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

% **Decision delivered on: 12.05.2023**

+ **ITA 273/2023 & CM Nos.24780-81/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX,
CENTRAL-3, DELHI

..... Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh, Jr
Standing Counsel.

versus

M/S ANANT OVERSEAS PVT LTD

..... Respondent

Through: None.

+ **ITA 274/2023 & CM Nos.24782-83/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX,
CENTRAL-3, DELHI

..... Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh, Jr
Standing Counsel.

versus

M/S ANANT OVERSEAS 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 Nos.24780-81/2023 in ITA 273/2023

CM Nos.24782-83/2023 in ITA 274/2023

1. The above-captioned applications, which are four in number, concern



the delay in filing and re-filing the appeals.

2. In CM No.24780/2023 and CM No.24781/2023 preferred in ITA No.273/2023, it is indicated that there is a delay of 10 days in filing and 35 days in re-filing the appeal respectively.

2.1 Likewise, in CM No.24782/2023 and CM No.24783/2023 preferred in ITA No.274/2023, it is averred that there is a delay of 10 days in filing and 5 days in re-filing the appeal respectively.

3. Having regard to the period of delay involved both in filing and re-filing the appeals, we are inclined to condone the delay.

3.1 It is ordered accordingly.

4. The above-captioned applications are, accordingly, disposed of.

ITA 273/2023

ITA 274/2023

5. These appeals concern Assessment Year (AY) 2012-13.

6. The appellant assails the order dated 31.08.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

7. The Tribunal *via* the impugned order disposed of the revenue's appeal and the assessee's cross-objections against the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] dated 29.08.2017.

8. The record shows, that the assessee, being aggrieved by the assessment order dated 29.02.2016 had preferred the appeal with the CIT(A).

9. A perusal of the assessment order shows, that the assessee had earned dividend income amounting to Rs.4,06,63,807/-.

9.1 This dividend income was received from Uflex Ltd. [erstwhile Flex



Industries Ltd.].

10. According to the assessee, Uflex Ltd. is the promotee company, and 99.88% of the dividend income has been received from the said entity.

11. The Assessing Officer (AO), according to Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the appellant/revenue, had disallowed expenses amounting to Rs.7,75,24,213/-.

12. The CIT(A) had set aside the disallowance. The Tribunal has deleted the disallowance amounting to Rs.3,68,60,405/- which is, in fact, the difference between the disallowed income i.e., Rs.7,75,24,213/- and the dividend income earned by the assessee i.e., Rs.4,06,63,808/-.

13. The rationale, apparently, employed by the Tribunal, which is not disputed by Mr Maratha, is that disallowance cannot exceed the exempt income by way of dividend earned by the assessee.

14. Mr Maratha says, that the Tribunal has remitted the matter to the CIT(A) with regard to the aspect concerning the amounts said to have been earned as dividend by the assessee.

15. As to the principle which the Tribunal has adopted i.e., that disallowance under Section 14A cannot exceed the exempt income, we find that there is no error in the same, as there is good authority for that approach. [See: *Joint Investments Pvt. Ltd. v. CIT* [372 ITR 694].

16. Insofar as the other aspects are concerned, the matter, as indicated by the Tribunal, can be examined by the CIT(A).

16.1 In case there is a variation in the quantum of dividend income said to have been earned by the assessee, appropriate orders can be passed, with regard to the disallowance that requires to be deleted.



17. Given this position, we are not inclined to interdict the order passed by the Tribunal.
18. The above-captioned appeals are closed in the aforesaid terms.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 12, 2023/aj

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