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

% ***Date of decision: 07.02.2023***

+ **ITA 71/2023**

PR. COMMISSIONER OF INCOME TAX-1 Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel.

versus

M/S ATHENA ENERGY VENTURES PVT. LTD..... Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

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

RAJIV SHAKDHER, J.: (ORAL)

CM No.5866/2023*[Application filed on behalf of the appellant seeking
condonation of delay of 180 days in re-filing the appeal]*

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

2.1 There is a delay of 180 days.

3. The reason given is that certain information was required from the
Income Tax Department to remove the defects.

3.1 Although the reason is not satisfactory, given the fact that the
impugned order was passed around the time when Corona Virus was raging
in the city we are inclined to take a benevolent view.

4. According the delay is condoned.

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

ITA 71/2023

6. This is an appeal directed against order dated 17.02.2021 passed by

the Income Tax Appellate Tribunal [in short, “the Tribunal”].

7. The only issue which arises for consideration in the instant appeal concerns the disallowance made by the Assessing Officer (AO) amounting to Rs 3,14,71,557/- under Section 14A of the Income Tax Act, 1961 [in short, “the Act”] read with Rule 8D of the Income Tax Rules, 1962 [in short, “1962 Rules”].

7. A finding of fact has been returned by the Commissioner of Income Tax Appeals [in short, “CIT(A)”] to the effect that the appellant made investment in subsidiary/associated companies for strategic purposes.

7.1 The CIT(A) has also found that the respondent/assessee has not earned any dividend income which was exempted under the Act.

7.2 The Tribunal has affirmed these findings of fact and thus sustained the order of the CIT(A).

8. The relevant observations are made in paragraph 5 of the impugned order.

9. Mr Sanjay Kumar, who appears on behalf of the appellant/revenue, cannot but accept that this issue is covered against the revenue *via* judgment of the coordinate bench rendered in ***Cheminvest Ltd. Vs. CIT*** 378 ITR 33.

10. As a matter of fact, in the decision rendered on 05.12.2022 in ITA 505/2022, titled ***Principal Commissioner Of Income Tax, Delhi-4 v. M/S MMTCLTD***, the Court even dealt with the amendment brought about under Section 14A of the Finance Act, 2022.

11. The relevant observations made by another coordinate bench of this court which included one of us i.e., Rajiv Shakti, J read as follows:

“8. Mr Ajit Sharma, who appears on behalf of the appellant/revenue, has fairly placed before us a judgment dated 20.07.2022, rendered by a coordinate bench of this Court in ITA No.204/2022, titled Principal

Commissioner of Income Tax (Central)-2 v. M/s Era Infrastructure (India) Ltd., which has ruled on the amendment which was brought about in Section 14A of the Act via Finance Act 2022.

8.1. The coordinate bench has ruled that the amendment will not operate retrospectively.

*8.2. As far as the merits of the matter are concerned, it appears that the coordinate bench in the aforesaid judgment has referred to judgments passed by other coordinate benches rendered in *PCIT v. IL & FS Energy Development Company Ltd. 2017 SCC OnLine Del 9893* and *Cheminvest Limited v. Commissioner of Income Tax-VI (2015) 378 ITR 33.**

*8.3. Mr Sharma informs us that the decision rendered by the Division Bench of this court in *PCIT v. IL & FS Energy Development Company Ltd.* has been assailed by the appellant/revenue by instituting a special leave petition (SLP), which is pending adjudication.”*

12. Given these circumstances, we are of the view that, insofar as this case is concerned, no substantial question of law arises for consideration.

13. We are informed that appellant/revenue has filed a Special Leave Petition *vis-a-vis* the judgment in ***PCIT v. IL & FS Energy Development Company Ltd.***

13.1 In case, appellant/revenue were to succeed, it would then have liberty to approach the court to re-open the appeal.

14. Appeal is accordingly closed.

14.1 Registry is directed to dispatch a copy of the judgement rendered today to respondent/assessee *via* all modes including email.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 7, 2023/r