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

% **Decision delivered on: 08.12.2023**

+ **ITA 719/2023**

COMMISSIONER OF INCOME TAX (INTERNATIONAL
TAXATION)-3

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

UT STARCOM INC.

..... 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. 63556/2023 [Application filed on behalf of the appellant seeking condonation of delay of 430 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 430 days in re-filing the appeal.

2. Although the period of delay is large, we are inclined to condone the same as we intend to decide the appeal on merits.

3. It is ordered accordingly.

4. The aforesaid application is disposed of.

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5. This appeal concerns Assessment Year (AY) 2008-09.
6. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 28.07.2021 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
7. The only issue which arose for consideration before the statutory authorities was: Whether the respondent/assessee had rightly claimed deduction with regard to liquidated damages?
8. The record shows that the respondent/assessee had made a provision for the liquidated damages in the preceding Financial Year (FY), i.e., F.Y. 2006-07 (AY 2007-08).
9. The respondent/assessee had thus made a provision in the AY 2007-08 amounting to Rs.3,87,12,148/-.
10. In the period in issue i.e., AY 2008-09, the respondent/assessee claimed deduction of liquidated damages, *albeit* on actual basis of an amount equivalent to Rs. 4,37,36,387/-. This amount included the sum referred to hereinabove which was provided as liquidated damages in the preceding AY i.e., Rs.3,87,12,148/-, and Rs. 50,24,239/- which was additional compensation that the respondent/assessee had to pay towards the liquidated damages in the period in issue.
11. The record shows that the Assessing Officer (AO) concluded that the respondent/assessee had not proved that it had suffered damages amounting to Rs.3,87,12,148/- which was the sum provided in the preceding AY.
 - 11.1. The AO, however, allowed the deduction amounting to Rs.50,24,239/-.



12. Being aggrieved, the respondent/assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, “CIT(A)"].

13. The CIT(A) examined the material on record and returned a finding of fact that the respondent/assessee had infact suffered damages to the extent of the provisions made in the preceding AY, i.e., Rs.3,87,12,148/-.

13.1. The CIT(A) found that the respondent/assessee had to make supplies to BSNL and MTNL. Since, there was a delay in making the supplies, liquidated damages were adjusted by the said entities against the invoices raised by the respondent/assessee.

14. These finding of facts are recorded by the CIT(A) in his order dated 28.03.2018. The CIT(A) has given the details of purchase orders, the value of the invoices, and the liquidated damages deducted by BSNL and MTNL against each of the purchase orders.

15. The tabulated information *qua* the same is provided in paragraph 5.3 of the order passed by the CIT(A).

16. Being aggrieved, the appellant/revenue carried the matter in appeal to the Tribunal.

17. The Tribunal, however, was not impressed with the arguments advanced on behalf of the appellant/revenue, and hence sustained the findings returned by the CIT(A) with regard to the liquidated damages suffered by the respondent/assessee.

17.1. We may note that there is nothing brought on record to suggest that the findings returned by the CIT(A) are perverse.

18. Thus, having regard to the orders passed by the CIT(A) and the Tribunal, according to us, no substantial question of law arises for our consideration.



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19. The appeal is accordingly closed.
20. Parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

DECEMBER 8, 2023/RV

Click here to check corrigendum, if any