

\$~33

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

%

Date of decision: 17.04.2023

+ **ITA 218/2023**

THE PR. COMMISSIONER OF INCOME TAX -7..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Ms Priya Sarkar and Mr
Shlok Chandra, Jr. Standing Counsel.

versus

VEOLIA INDIA PVT. LTD. (EARLIER KNOWN AS VEOLIA
WATER INDIA PVT. LTD.)

..... Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 18244/2023

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 263 days.

2. For the reasons given in the application, the delay is condoned.

3. The application is disposed of.

ITA 218/2023

4. This appeal is directed against the order dated 27.04.2020 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"] concerning Assessment Year (AY) 2010-2011.

5. The central issue which arose for consideration before the Tribunal was, whether the operation and maintenance expenditure should be added to the costs of contract, while recognising revenue.

6. Concededly, the respondent/assessee used the percentage completion method for recognising revenue. The Tribunal has returned a finding of fact, that the operation and maintenance costs cannot be included in determining the percentage of completion method in recognition of the revenue. This finding of fact is contained in paragraph 12 of the Tribunal's order. The same is extracted hereafter:

"12. Further, we have gone through the payments made by the NMC to the assessee. The payment pattern reveals that the assessee has raised separate invoices for O&M phase on a regular basis as per Section 5 of TOR Clause 8.3 and the same have been duly accounted in the years in which it has been received. Thus, on going through the entire facts of the case, we find that the three different phases of the work which are totally separate in execution. Keeping in view the fact, that the O&M phase cannot be a part of the construction activity as the O&M phase involves the supply of water to the residence giving connections and monitoring the connections which is clearly a post construction activity, we hold that the amount allotted for O&M phase cannot be included in determining the percentage of completion method in recognition of the revenue. We also find that the amounts of O&M phase have been duly offered to tax in the year of receipts. We also find that the Phase-I and the Phase-II are the preparatory construction phases over a period of 18 months whereas the operations & maintenance (O&M phase) of such constructed project is of 60 months. Hence, the maintenance activities cannot be clubbed with the construction activity. Having gone through the accounting standards (AS-7 and AS-9), we find that application of the standard to separately identifiable components of single contract is allowable while determining the percentage completion of the project. Since, the O&M phase commences after the construction of activity of rehabilitation phase, we hereby hold that the amount pertaining to O&M phase needs to be separately considered while determining the profits out of the construction activities."

7. It is relevant to note, that the respondent/assessee has adopted the percentage completion method, as per Accounting Standard 7, framed by the Institute of Chartered Accountants of India (ICAI).

8. As is evident from a perusal of the impugned order, the rationale for

not including operation and maintenance expenditure given by the Tribunal was, that these expenses were incurred after the construction activity is completed. We find no difficulty in accepting this rationale.

9. Having regard to the aforesaid, we are of the view that no substantial question of law arises for our consideration.

10. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 17, 2023 / tr

Click here to check corrigendum, if any