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

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Date of decision: 25.09.2023+ **ITA 88/2020**

PR. COMMISSIONER OF INCOME TAX- 4 Appellant

Through: Mr Sanjeev Menon, Standing
Counsel.

versus

M/S IMPERATIVE HOSPITALITY PVT LTD Respondent

Through: None.

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 Appl.5397/2020** [*Application moved on behalf of the appellant/revenue seeking condonation of delay of 54 days in re-filing the appeal*]

1. This appeal concerns Assessment Year (AY) 2012-13.
2. The appellant/revenue, *via* the instant appeal, seeks to assail the order dated 10.06.2019 passed by the Income Tax Appellate Tribunal [in short, "ITAT"].
 - 2.1 The Tribunal was confronted with two issues. First, the deletion of disallowance was made by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] qua expenses incurred at pre-operative stage expenses amounting to Rs.5,75,23,000/-, debited in the profit and loss account by the



respondent/assessee.

2.2 Second, the deletion of addition amounting to Rs. 3,39,98,656/- was made by the CIT(A) under the head 'Income from other Source'.

3. Insofar as the first issue is concerned, the record shows that the Assessing Officer (AO) had disallowed the deduction amounting to Rs.5,75,23,000/-, claimed by the assessee.

4. The Tribunal, according to us, noticed quite correctly that there is a distinction between the date when the business was set up and the date when the business was commenced. The expenses incurred between these two dates have rightly been categorized as revenue expenditure. Therefore, the Tribunal proceeded to sustain the view taken by the CIT(A), insofar as the first issue is concerned.

5. In this regard, we may note something which Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the appellant/revenue, has brought to our notice, that since the pre-operative stage period spilled over to two succeeding years as well, the matter came up before the AO and that the AO made no addition with regard to the expenses incurred during this period.

5.1 In this regard, Mr Menon has placed before us a hard-copy of the order dated 30.06.2016 passed by the AO for AY 2013-14.

6. Apart from the aforementioned reason, following the principle of consistency, in our view, no substantial question of law arises, insofar as the first issue is concerned.



7. As regards the second issue, the record discloses that there is no dispute with regard to the fact that the respondent/assessee had included Rs.3,39,98,651/- under the head 'Income from other Sources'.

7.1 The record also discloses, something which is not in dispute, that the said income was set off by the respondent/assessee against the losses incurred under the head 'Profits and Gains from Business and Profession', by taking recourse to Section 71 of the Income Tax Act, 1961 [in short, "Act"].

8. The respondent/assessee's submission before the AO, as well as the CIT(A) and the Tribunal, was that the interest was earned on fixed deposit created out of surplus funds, which were used for the execution of the project.

9. The Tribunal, having regard to this fact situation, applied the ratio of the judgment of a coordinate Bench of this court in ***Indian Oil Panipat Power Consortium Ltd vs Income Tax Officer*** 315 ITR 255(Del).

10. The argument advanced by the respondent/assessee was that the funds invested in fixed deposit were inextricably linked to the setting up of the plant.

11. It is in this context that the Tribunal made the following observations and deleted the addition made with regard to the interest:

"17. As has been held in preceding paras, when it is proved that the assessee has set up the business, earned the income from interest during the construction period and has set off the same against the loss under the head PGBP as per section 71 of the Act, the ld. CIT(A) has rightly deleted the addition as the funds parked in the bank on which interest has been earned were inextricably linked with the setting up of the hospitality business."



12. Given the foregoing discussion, we are of the opinion that no substantial question of law arises for consideration of this court.

13. The appeal is, accordingly, disposed of.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 25, 2023 / pmc