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

+ **ITA 509/2022**

PRINCIPAL COMMISSIONER OF INCOME TAX-04..... Appellant
Through: Mr Abhishek Maratha, Sr Standing
Counsel.

Versus

M/S MICROSOFT INDIA (R ANDD) PVT LTD Respondent
Through: Mr Nageshwar Rao, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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06.12.2022

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

CM APPL.52444/2022

1. Allowed, subject to the appellant filing legible copies of the annexures, at least three days before the next date of hearing.

ITA 507/2022&CM APPL.52423/2022*[Application filed on behalf of the appellant seeking condonation of delay in refiling the appeal]*

2. The short issue which arises for consideration in the above-captioned appeal is: whether the rent received by the respondent/assessee should be treated as composite rent for letting out building, furniture and fixtures, as also equipment?

ITA 507/2022

1/3



2.1 The record seems to reveal, that the respondent/assessee, in the revised return, had claimed the rent received from the subject building as “income from other sources”.

3. Unfortunately, the appellant/revenue has not placed on record, the entire record, in particular, the lease agreement.

4. Mr Abhishek Maratha, who appears on behalf of the appellant/revenue, is directed to place the entire record before the Court, which will include the lease agreement; *albeit*, in electronic form.

5. We may note, that the Income Tax Appellate Tribunal [in short “Tribunal”] has ruled in favour of the respondent/assessee, and has reached a conclusion that rent received by the respondent/assessee was composite rent, and hence would fall under Section 56 of the Income Tax Act, 1961 i.e., income received from other sources.

6. Furthermore, counsel for the respondent/assessee, in support of his submission, has *inter alia*, relied upon the judgment of the Supreme Court in ***Sultan Brothers (P) Ltd vs Commissioner of Income-Tax*** (1964) 5 SCR 807.

6.1 In addition thereto, the respondent/assessee has also relied upon the judgments of this Court in ***Garg Dyeing & Processing Industries vs. Assistant Commissioner of Income Tax*** (2013) 212 Taxman 160 (Delhi) and ***Jay Metal Industries (P.) Ltd. vs. Commissioner of Income-tax-V***, (2017) 249 Taxman 450 (Delhi).

7. List the matter on 20.01.2023.



8. Counsel for the parties will file their written submissions, not exceeding three pages each, at least three days before the next date of hearing.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 6, 2022/pmc

Click here to check corrigendum, if any

ITA 507/2022

3/3