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

% *Date of Decision: 01.12.2022*

+ **ITA 236/2019**

THE PR. COMMISSIONER OF INCOME
TAX - CENTRAL -3

.....Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel.

versus

MONTAGE ENTERPRISES PVT. LTD.

.....Respondent

Through: Mr M P Rastogi with Mr Manu K
Giri and Mr K N Ahuja, Advs.

+ **ITA 308/2019 & CM Appl.14798/2019**

THE PR. COMMISSIONER OF INCOME
TAX - CENTRAL -3

.....Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel.

versus

MONTAGE ENTERPRISES PVT. LTD.

..... Respondent

Through: Mr M P Rastogi with Mr Manu K
Giri and Mr K N Ahuja, Advs.

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 Appl.14798/2019 in ITA 308/2019

1. This is an application filed on behalf of the appellant/revenue seeking condonation of delay in refiling the appeal.

2. According to the appellant/revenue, the period of delay involved is 64 days.
3. For the reasons given in the application, the delay is condoned.
4. The application is disposed of in the aforesaid terms.

ITA 236/2019

ITA 308/2019

5. The challenge in these appeals is laid to a common order dated 29.06.2018 passed by the Income Tax Appellate Tribunal [in short “Tribunal”].
6. ITA 236/2019 concerns Assessment Year (AY) 2009-10, while ITA 308/2019 concerns AY 2008-09.
7. Counsel for the parties before us have placed on record, a hard copy of the judgment dated 06.09.2018 passed in ITA nos.892/2016, 893/2016, 894/2016 &895/2016, titled ***Pr.Commissioner of Income Tax vs Montage Enterprises Pvt. Ltd.***
8. The substantial questions of law, which the coordinate Bench of this Court answered, were the following:

“1. Whether assessee was right in reallocating expenditure/income on account of royalty from Jammu Unit to Corporate Division?”

2. If the answer to the above is in the affirmative in favour of the Revenue, the further question which arises is whether the Assessee was entitled to deduction under Section 80-IB of the Income Tax Act, 1961 in respect of sub-licence fee (ITA 892/2016 & 894/2016)?

9. The operative directions, which were issued by the coordinate Bench in the aforementioned judgment read as follows:

“21. Accordingly, we are of the opinion that the matter requires reexamination by the Tribunal on the question, whether the

Jammu Unit had utilized the technical know-how provided to the respondent assessee company under the MoUs. Till this core and important aspect and question is decided, we cannot proceed and decide, the other question whether the expenditure on royalty was incurred by the Jammu Unit or the Corporate Office.

22. In view of the aforesaid finding in the appeal filed by the Assessee, the Tribunal did not decide the cross appeal filed by the Revenue challenging order passed by Commissioner of Income Tax (Appeals), allowing netting of royalty received from royalty paid for computation of deduction under Section 80-IB of the Act. As we have remanded the issue of deduction under Section 80-IB, it will be open to the Assessee to press their cross appeal before the Tribunal in case of an adverse finding against the assessee on the first issue.

23. The substantial questions of law are accordingly answered partly in favour of the Revenue and against the respondent-assessee. We have not given and expressed any firm opinion on merits as an order of remand to the Tribunal has been issued for fresh adjudication. In the factual matrix, there would be no order as to costs.”

10. Counsel for the parties are *ad idem*, that the issue, which was decided by the coordinate Bench in the aforementioned matters, also arises in the appeals placed before us.

11. Accordingly, the above-captioned appeals are disposed of in terms of the operative directions issued by the coordinate Bench in the aforementioned *Montage Enterprises Pvt. Ltd.* case [ITA nos.892/2016, 893/2016, 894/2016 &895/2016].

11.1 The directions contained in *Montage Enterprises Pvt. Ltd.* will apply *mutatis mutandis* in respect of the instant appeals as well.

12. The matters are, thus, remitted to the Tribunal for a fresh adjudication.

13. Counsel for the parties will appear before the Tribunal on 23.01.2023.

14. The Tribunal will fix a date of hearing in the matter, as per its convenience and that of the counsel for the parties.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

DECEMBER 1, 2022/pmc

Click here to check corrigendum, if any