The Tribunal dismissed the appellant/revenue's appeal by placing

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reliance on an earlier decision rendered by it concerning AY 2002-03 to 2008-09.

6. Although, Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that appeals were not preferred to this court on account of tax impact, Mr Kamal Sawhney, who appears on behalf of the respondent/assessee, refutes this assertion.

6.1. It is Mr Sawhney's assertion that in certain AYs the tax impact was above the threshold limit prescribed for lodging appeals to this court.

7. In any event, Mr Rai fairly states that for AYs 2009-10 to 2014-15, the CIT(A) had rendered a decision in favour of the assessee on the very same issue, and the appellant/revenue did not carry the matter in appeal to the Tribunal.

8. In our opinion, whether or not additions should have been made with regard to the issue at hand, is, essentially, a question of fact. Having regard to the history in the earlier AYs, we are of the view that, apart from anything else, the principle of consistency would apply, as enunciated by the Supreme Court in the judgment rendered in *Radhasoami Satsang v. Commissioner of Income Tax* 193 ITR 321.

9. In these circumstances, we find no good reason to interfere with the impugned order passed by the Tribunal.

9.1. In any event, as noted above, no substantial question of law arises for our consideration.

10. The appeal is, accordingly, closed.

11. Although there is a huge delay of 198 days, which, ordinarily, we would not have condoned; however, given the fact that we have examined



the matter in light of the submissions made before us by the counsel for the parties, the delay is condoned.

12. The application is, accordingly, disposed of.

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**MARCH 6, 2023/ tr**

*Click here to check corrigendum, if any*

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