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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **ITA 168/2023**

THE PR. COMMISSIONER OF INCOME TAX -7..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing  
Counsel.

versus

TUTICORIN PORT ROAD COMPANY LTD. .... Respondent

Through:

**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.13591/2023** [*Application filed on behalf of the appellant seeking condonation of delay of 245 days in re-filing the appeal*]

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

1.1 According to the appellant/revenue, there is a delay of 245 days.

2. Having regard to the reasons given in the application, the delay is condoned.

3. The application is, accordingly, disposed of.

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4. This appeal is preferred against the order dated 28.02.2020 passed by the Income Tax Appellate Tribunal [in short, the "Tribunal"] concerning Assessment Year (AY) 2006-07.

5. Broadly, the facts of the case show that in the second round, the

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Tribunal *via* the order dated 09.05.2016 had remitted the matter to the Assessing Officer (AO).

5.1 To be noted, in the first round, addition amounting to Rs.30,06,70,521/- had been made by the AO. The respondent/assessee had claimed that since this was expense incurred toward work-in-progress, it had been capitalized.

5.2 Upon remand, the AO passed an order under Section 143(3), read with Section 254 of the Income Tax Act, 1961 [in short, the “Act”] dated 08.12.2017.

5.3 The AO scaled down the addition to Rs.3,05,64,085/-. The rationale provided by the AO was that no supporting evidence had been provided by the respondent/assessee for the sum which was sought to be added to the returned income of the respondent/assessee.

5.4 Being aggrieved, the respondent/assessee preferred an appeal to the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”]. The CIT(A), *via* order dated 18.03.2019, sustained the addition made by the AO.

5.5 This led to the respondent/assessee preferring an appeal with the Tribunal.

6. The Tribunal returned a finding of fact that the amount which was disallowed and thereupon added by the AO i.e., Rs.3,05,64,085/- was not debited to the profit and loss account of the respondent/assessee as it always constituted work-in-progress.

7. The Tribunal held that since the expense had been incurred by the respondent/assessee at the pre-operative stage, it could not be treated as



income of the respondent/assessee, and hence was, indisputably, a capital expenditure.

8. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, cannot but accept that the addition of Rs. Rs.3,05,64,085/- could not have been made to the returned income of the respondent/assessee.

8.1 Mr Bhatia says that, perhaps, the proper course of action that the AO should have followed was to reduce the amount from the block of assets, and not add the amount in issue to the returned income of the respondent/assessee.

9. That said, Mr Bhatia cannot but accept that the basis for every such proceeding is the AO's order. At this stage, the appellant/revenue cannot change course and therefore, this submission cannot be accepted.

10. Having regard to the aforesaid, we find no infirmity either in the reasoning or the conclusion reached by the Tribunal.

11. According to us, no substantial question of law arises for our consideration. The appeal is, accordingly, closed.

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**MARCH 21, 2023/pmc**

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

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