



\$~30 & 31

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

% *Date of decision: 07.12.2023*

+ **ITA 708/2023**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3 Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

TRAVELPORT L.P. USA Respondent

Through: None.

+ **ITA 709/2023**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3 Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

TRAVELPORT L.P. USA 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. 63249/2023 in ITA 708/2023

CM APPL. 63251/2023 in ITA 709/2023

1. Allowed, subject to just exceptions.

CM APPL. 63250/2023 in ITA 708/2023 *[Application filed on behalf of
the appellant seeking condonation of delay of 430 days in re-filing the*



appeal]

CM APPL. 63252/2023 in ITA 709/2023 *[Application filed on behalf of the appellant seeking condonation of delay of 430 days in re-filing the appeal]*

2. These are applications filed by the appellant/revenue seeking condonation of delay in re-filing the appeal.

3. According to the appellant/revenue, there is a delay of 430 days in re-filing the appeal.

4. Since we intend to decide the appeals on merits, we are inclined to condone the delay.

4.1 It is ordered accordingly.

5. The applications are disposed of.

ITA 708/2023

ITA 709/2023

6. These appeals concern Assessment Year (AY) 2010-11 [ITA 708/2023] and AY 2008-09 [ITA 709/2023].

7. Via the instant appeals, the appellant/revenue seeks to assail the order dated 09.11.2020 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

8. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, fairly concedes that insofar as the merits of the case are concerned, the decision of the Supreme Court rendered concerning AY 2006-07, in the case of the respondent/assessee, holds the field.

8.1 Mr Bhatia, in this behalf, has drawn our attention to the following order passed by the Supreme Court in the case of ***Commissioner of Income-tax (International Taxation) v. Travelport L.P. USA***, [2023] 153



taxmann.com 176 (SC). Since the order of the Supreme Court refers to a judgment of this court, the order is extracted hereafter:

“1. Delay of 146 days is condoned.

2. Learned Additional Solicitor General appearing for the petitioner has submitted that the issues which arise in this petition have been considered and held against the Revenue in [Civil Appeal Nos. 6511-6518/2010] DIT v. Travelport Inc. [2023] 149 taxmann.com 470/454 ITR 289 (SC) by affirming the judgment of the High Court. His submission is placed on record.

3. In the circumstances, the special leave petition is dismissed.

Pending application(s) shall stand disposed of.”

9. The moot point, on merits, that arises in the appeals preferred by the appellant/revenue, before the Tribunal, was whether the view taken by the Commissioner of Income Tax (Appeals) [in short, CIT(A)], that 15 percent of the revenue generated from the bookings made within India were attributable to the Permanent Establishment (PE) of the respondent/assessee, is sustainable.

9.1 The coordinate bench, in AY 2006-07, while dealing with ITA 301/2022, had sustained the said conclusion and had gone on to hold that no substantial question of law arose for its consideration. It is this decision that was affirmed by the Supreme Court, with the dismissal of the SLP as noted hereinabove.

10. To be noted, the Tribunal *via* the impugned order, did not rule on the merits of the case for AYs 2007-08 to 2010-11.

10.1 The appellant/revenue, in the instant appeals, has not proposed a question on merits, perhaps, having regard to the aforementioned judgment of the Supreme Court as well as the decision of the Tribunal on the narrow



issue of limitation.

10.2 The Tribunal, in the instant case, had dismissed the appeal of the appellant/revenue on the ground of limitation for the AYs in issue, i.e., AYs 2008-09 and 2010-11.

10.3 The reason given by the Tribunal for dismissal, on merits, was that the final assessment order was barred by limitation, as per Section 153 of the Income-tax Act [in short, “Act”].

10.4 Furthermore, the appellant’s/revenue’s plea that the provisions of Section 144C of the Act would come into play was repelled by the Tribunal for the reason that framing a draft assessment order was not required for the periods in issue, and therefore, the non-obstante clause under Section 144C of the Act would not override Section 153 of the Act.

11. Since on merits the matter stands closed, in our view, these appeals need not be entertained *vis-à-vis* the questions proposed by the appellant/revenue as they have, in a sense, been rendered academic.

12. The appeals are, accordingly, closed.

13. The Registry will dispatch a copy of the order passed today to the respondent/assessee *via* all modes, including e-mail.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 7, 2023 / tr