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

+ **ITA 575/2023**

PR. COMMISSIONER OF INCOME TAX-7, DELHI

..... Appellant

Through: Mr Sunil Agarwal, Sr. Standing
Counsel with Mr Shivansh B. Pandya
and Mr Utkarsh Tiwari, Advocates.

versus

PALIWAL INFRASTRUCURE PRIVATE LTD..... Respondent

Through: Mr Somil Agarwal with Mr Dushyant
Agarwala and Mr Prateek Bhati,
Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

ORDER

% **11.10.2023**

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

CM APPL. 52814/2023

1. Allowed, subject to just exceptions.

**CM APPL. 52813/2023 [Application filed on behalf of the appellant
seeking condonation of delay of 1321 days in re-filing the appeal]**

2. This is an application filed by the appellant/revenue seeking
condonation of delay in re-filing the appeal.

3. According to the appellant/revenue, there is delay of 1321 days in re-
filing the appeal.

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4. Issue notice.

4.1 Mr Somil Agarwal accepts notice on behalf of the respondent/assessee.

5. Reply will be filed within the next three weeks.

5.1 Rejoinder thereto, if any, will be filed at least five days before the next date of hearing.

6. List the above-captioned application on 12.01.2024.

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7. Counsel for the respondent/assessee says that the issue that arises for consideration is covered by the judgment of the coordinate bench rendered in *Principal Commissioner of Income Tax and Anr. v. Bhushan Steel Ltd. and Anr.*, (2015) 94 CCH 0335 DelHC.

8. Mr Sunil Agarwal, learned senior standing counsel, who appears on behalf of the appellant/revenue, contends to the contrary.

9. Mr Agarwal says that he would also like to place on record the judgment of the Tribunal which was relied upon in the impugned order i.e., the judgment rendered in ITA No. 502/Del2012, titled *ACIT v. Vireet Investment Pvt. Ltd.*

10. The point in issue is whether the Tribunal was right in holding that no objection could be raised under Explanation 1, Clause (f) of Section 115JB with regard to expenditure incurred on earning exempt income. The income earned by the respondent/assessee is concededly exempt under Section 10(2A) of the Income Tax Act, 1961 [in short, “the Act”]?



11. The rationale adopted in the *Bhushan Steel Ltd.* case is that the expenditure incurred in earning exempt income is disallowable under the provisions of Section 14A, read with Rule 8D(2)(ii) of the Income Tax Rules, 1962 [in short, “1962 Rules”].

12. We may note in this particular case, the counsel for the respondent/assessee points out that the disallowable expenditure has been quantified by taking recourse to Rule 8D(2)(ii) of the 1962 Rules.

12.1 This aspect of the matter will be examined on the next date of hearing.

13. List the matter on 12.01.2024.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 11, 2023 / tr

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