



\$~101

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

+ ITA 214/2024

MIDWAY EXIM PVT LTD Appellant

Through: Mr. Aditya Kumar Garg, Adv.

versus

INCOME TAX OFFICER Respondent

Through: Ms. Madhavi Shukla, Ms. Priya Sarkar, JSCs and Mr. Sudarshan Roy, Adv for Mr. Shlok Chandra, SSC for Revenue.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

% **15.04.2024**

CM APPL. 22007/2024 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

CM APPL. 22008/2024 (05 days delay in refiling)

1. Bearing in the mind the disclosures made, the delay of 05 days in re-filing the appeal is condoned.

2. The application shall stand disposed of.

ITA 214/2024

3. Notice. Since the respondent is duly represented, no further steps need be taken.

4. We take note of the decision rendered by the Supreme Court in **Assistant Commissioner of Income Tax And Another vs. Hotel**



Blue Moon [(2010) 3 SCC 259]. It is in the aforesaid backdrop that the appellant-assessee assails the view taken by the Income Tax Appellate Tribunal [‘ITAT’] by contending that in the absence of a notice under Section 143(2) of the Income Tax Act, 1961 [‘Act’] having been issued, the proceedings referable to Section 147 of the Act would fail. Matter requires consideration.

5. We accordingly admit the appeal on the following question of law:-

A. Whether the ITAT made a serious error of law in not deleting the impugned addition, without considering the fact that in the present case the Assessing Officer has passed the assessment order and Commissioner of Income Tax (Appeals) confirming the same without overruling the appellant’s pointed contention that no notice under Section 143(2) of the Act during the pendency of assessment proceedings was ever issued or served upon the appellant?

6. List on 01.08.2024.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 15, 2024/RW