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

\+ ITA 146/2024

PR.COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr. Sanjeev Menon, Jr.SC for Mr. Zoheb Hossain, Sr.SC.

versus

AGRICULTURE INSURANCE COMPANY OF INDIA PVT LTD ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 29.02.2024

CM APPL 12452/2024 (condonation of delay)

1. This is an application filed by the appellant seeking condonation of 636 days' delay in re-filing the present appeal.

2. For the reasons stated in the application, the delay of 636 days in re-filing the appeal is condoned.

3. Application is disposed of.

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4. Notice. Although the respondent is stated to have been placed on advance notice, none has appeared on its behalf when the matter was called. We consequently, request Mr. Menon, learned counsel appearing for the appellant to take appropriate steps for service upon the respondent through all permissible modes including via approved courier service.

5. Prima facie, we find merit in the contentions addressed by Mr. Menon, who contends that the Income Tax Appellate Tribunal

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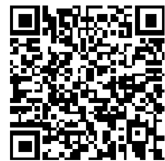

["**ITAT**"] has clearly erred in holding in favour of the assessee ignoring the undisputed position that the income from investments made was firstly received by the assesssee itself.

6. He has, in this connection, drawn our attention to the following pertinent observations as rendered by the Supreme Court in **CIT v. Sitaldas Tirathdas** [(1961) 41 ITR 367]:

> "16. These are the cases which have considered the problem from various angles. Some of them appear to have applied the principle correctly and some, not. But we do not propose to examine the correctness of the decisions in the light of the facts in them. In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable. In our opinion, the present case is one in which the wife and children of the assessee who continued to be members of the family received a portion of the income of the assessee, after the assessee had received the income as his own. The case is one of application of a portion of the income to discharge an obligation and not a case in which by an overriding charge the assessee became only a collector of another's income. The matter in the present case would have been different, if such an overriding charge had existed either upon the property or upon its income, which is not the case. In our opinion, the case falls outside the rule in Bejoy Singh Dudhuria case [(1933) 1 ITR 135] and rather falls within the rule stated by the Judicial Committee in P.C. Mullick case [(1938) 6 ITR 206] ."

7. Proceeding then to the question of deletion of the additions made on account of disallowance of expenses under Section 14A of

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the Income Tax Act, 1961 ["**Act**"], it was the submission of Mr. Menon, that Section 14A of the Act commences with a *non obstante clause* and consequently, the expenses disallowed thereunder would not be covered by Section 44 of the Act. It is also his submission that for the purposes of those expenses being claimed under Section 44 of the Act, it would also have to be considered whether the expenditure was incurred in connection with business income.

8. We consequently, admit the appeal on the following questions of law:

> A. Whether, in facts and circumstances of the case and in law, the ITAT erred in deleting addition made on account of profit & gains earned out of investment on corpus funds whilst disregarding the provision of Section 44 of the Act read with clause (a) to (c) of Rule 5 of the First Schedule whereby it is categorically stated that any gain or loss on realization of investment should be added to the Income of the assessee?
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> B. Whether, in facts and circumstances of the case and in law, the ITAT erred in deleting the addition made on account of disallowance of expenses under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962?

9. Let the matter be called again on 07.05.2024.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 29, 2024/p

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