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

% *Date of decision: 10.04.2023*

+ **ITA 205/2023**

THE PR. COMMISSIONER OF INCOME TAX -4..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

MODLAND WEARS 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 APPL. 16612/2023 [*Application filed on behalf of the appellant seeking condonation of delay of 255 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 255 days.

2. For the reasons given in the application, the delay in re-filing is condoned.

3. The application is disposed of, in the aforesaid terms.

ITA 205/2023

4. The instant appeal concerns Assessment Year (AY) 2008-09.

5. This appeal is directed against the order dated 28.01.2020 passed by

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

6. *Via* this appeal the appellant/revenue has sought to bring to the fore two issues.

(i) First, the decision taken, both by the Tribunal and Commissioner of Income Tax (Appeals) [in short, “CIT(A)”], with regard to business income arising on the date of conversion of the subject shares from stock-in-trade to investment by the assessee.

(ii) Second, the tenability of the Tribunal’s view with regard to the restriction imposed on the disallowance made under Section 14A of the Income Tax Act, 1961 [in short, “the Act”] to the amount earned as exempt income by the assessee.

7. Mr Ruchir Bhatia, senior standing counsel, who appears on behalf of the appellant/revenue, fairly accepts that insofar as the second issue is concerned, the decision of the Tribunal is supported by the view rendered by this court in *Joint Investment Pvt. Ltd. v. Commissioner of Income Tax* 372 ITR 694 (Del).

8. Therefore, in our view, insofar as the second issue is concerned, no substantial question of law arises for our consideration.

9. As regards the first issue, the following facts are required to be noticed.

(i) The respondent/assessee had, in its possession, what evidently were shares concerning the three companies i.e., Fortis Financial Services Ltd., Oscar Investment Ltd. and Ranbaxy Laboratories Ltd.

(ii) The shares in the said entities held by the respondent/assessee were converted into investments.

(iii) The Assessing Officer (AO), while framing the assessment, concluded that business income had arisen in favour of the respondent/assessee by

virtue of the conversion of the subject shares into investments.

(iv) In this regard, the AO pegged the business income of the respondent/assessee at Rs. 14,70,90,284/-. This figure was arrived at by the AO by calculating the difference between the cost of shares and the market value on the date of conversion. The calculations made by the AO are set forth hereafter:

Name of Company	No. of Shares	Cost of shares (In Rs.)	Market Rate on 01.04.07	Market Value on date of transfer (01.04.07) (In Rs.)	Difference (In Rs.)
Fortis Fin. Services Ltd.	16,13,099	1,01,86,807	(*) 91.05	14,75,98,558	13,71,11,751
Oscar Investments Ltd.	86,280	50,51,511	(**) 238.75	2,05,99,350	1,55,47,839
Ranbaxy Ltd.	1,21,160	4,78,54,146	(**) 349.00	4,22,84,840	- 55,69,306
Total	6,33,92,464			21,04,82,748	14,70,90,284

(*) Rate taken from Schedule D of the Annual Accounts (Figures of 31.3.2007)

(**) Opening market rates at BSE on 1st Day of Trading during F.Y. 2007-08.

10. Mr Bhatia says that both the CIT(A) and the Tribunal lost sight of the fact that they had to undertake an exercise as to when the subject shares were, in fact, sold.

11. According to us, the error pointed out by the CIT(A) and the Tribunal

in the approach of the AO was correct. The error in the AO's approach was that he had based the addition in the respondent/assessee's taxable income on the presumption that business income had arisen in its favour. Clearly, there is no finding of fact returned by the AO that there was a sale of the shares.

12. The quantification of business income i.e., the sum referred to hereinabove was not, as noticed both by the Tribunal and the CIT(A), respondent/assessee's real income.

13. To our minds, as and when the subject shares are sold, as per the provisions of the Act, income arising from sale, if they are still held as investment, will, perhaps, be amenable to tax as capital gains.

14. We find that there is no error either in law or on facts in the approach adopted by the CIT(A) and the Tribunal. Therefore, the second issue is also decided against the appellant/revenue and in favour of the respondent/assessee.

15. We find that no substantial question of law arises for our consideration. The appeal is, accordingly closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 10, 2023 / tr