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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

% **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?

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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.

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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

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