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

+ **ITA 792/2023**

THE COMMISSIONER OF INCOME TAX –  
INTERNATIONAL TAXATION -3

..... Appellant

Through: Mr Ruchir Bhatia, Senior Standing  
Counsel.

versus

ZEBRA TECHNOLOGIES ASIA PACIFIC  
PET. LTD.

..... Respondent

Through: Mr Ajay Vohra, Senior Advocate  
with Dr Shashawat Bajpai and Mr  
Mahir Khanna, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE GIRISH KATHPALIA**

**ORDER**

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**20.12.2023**

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

**CM APPL. 66315/2023** [*Application filed on behalf of the appellant  
seeking condonation of delay of 90 days in re-filing the appeal*]

1. This is an application moved on behalf of the appellant/revenue,  
seeking condonation of delay in re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 90 days in re-  
filing the appeal.

2. Mr Ajay Vohra, learned senior advocate, who appears on behalf of the  
respondent/assessee, says that he does not oppose the prayer made in the  
application.

3. Accordingly, the delay is condoned.

4. The application is disposed of.

ITA 792/2023

Page 1 of 3



### **ITA 792/2023**

5. This appeal concerns Assessment Year (AY) 2017-18.

6. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 28.02.2023, passed by the Income Tax Appellate Tribunal [in short “Tribunal”].

7. The Tribunal has set aside the order passed by the Commissioner of Income Tax (CIT) dated 25.03.2022, passed under Section 263 of the Income Tax Act, 1961 [in short “Act”].

8. One of the issues that arises for consideration is: whether the respondent/assessee has indulged in treaty abuse? The CIT has concluded that there has been treaty abuse by the respondent/assessee.

8.1 In this regard, reference has been made to the holding company i.e., Zebra Jersey Holding Ltd. located in Jersey, which is a tax haven. Concededly, the ultimate holding company, i.e., Zebra Technologies India Pvt. Ltd. is located in the US.

9. Mr Vohra has emphasized that the respondent/assessee is a tax resident of Singapore and has been, accordingly, issued the Tax Residency Certificate (TRC).

9.1 According to Mr Vohra, the appellant/revenue cannot look beyond the TRC. It is submitted that the respondent/assessee does not have a Permanent Establishment (PE) in India.

10. Furthermore, Mr Vohra says that the issue concerning treaty abuse was not put to the respondent/assessee in the course of proceedings carried out by the CIT.

11. Given this submission, we would like Mr Ruchir Bhatia, learned



senior standing counsel, who appears on behalf of the appellant/revenue, to place on record the order sheets concerning the proceedings carried out by the CIT.

11.1 Furthermore, liberty is granted to Mr Bhatia to place before the court the materials which, according to him, are relevant for the disposal of the instant appeal.

12. Needless to add, copies of the same will be furnished to Mr Bajpai, Advocate, who appears along with Mr Vohra, for the respondent/assessee.

13. List the above-captioned matter on 01.03.2024.

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**DECEMBER 20, 2023**

*MS*

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