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

% *Date of Decision: 21.12.2023*

+ **ITA 804/2023**

+ **ITA 805/2023**

COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3

..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing
Counsel.

versus

ZAHEER MAURITIUS

..... Respondent

Through: Ms Ananya Kapoor, Adv.

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.66735/2023 in ITA 804/2023

CM Appl.66777/2023 in ITA 805/2023 *[Applications moved on behalf of
the appellant/revenue seeking condonation of delay of 480 days in re-
filing the appeal.]*

1. These are applications moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeals.

1.1 Even according to the appellant/revenue, the delay involved is 480 days.



2. Ms Ananya Kapoor, who appears on behalf of the respondent/assessee, says that she would have no objection if the court condones the delay in re-filing the appeals.

2.1. It is ordered accordingly.

3. The applications are disposed of, in the aforesaid terms.

ITA 804/2023

ITA 805/2023

4. These appeals concern Assessment Years (AYs) 2014-15 [ITA 804/2023] and 2013-14 [ITA 805/2023].

6. *Via* the above-captioned appeals, the appellant/revenue seeks to assail two separate orders of even date i.e., 08.09.2021 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

7. It is important to note that the assessment orders in the above-captioned appeals are pivoted on the decision of the Authority for Advance Ruling [in short, “AAR”] dated 21.03.2012.

7.1 The decision of the AAR dated 21.03.2012 was assailed by the respondent/assessee by way of a writ petition i.e., W.P.(C) 1648/2013. This court *via* the decision dated 30.07.2014 allowed the said writ petition, which resulted in the AAR’s ruling dated 21.03.2012 being set aside.

8. It is in these circumstances that the matter reached the Tribunal. The Tribunal, having regard to the judgment dated 30.07.2014 rendered by this court in W.P.(C) 1648/2013, ruled in favour of the respondent/assessee.

9. The record discloses that the respondent/assessee and an entity named, Vatika Pvt. Ltd. [in short, “Vatika”] had invested in Compulsorily Convertible Debentures (CCDs) issued by another entity named, SH. Tech Park Developers Pvt. Ltd. [in short, “SHT”].



9.1. The respondent/assessee and Vatika were issued CCDs by SHT in the ratio of 35:65. The respondent/assessee transferred the CCDs issued to it to Vatika.

10. Against this backdrop, the respondent/assessee claimed that the gains arising from transfer of CCDs were in the nature of capital gains and, therefore, not taxable in view of the provisions of Article 13 of the India-Mauritius Double Taxation Avoidance Agreement [“DTAA”].

11. The Assessing Officer (AO), on the other hand, sought to treat the gains as interest, placing reliance upon Section 2(28A) of the Income Tax Act, 1961 [in short, “Act”] and Article 11 of the India-Mauritius DTAA.

12. As noted above, this was also the view of the AAR, which was overruled by this court *via* the aforesaid judgment dated 30.07.2014 rendered in W.P.(C) 1648/2013.

13. It has been brought to our notice that for AY 2011-12, appeals filed by the appellant/revenue have been dismissed by a coordinate bench, wherein the questions of law proposed were similar to those formulated for consideration in the instant appeal.

14. Thus, having regard to the aforesaid position, the above-captioned appeals are closed.

15. Since the appellant/revenue has preferred a Special Leave Petition, which has been converted into a Civil Appeal [i.e., Civil Appeal 10299/2016], counsel for the parties submit that they will abide by the final decision rendered by the Supreme Court in the said appeal.



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16. The appeals are, accordingly, closed. Parties will be bound by the stand recorded in para 15 above.
17. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 21, 2023/pmc