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

+ **ITA 172/2023**

**COMMISSIONER OF INCOME TAX
(EXEMPTIONS) DELHI**

..... Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel.

versus

NATIONAL INTERNET EXCHANGE OF INDIA..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

22.03.2023

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

**CM Appl.13598/2023 [Application filed on behalf of the appellant seeking
condonation of delay of 212 days in re-filing the appeal]**

1. This is an application filed on behalf of the appellant seeking condonation of delay in re-filing the appeal.
2. According to the appellant/revenue, there is a delay of 212 days.
3. For the reasons given and having regard to the period of delay involved in the application, we are inclined to condone the delay.
- 3.1 It is ordered accordingly.
4. The application is disposed of.

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5. This appeal concerns Assessment Year (AY) 2014-15.

6. The core issue which arises for consideration in the present appeal, according to the appellant/revenue is:

(i) Whether the charitable activities carried out by the respondent/assessee constitute trade, commerce and business?

7. According to the appellant/revenue, these are not charitable activities and thus, fall within first proviso to Section 2(15) of the Income Tax Act, 1961 [in short, the “Act”] and hence, exemption under Section 11 of the Act is not available.

8. It is not disputed that this very issue has been decided in favour of the respondent/assessee and against the appellant/revenue by this court *via* the judgment dated 30.04.2019 rendered in ITA 133/2019, titled ***Commissioner of Income Tax –Exemption vs. National Internet Exchange of India.***

8.1 This judgment concerns AY 2009-10.

8.2 It is evident from the record that insofar as AY 2010-11 is concerned, even in that case, the judgment has been rendered in favour of the respondent/assessee. This judgment is dated 12.02.2019 and passed in ITA 145/2019.

9. We are told that a Special Leave Petition has been filed qua the aforesaid judgments rendered by the coordinate bench of this court, which have been converted into Civil Appeals and are pending adjudication.

10. For this purpose, our attention has been drawn to Annexure-A/5 (Colly).



11. Accordingly, the appeal is closed as no substantial question of law arises for our consideration.

12. Needless to state, in case the appellant/revenue were to succeed in the pending Civil Appeals before the Supreme Court, it will have liberty to approach the court for reopening the appeals.

13. The Registry is directed to dispatch a copy of the order passed today to the respondent/assessee.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 22, 2023/pmc

Click here to check corrigendum, if any

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