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

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Date of Decision: 12.10.2023

+ **ITA 578/2023**

THE COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-1, NEW DELHI Appellant

Through: Mr Ashwini Kumar, Adv. for Mr Puneet Rai, Sr Standing Counsel.

versus

COBRA INSTALACIONES Y SERVICIOS S.A Respondent

Through: Mr A.T. Panda, Adv. for Mr Satyen Sethi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J.: (ORAL)

CM Appls.53068-69/2023 [*Applications filed on behalf of the appellant/revenue seeking condonation of delay of 5 days in filing and 38 days in re-filing the appeal.*]

1. These are the applications moved on behalf of the appellant/revenue, seeking condonation of delay in filing and re-filing the appeal.
2. According to the appellant/revenue, there is a delay of 05 days in filing and 38 days in re-filing the appeal.
3. Mr A.T. Panda, counsel who appears on behalf of the



respondent/assessee, says that he would have no objection if the delay is condoned.

4. It is ordered accordingly.
5. The applications are disposed of in the aforesaid terms.

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6. This appeal concerns Assessment Year (AY) 2005-06.
7. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 13.02.2023 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
8. The only issue which has been raised by the appellant/revenue concerns the deletion of the disallowance of engineering fees paid by the respondent/assessee to its head office.
 - 8.1 The disallowance in this respect is quantified at Rs.6,34,83,482/-.
9. The record shows that the Assessing Officer (AO) *via* the order dated 29.12.2008 has disallowed the engineering fees paid by the respondent/assessee to its head office on the ground that the time log sheets were not filed.
10. The Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] *via* the order dated 27.06.2013 has sustained the view taken by the AO.
11. The Tribunal, however, has reversed the view of the CIT(A) and in this behalf, has returned the following findings of fact:
 - (i) The respondent/assessee has incurred its expenses in executing a project concerning Delhi Metro Rail Corporation [in short, “DMRC”]. The debit notes, which were furnished, indicated the



names of the employees, the nature of duties and the number of hours that were apportioned to the work carried out.

(ii) The Transfer Pricing Officer (TPO) while carrying out his inquiry concluded that the transactions between the respondent/assessee and the head office were at Arm's Length Price (ALP).

12. Given this position, the Tribunal concluded that there was no material basis for discrediting the debit notes furnished by the respondent/assessee.

13. Mr Ashwini Kumar, who appears on behalf of the appellant/revenue, submits that without relevant evidence, the expenses incurred by the respondent/assessee could not have been allowed towards the engineering fee.

14. We have examined the reasoning furnished by the AO and the CIT(A).

15. We are inclined to agree with the view taken by the Tribunal for the reason that the involvement of the respondent/assessee in the project which was under execution is not in doubt. The DMRC had availed the engineering services rendered by the employees of the head office.

16. The respondent/assessee only remitted the engineering fee to the head office. There is no dispute with regard to the fact that the debit note provided sufficient information as noted above, not only concerning the names of the employees, but also as to the nature of duties and number of hours that they spent on the job assigned to them.

17. In view of the above, we are of the opinion that since the Tribunal is



the final fact-finding authority, no interference is called for, especially in the circumstance where the appellant/revenue has not proposed any question which is indicative of the fact that any of the findings returned by the Tribunal is perverse.

18. Thus, for the aforesaid reasons, we are not inclined to interfere with the decision of the Tribunal.

19. In our view, no substantial question of law arises for our consideration.

20. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 12, 2023/pmc