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

+ **ITA 491/2023**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL  
TAXATION -3 ..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing  
Counsel.

versus

SIEMENS MOBILE COMMUNICATION SPA ..... Respondent

Through: Mr Deepak Chopra, Advocate.

**CORAM:**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**HON'BLE MR JUSTICE GIRISH KATHPALIA**

**ORDER**

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**31.08.2023**

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

**CM APPL. 45023/2023**

1. Allowed, subject to just exceptions.

**CM APPL.45022/2023** [*Application filed on behalf of the appellant seeking condonation of delay of 24 days in filing the appeal*]

**CM APPL.45024/2023** [*Application filed on behalf of the appellant seeking condonation of delay of 400 days in re-filing the appeal*]

2. These are applications filed by the appellant/revenue seeking condonation of delay in filing and re-filing the appeal.

3. According to the appellant/revenue, there is a delay of 24 days in filing and 400 days in re-filing the appeal.

4. Counsel for the respondent/assessee says that he would have no objection if the delay is condoned.

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5. For the reasons given in the applications, the delay in filing and re-filing the appeal is condoned.

6. The applications are disposed of.

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7. *Prima facie*, it appears that no question of law arises for our consideration as the Income Tax Appellate Tribunal [in short, “Tribunal”] *via* order dated 30.09.2019 appears to have returned findings of the fact regarding the following issues:

(i) The respondent/assessee has no Permanent Establishment [in short, “PE”] in India.

(ii) Respondent/assessee has no business connection in India.

(iii) The use of software cannot constitute royalty.

8. Faced with this, Mr Ruchir Bhatia, learned senior standing counsel who appears on behalf of the appellant/revenue says that he would like to place the subject agreement on record and file brief submissions as well.

8.1 Leave in that behalf is granted.

8.2 Mr Deepak Chopra, who appears on behalf of the respondent/assessee will do likewise.

9. List the appeal on 17.11.2023.

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**AUGUST 31, 2023 / tr**

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