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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 167/2023**

THE PR. COMMISSIONER OF INCOME
TAX -CENTRAL -1

..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing
Counsel.

versus

PEPSICO INDIA HOLDING PVT. LTD.

..... Respondent

Through: Ms Priya Tandon, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **21.03.2023**

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

CM Appl.13549/2023

1. Allowed, subject to just exceptions.

CM Appl.13550/2023*[Application filed on behalf of the appellant seeking
condonation of delay of 250 days in re-filing the appeal]*

2. This is an application moved on behalf of the appellant/revenue
seeking condonation of delay in re-filing the appeal.

2.1 According to the appellant/revenue, there is a delay of 250 days.

3. Ms Priya Tandon, who appears on behalf of the respondent/assessee,
does not oppose the prayer made in the application.

4. The delay is, accordingly, condoned.

5. The application is disposed of, in the aforesaid terms.

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6. This appeal concerns Assessment Year (AY) 2008-09.
7. Broadly, there are three issues which arise for our consideration:
 - (i) Whether the disallowance made under Section 14A of the Income Tax Act, 1961 [in short, the “Act”] can exceed the exempt income?
 - (ii) Whether the disallowance made under Section 14A of the Act can be added to book profit under clause (f) of Explanation 1 appended to Section 115JB(2) of the Act?
 - (iii) Whether depreciation can be allowed on capitalized non-compete fee?
8. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that insofar as the first issue involving Section 14A of the Act is concerned, the Income Tax Appellate Tribunal [in short, the “Tribunal”] for AYs 2005-06 to 2007-08 has ruled against of the appellant/revenue.
 - 8.1 Mr Bhatia also informs us that the appeal preferred to this court by the appellant/revenue was closed.
9. Therefore, even according to Mr Bhatia, only the second and third issues, indicated above, arise for consideration.
10. Accordingly, notice shall issue, limited to the second and third issue.
 - 10.1 Ms Priya Tandon accepts notice on behalf of the respondent/assessee.
11. List the matter on 18.09.2023.

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12. Counsel for the parties will file their written submissions, not exceeding three pages each, at least five days before the next date of hearing.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 21, 2023/pmc

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

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