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

+ **ITA 140/2023**

**THE COMMISSIONER OF INCOME TAX -INTERNATIONAL
TAXATION -2** Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

THE BANK OF TOKYO -MITSUBISHI UFJ LTD..... Respondent

Through: Mr Nikhil Ranjan, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

% **10.03.2023**

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

CM APPL. 11388/2023 [*Application filed on behalf of the appellant
seeking condonation of delay of 19 days in filing the appeal*]

1. This is an application moved on behalf of the appellant/revenue, seeking condonation of delay in filing the appeal.
2. According to the appellant/revenue, there is delay of 19 days.
3. Having regard to the period of delay, we are inclined to condone the same.
4. The delay is, accordingly, condoned.
5. The application is disposed of.

CM APPL. 11389/2023 [*Application filed on behalf of the appellant
seeking condonation of delay of 240 days in re-filing the appeal*]

6. This is an application moved on behalf of the appellant/revenue. Via the application, the appellant/revenue seeks condonation of delay in re-filing the appeal.

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7. According to the appellant/revenue, there is delay of 240 days.

7.1 The impugned order passed by the Income Tax Appellate Tribunal [in short, “Tribunal”] is dated 16.09.2019. Mr Ruchir Bhatia, senior standing counsel, who appears on behalf of the appellant/revenue, says that since the court’s working was disrupted from March 2020 on account of COVID-19, much time was lost.

8. For the reasons given in the application, we are inclined to condone the delay.

8.1 It is ordered accordingly.

9. The application is disposed of.

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10. This appeal concerns Assessment Year (AY) 2007-2008.

11. Mr Bhatia points out that in another AY concerning the respondent/assessee, the revenue’s appeal has been admitted.

12. The core issue which arises for consideration in the present appeal is: whether the Tribunal erred in law and on facts, in deleting the addition amounting to Rs. 80,07,24,582/-, against the interest received by head office/foreign branches of the respondent/assessee on External Commercial Borrowings (ECBs) extended to Indian borrowers?

13. Since other appeals have been admitted, *inter alia*, on this very issue, we frame the following questions of law for our consideration:

(i) Whether the Tribunal erred in deleting the addition amounting to Rs.80,07,24,528/- against interest received by head office/foreign branches on ECBs extended to Indian Borrowers?



(ii) Whether, in the facts and circumstances of the case, the Tribunal erred in not appreciating that the interest under Section 234D of the Income Tax Act, 1961 [in short, “the 1961 Act”] had been correctly computed by the Assessing Officer, since the amount refundable under Section 143(1) of the 1961 Act, exceeded the amount to be refunded upon regular assessment?

14. Mr Bhatia says that he will file the record of the case made available to the statutory authority before the next date of hearing.

15. We may note that Mr Nikhil Ranjan, who appears on behalf of the respondent/assessee, says that the respondent/assessee, as per his instructions, has taken recourse to the provisions of the Direct Taxes Vivad Se Vishwas Act, 2020 [in short, “the 2020 Act”].

16. Mr Ranjan will inform the court on the next date of hearing whether the application made by the respondent/assessee, has been accepted by the concerned authority under the 2020 Act.

17. List the above-captioned appeal on 10.07.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 10, 2023 / tr

[Click here to check corrigendum, if any](#)