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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Decision delivered on: 20.12.2023*+ **ITA 797/2023 & CM No.66364/2023**THE PR. COMMISSIONER OF INCOME TAX –
CENTRAL -1

..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing
Counsel.

versus

BLUE COAST HOTELS LTD.

..... Respondent

Through: Mr Ved Jain, Mr Nischay Kantoor
and Ms Soniya Dodeja, Advs.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****ORDER**% **20.12.2023****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****CM No.66364/2023 [Application filed on behalf of the appellant seeking
condonation of delay of 57 days in re-filing the appeal]**

1. This is an application filed 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 57 days in re-
filing the appeal.

2. Mr Ved Jain, counsel who appears on behalf of the
respondent/assessee, says that he would have no objection if the delay in re-
filing is condoned.



- 2.1 It is ordered accordingly.
3. The application is, accordingly, disposed of.

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4. This appeal concerns Assessment Year (AY) 2016-17.
5. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 17.03.2023 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
6. The only issue which arises for consideration in the instant matter is whether disallowance under Section 14A of the Income Tax Act, 1961 [in short, “Act”] can be ordered if the respondent/assessee has not earned any exempt income.
7. Concededly, this issue stands covered by various judgments of this court. For convenience, we may cite the relevant paragraphs of the judgment dated 13.10.2023 passed in ITA No.558/2023, titled ***Principal Commissioner of Income Tax, Delhi-7 v. Techno Trexim (India) Pvt. Ltd.*** 2023:DHC:7959-DB:

“8. *The record shows that the deletion of disallowance of deductions sustained via the impugned order amounted to Rs.3,81,71,231/-.*

9. *The stand taken by the appellant/revenue is that since huge investments had been made, amounting to nearly Rs.45.80 crores, expenses would have been incurred in managing such investments.*

10. *However, the record shows, something which is not disputed by Mr Rai, that in the period in issue, i.e., AY 2015-16, the respondent/assessee had not earned any exempt income. It is sought to be contended by Mr Rai that this position, i.e., the applicability of Rule 8D of 1962 Rules, is clarified by Finance Act, 2022.*

11. *We are unable to agree with the submissions advanced by Mr Rai as both issues stand covered by judgments of this court.*

11.1 *Insofar as the issue concerning whether Section 14A of the 1961 Act read with Rule 8D of the 1962 Rules could be triggered where no exempt income has been earned, it stands covered by the judgment rendered by this court in ***Principal Commissioner of Income Tax (Central)-3 v. Bhilwara Energy Ltd.*** (2023):DHC:5467-DB, wherein reference is made to other*



judgments on the point in issue. For convenience, the relevant observations contained therein are set forth hereafter:

“9. Via these appeals, the appellant/revenue seeks to assail the common order of the Income Tax Appellate Tribunal [in short, “Tribunal”] dated 02.08.2022.

10. Mr Abhishek Maratha, senior standing counsel, who appears on behalf of the appellant/revenue, submits that the issue that arises for consideration is whether the Tribunal was right in sustaining the deletion of disallowance under Section 14A of the Income Tax Act, 1961 [in short, “Act”] in view of the fact that no income exempt from tax had been earned during the relevant period.

11. According to us, the issue is covered by the following decisions:

*(i) judgement dated 02.09.2015 passed in ITA 749/2014, titled **Cheminvest Limited v. Commissioner of Income Tax-VI.***

*(ii) **Commissioner of Income-tax, Central 1, Chennai v. Chettinad Logistics (P.) Ltd.** [2017] 80 taxmann.com 221 (Madras).*

*(iii) Order dated 30.05.2023 passed in ITA Nos. 316/2023 and 317/2023, titled **Principal Commissioner of Income Tax Delhi 4 v. IL And FS Energy Development Co Ltd.**”*

*12. Mr Rai does not dispute that a Special Leave Petition (SLP) was preferred against **Cheminvest Limited**, which was dismissed via order dated 02.07.2018; which is reported in [2018] 95 taxmann.com 250 (SC). The order passed by the Supreme Court reads as follows:*

“The Special Leave petition is dismissed on the ground of delay as well as on merits.”

*13. As regards, the other issue, i.e., whether the Finance Act, 2022 could have retrospective effect, the said aspect also stands covered by the judgment rendered by a coordinate bench of this court in **Principal Commissioner of Income Tax (Central)-2 v. M/s Era Infrastructure (India) Ltd.** 2022-DHC:2690-DB.*

14. Thus, for the foregoing reasons, we are not inclined to entertain the appeal as, according to us, no substantial question of law arises for consideration.”

8. We may note that in the instant matter, the Assessing Officer (AO) had made an addition of Rs.10,20,24,116/-.

9. It is not in dispute that the respondent/assessee has not earned any exempt income in the period in issue, i.e., AY 2016-17.



9.1 Based on this, the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”], *via* order dated 21.10.2019, deleted the aforementioned addition.

This order was affirmed by the Tribunal.

10. Given the aforesaid position, both on facts and in law, according to us, no substantial question of law arises for our consideration.

11. The appeal is, accordingly, closed.

12. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 20, 2023

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