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

+ **ITA 38/2023 & CM Nos.2669-70/2023**

COMMISSIONER OF INCOME TAX (INTERNATIONAL  
TAXATION)-2

..... Appellant

Through: Ms Easha Kadian, Adv. for Mr  
Sanjay Kumar, Sr. Standing Counsel.

versus

M/S MITSUI AND CO.

..... Respondent

Through: Mr Ved Jain and Mr Nischay, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**ORDER**

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**20.01.2023**

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

**CM No.2669/2023**

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 150 days.

2. Mr Ved Jain, who appears on behalf of the respondent/assessee, says that he does not oppose the prayer made in the application.

3. Accordingly, the delay is condoned.

4. The application is disposed of.

**CM No.2670/2023**

5. Allowed, subject to just exceptions.

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6. A request for accommodation is made on behalf of Mr Sanjay Kumar, who appears on behalf of the appellant/revenue.

6.1 Mr Jain, who appears on behalf of the respondent/assessee, does not oppose the request for accommodation.

7. The record reveals, that this matter concerns Assessment Year (AY) 2009-2010.

8. The Income Tax Appellate Tribunal [in short, “Tribunal”] in the impugned order dated 04.01.2022 has adverted to its earlier decision pertaining to AYs 2006-2007 to 2008-2009. Based on its earlier decision for the said years, it has ruled in favour of the respondent/assessee.

9. Broadly, the Tribunal has concluded that even if MITSUI India Pvt. Ltd. (MIPL) is held to be a Dependent Agent Permanent Establishment (DAPE) of the respondent/assessee, no income arising in India could be attributed to the respondent/assessee.

10. At this stage, we are informed by Mr Jain, that in AY 2005-2006, the coordinate bench of this Court, following an earlier decision dated 12.10.2017 passed in ITA No.902/2009, titled *Director of Income Tax v. MITSUI & Co. Ltd.* has ruled in favour of the respondent/assessee.

11. List the matter on 31.01.2023.

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**JANUARY 20, 2023/**

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

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