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

+ ITA 127/2024

THE COMMISSIONER OF INCOME TAX -

INTERNATIONAL TAXATION -3 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC with  
Ms. Deeksha Gupta, Adv.

versus

THR INFRASTRUCTURE PTE LTD. .... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with  
Mr. Abhisek Singhvi, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR**

**KAURAV**

**ORDER**

**20.02.2024**

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**CM APPL. 10384/2024 (11 days delay in filing) & 10385/2024 (88 days delay in re- filing)**

1. These are applications filed by the appellant seeking condonation of 11 days delay in filing and 88 days delay in re-filing. For the reasons stated in the applications, the delay of 11 days in filing and 88 days in re-filing are condoned.

2. Applications stand disposed of.

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3. Notice. Since the respondent is duly represented, no further steps need be taken.

4. Prima facie we find ourselves unable to sustain the impugned order dated 12 May 2023 bearing in mind the fact that it is ex facie evident that the Income Tax Appellate Tribunal [“ITAT”] has failed to accord due consideration to the facts which had been noticed by the



Assessing Officer [“AO”] in its order dated 29 July 2022.

5. We consequently admit this appeal on the following questions of law:

1.1 Whether the ITAT has erred in law, by holding that the scheme of arrangement employed by the assessee is not in the tax avoidance through Treaty Shopping Mechanism?

1.2 Whether the ITAT has erred in law by holding that limitation of benefit clause of Article 3 of 2005 Protocol to India-Singapore Double Taxation Avoidance Agreement [“DTAA”] is not applicable as assessee was listed in Singapore Stock Exchange when in fact it is RHT Health Trust (of which assessee is totally owned subsidizing) which is listed and not the assessee?

1.3 Whether the ITAT has erred in law, by holding that the interest on the Compulsory Convertible Debentures [“CCDs”] has been rightly taxed by the Revenue as per the Treaty in the earlier and now the Revenue cannot turn around and deny the benefit of the Treaty in case of sale CCDs ignoring that doctrine of res judicata does not apply to income tax laws?

6. Let the matter be called again on 25.04.2024.

**YASHWANT VARMA, J**

**PURUSHAINDRA KUMAR KAURAV, J**

**FEBRUARY 20, 2024/kk**