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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 594/2023**

PR. COMMISSIONER OF INCOME TAX -7 Appellant

Through: Mr Puneet Rai, Sr Standing Counsel
with Mr Ashvini Kumar and Mr
Rishabh Nangia, Advs.

versus

PUNJAB NATIONAL BANK LTD (SUCCESSOR OF ERSTWHILE
ORIENTAL BANK OF COMMERCE) Respondent

Through: Mr Rajat Navet, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

% **20.10.2023**

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

CM Appl.55123/2023

1. Allowed, subject to just exceptions.

CM Appl.55111/2023 [*Application moved on behalf of the
appellant/revenue seeking condonation of delay of 07 days in filing the
appeal*]

2. This is an application moved on behalf of the appellant/revenue
seeking condonation of delay in filing the appeal.

2.1 According to the appellant/revenue, there is a delay of seven (07)
days.

3. Having regard to the period of delay involved, we are inclined to
condone the delay.

3.1 It is ordered accordingly.

4. The application is disposed of in the aforesaid terms.

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5. This appeal concerns Assessment Year (AY) 2016-17.
6. Via the instant appeal, the appellant/revenue seeks to assail the order dated 31.03.2023 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
7. The appellant/revenue has proposed the following questions of law for consideration by this court:

“A. “Whether on the facts and circumstances of the case and in law Hon’ble ITAT erred in deleting the addition of Rs.5,99,00,000/- made u/s 14A r.w. rule 8D of the Act only on following the decision of Hon’ble Supreme Court in case of Maxopp Investment Vs CIT by ignoring the fact that the assessee earned exempt income of Rs.11,59,04 ,869 /- during the year and the provisions u/s 14A were mandatory provisions to arrive at correct real income, it was necessary to apportion the expenditure between taxable and non taxable income?”

B. Whether on the facts and circumstances of the case and in law Hon’ble ITAT erred in allowing 100% depreciation of Rs.12,40,84,777 claimed by the assessee on temporary erections as against 20% and 10% for less than 180 days allowed by the AO that the erection and fixtures mentioned above have longer life than one year and of enduring benefit to the assessee company?”

C. Whether on the facts and circumstances of the case and in law Hon’ble ITAT as well as CIT(A) erred in deleting the addition of Rs.81,44,33,541/- made by the AO with respect to loss on shifting of securities from AFS/HTS category to HTM category and failed to appreciate that the loss claimed by the assessee on such transfer is merely notional loss which does not exist ?

D. Whether on the facts and circumstances of the case Hon’ble ITAT is legally justified in deleting the disallowance of Rs.2153.02 cr u/s 36(1)(vii) by ignoring first proviso as well as clarificatory provision of Explanation 2 to section 36(1)(vii)?

E. Whether on the facts and circumstances of the case Hon’ble ITAT erred in deleting additions made u/ s 115JB without appreciating that MAT provision is also applicable on Banking company vide explanation 3 of Section 115JB of the Act by the Finance Act, 2012 w.e.f. 01.04.2013?”



8. Mr Puneet Rai, who appears on behalf of the appellant/revenue, does not dispute the fact that out of the proposed questions of law, question numbers (A) to (D) are covered by a decision rendered by this court dated 13.09.2023 in a bunch of appeals, the lead appeal being ITA 521/2023, titled ***Pr. Commissioner of Income Tax vs. Oriental Bank of Commerce (now merged with Punjab National Bank Ltd)***.

8.1 The said appeals concern AYs 2014-15, 2015-16 and 2013-14.

9. We may note that during the said AYs, admittedly, the proposed question (E) was not raised by the appellant/revenue.

10. Therefore, having regard to the principle of consistency, in our view, proposed question no. (E) cannot be considered in the aforementioned AY i.e., AY 2016-17.

11. In our view, no substantial question of law arises for consideration by this court.

12. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 20, 2023/pmc

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

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