



\$~85

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

+ ITA 468/2024

THE PR COMMISSIONER OF INCOME
TAX-4 NEW DELHI

.....Appellant

Through: Mr. Shlok Chandra, SSC With
Ms. Priya Sarkar, Ms. Madhavi
Shukla, JSCs, Mr. Madhav
Gawri & Mr. Sushant Pandey,
Adv.

versus

M/S HESPERA REALTY PVT. LTD.Respondent

Through: Mr. Aniket D. Agrawal, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **29.08.2024**

CM APPL. 49577/2024 (Ex.)

Allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 49575/2024 (6 Days Delay in filing) & 49576/2024 (213 Days Delay in Refiling)

Bearing in mind the disclosures made the delay of 6 days in filing and 213 days in refiling the appeal is condoned.

Applications stand disposed of.

ITA 468/2024

1. Having heard Mr. Chandra, learned counsel appearing for the appellant, we take note of the following conclusions which have been rendered by the Commissioner of Income Tax (Appeals) [“CIT(A)”]:

“8.6 The argument taken by the AO, in view of first proviso to section 10(38), that the income by way of long term capital gain of



a company shall be taken into account in computing the book profit u/s 115JB and therefore exemption u/s 10(38) cannot be allowed to the appellant, in my view is not correct. The proviso only makes it mandatory that irrespective of any LTCG being exempt u/s 10(38), the same shall be included while computing the book profit u/s 115JB. It is not the other way round that once such income is included in computing book profit u/s 115JB, the same becomes ineligible for exempt u/s 10(38).”

2. It is in the aforesaid context that the Income Tax Appellate Tribunal [“**Tribunal**”] has proceeded to affirm the view as expressed, bearing in mind the plain language in which the Proviso to Section 10(38) of the Income Tax Act, 1961 [“**Act**”] stands couched.

3. We are presently also not apprised of whether Long Term Capital Gains [“**LTCG**”] would be liable to be excluded while computing book profits under Section 115JB of the Act.

4. In order to enable Mr. Chandra, learned counsel, to address further submissions, let this matter be called again on 01.10.2024.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 29, 2024/kk