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

+ **ITA 186/2023**

+ **ITA 187/2023**

+ **ITA 188/2023**

PR. COMMISSIONER OF INCOME TAX -7 Appellant
Through: Mr Puneet Rai, Sr Standing Counsel.

versus

VERIZON COMMUNICATIONS INDIA PVT. LTD..... Respondent
Through: Mr Rajeev Mishra, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **28.03.2023**

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

CM Appl.15085/2023 in ITA 186/2023 [*Applications filed on behalf of the appellant/revenue seeking condonation of delay of 288 days in re-filing the appeal*]

CM Appl.15086/2023 in ITA 187/2023 [*Applications filed on behalf of the appellant/revenue seeking condonation of delay of 285 days in re-filing the appeal*]

CM Appl.15087/2023 in ITA 188/2023 [*Applications filed on behalf of the appellant/revenue seeking condonation of delay of 286 days in re-filing the appeal*]

1. These are the applications filed on behalf of the appellant/revenue seeking condonation of delay.
2. According to the appellant/revenue, the period of delay involved in the above-captioned appeals is 288 days [ITA 186/2023], 285 days [ITA 187/2023] and 286 days [ITA 188/2023].

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3. Mr Rajeev Mishra, who appears on behalf of the non-application/respondent, does not oppose the prayer made in the applications.

4. The delay is, accordingly, condoned. The applications are disposed of.

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5. These appeals concern Assessment Years (AY) 2010-11 [ITA 186/2023], 2015-16 [ITA 187/2023] and 2013-14 [ITA 188/2023].

6. The Income Tax Appellate Tribunal [in short, the “Tribunal”], *via* the common impugned order dated 20.10.2021, has ruled in favour of the respondent/assessee on issues which arise for consideration before us.

6.1 The Tribunal, it appears, has relied upon its own judgment rendered in AY 2011-12.

7. We are informed by Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, that an appeal under Section 260A of the Income Tax Act, 1961 [in short, “Act”] has been lodged with this Court challenging the Tribunal's order concerning AY 2011-12.

7.1 We are told by Mr Rai that in that case, Diary no.1190971 has been allocated by the Registry.

8. There are only two issues on which these appeals founded:

- (i) First, whether the Tribunal has erred in deleting the additions amounting to Rs.11,14,74,058/-, on account of disallowance under Section 80IA of the Act?



(ii) Second, whether the Tribunal has committed an error in deleting the additions amounting to Rs.72,09,30,047/-, on account of disallowance under Section 40(a)(i) of the Act?

9. The disallowance has been made as the respondent /assessee has not deducted tax at source under Section 194J of the Act.

10. According to the AO, the payments made to the respondent/assessee were royalty in terms of Explanation appended to Section 9(1)(vi) of the Act.

11. *Prima facie*, according to us, this issue is covered by a judgment of the Supreme Court rendered in *Engineering Analysis Centre of Excellence (P.) Ltd. Vs. Commissioner of Income Tax and Anr*, (2022) 3 SCC 321.

12. Since Mr Rai says that the appeal for AY 2011-12 is likely to be listed shortly, list the above-captioned appeals on 19.05.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 28, 2023/pmc

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

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