$~25

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

% *Date of decision: 13.04.2023*

\+ **ITA 214/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 ..... Appellant

Through: Ms Hemlata Rawat, Advocate.

versus

KKM MANAGEMENT CENTRE PVT. LTD. ..... Respondent

Through: Mr Aniket D. Aggarwal, Advocate.

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.17995/2023

1. Allowed, subject to just exceptions.

CM APPL.17996/2023*[Application filed on behalf of the appellant/revenue for condonation of delay of 240 days in filing the appeal]*

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

2.1 According to the appellant/revenue, there is a delay of 240 days.

3. Mr Aniket D. Aggarwal, who appears on behalf of the respondent/assessee, does not oppose the prayer made in the application.

4. The prayer made in the application is, accordingly, allowed. The delay is condoned.

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

ITA 214/2023

6. This appeal concerns Assessment Year (AY) 2014-15.

7. The issue which arises for consideration in the instant appeal also arose in another appeal concerning respondent/assessee, i.e., ITA No.193/2023, which concerned AY 2013-14.

7.1 *Via* order dated 29.03.2023, the appellant/revenue's appeal was closed, as according to the court, no substantial question of law arose for consideration.

8. In this case as well, we find that the Income Tax Appellate Tribunal [in short, "Tribunal"] had confirmed the findings of fact returned by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].

9. The relevant paragraphs of the impugned order dated 14.10.2021, for the sake of convenience, are extracted hereafter:

> *"10. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the deleting the addition of Rs.7.16 crore (rounded off) that was made by AO but deleted by the CIT(A). Before us, Learned AR has pointed out that in A.Y. 2011-12, assessee had taken on seconded employees who were originally employee in the flagship group company i.e. Godfrey Philips India (P) Ltd. and then seconded to the assessee on cost to company basis, without any mark-up. It has· been further pointed by the Learned AR that no disallowance of secondment cost to employees was disallowed by the AO in earlier years. The aforesaid contention of the learned AR has not controverted by the Revenue. We find that AO on one had had held the secondment agreement to be not a genuine agreement but on the other hand had disallowed only 50% of the expenditure which according to us appear to be contrary. We further find that CIT(A) for the reasons stated in the order has deleted the addition. Before us, Revenue has not pointed any fallacy in the findings of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A) and thus the ground of Revenue is dismissed.*
>
> *xxx xxx xxx*
>
> *12. As far as ITA No.2988/Del/2018 for A.Y. 2014-15 is concerned,*

> *before us, both the parties have submitted that the issue raised in the present appeal for A.Y. 2014-15 is identical to that of ITA No.2987 /Del/2018. We have hereinabove while deciding the appeal for A.Y. 2013-14 in ITA No.2987 /Del/2018 and for the reasons stated therein have dismissed the grounds of Revenue. We for similar reasons dismiss the grounds of Revenue in the present appeal also. Thus the grounds of Revenue are dismissed.*"

10. It is not the case of the appellant/revenue that the findings of fact are perverse. There is no dispute raised before us that secondment costs were incurred by the respondent/assessee. There is also no dispute raised that in the earlier AYs secondment costs were allowed.

10.1 There was, to our minds, no rationale in the AO allowing 50% of the cost and disallowing the remaining costs; what is sauce for the goose is sauce for the gander. The approach of the AO bordered on whimsicality.

10.2 Furthermore, while we are conscious that the principle of res judicata has no place in the Income Tax regime, the principle of consistency, which is equally weighty, has been applied by the court where circumstances are *pari materia* with the facts obtaining in the period in issue.

11. Accordingly, we find no reason to interfere with the impugned order passed by the Tribunal.

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

13. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 13, 2023/pmc