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

+ **ITA 207/2023**

PR. COMMISSIONER OF INCOME TAX -CENTRAL -1

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Ms Priya Sarkar, Jr.
Standing Counsel.

versus

SHAHI EXPORTS PRIVATE LIMITED

..... Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

11.04.2023

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

CM APPL. 17033/2023

1. This is an application filed 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 201 days.

2. Issue notice to the non-applicant/respondent *via* all modes, including e-mail.

3. List the above-captioned application on 17.08.2023.

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4. This appeal concerns Assessment Year (AY) 2016-2017.

5. The issue which arises for consideration is: whether Specified Domestic Transactions (SDT) come within the purview of the transfer pricing regime.

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6. The Income Tax Appellate Tribunal *via* the impugned judgment dated 17.01.2022 has taken the position, that since clause (i) of Section 92BA of the Income Tax Act, 1961 [in short, “the Act”] was removed from the statute without any saving clause, the entire proceedings carried out by the statutory authorities *qua* transfer pricing would collapse.

7. We may note, that Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, has pointed out that the insertion of Explanation 3 *via* Finance Act 2022 has been made with retrospective effect to Section 40(a)(ii) of the Act. Mr Bhatia says, that the said provision has been made retrospective with effect from 01.04.2005.

8. The second issue which arises for consideration is, whether the Tribunal was correct in allowing deduction *qua* education cess. In this regard, Mr Bhatia says that Explanation 3 as inserted by Finance Act, 2022 which is appended to Section 40a(ii) of the Act would be relevant.

9. The third issue which arises for consideration, according to Mr Bhatia, is the deduction which has been allowed by the Tribunal under Section 80(i)(a) of the Act. The Tribunal has directed the Assessing Officer to calculate the deduction, based on the rate charged by the concerned electricity board from its consumers.

10. Insofar as the first issue is concerned, Mr Bhatia says that this issue also arises in another appeal filed by the revenue i.e., ITA 164/2023 in which notice was issued on 20.03.2023, and made returnable on 17.08.2023.

11. Accordingly, list the captioned appeal on 17.08.2023.

12. The notice issued in the application for condonation of delay will be accompanied by the order passed today.



13. Mr Bhatia informs us, that insofar as the judgment of the Karnataka High Court in Texport Overseas Pvt. Ltd. [ITA 352/2018] is concerned, an appeal is pending in the Supreme Court. The judgment of the Karnataka High Court was rendered on 12.12.2019.

13.1 In case there is any decision of the Supreme Court *qua* the said judgment, the same will be placed before us, on the next date of hearing.

14. 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

APRIL 11, 2023 / tr

Click here to check corrigendum, if any