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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision:04.07.2023

+ **ITA 338/2023**

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2

..... Appellant

Through: Mr Sanjay Kumar, Senior Standing Counsel
with Ms Easha Kadian and Ms Hemlata
Rawat, Advocates.

versus

L.G. ELECTRONICS INC. KOREA

..... Respondent

Through: Mr Deepak Chopra and Mr Ankul Gupta,
Advocates.

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. 33068/2023

1. Allowed, subject to all just exceptions.

CM APPL. 33069/2023 *[Application filed on behalf of the appellant seeking
condonation of delay of 60 days in re-filing the appeal]*

2. This is an application moved on behalf of the appellant/revenue seeking
condonation of delay in re-filing the appeal.

2.1 According to the appellant/revenue, there is a delay of 60 days.

3. Mr Deepak Chopra, who appears on behalf of the respondent, says that he does
not oppose the prayer made in the application.

4. Accordingly, the delay is condoned.

5. The application is disposed of.

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6. This appeal is directed against the order dated 31.10.2022 passed by the Income
Tax Appellate Tribunal (in short, the "Tribunal") in Miscellaneous Application No.
278/DEL/2022. The record shows that the said application was directed against order
dated 20.05.2022 passed by the Tribunal.



7. Via the order dated 20.05.2022, the Tribunal, it appears, had extended the stay on recovery of outstanding demands concerning Assessment Years (AY) 2015-16, 2016-17 and 2017-18.

7.1 Mr Sanjay Kumar, Senior Standing Counsel, who appears on behalf of the appellant/revenue, informs us that the instant appeal is confined to AY 2017-18. Counsel for the parties also inform us that initially, stay was granted by the Tribunal, albeit *via* order dated 13.03.2020.

8. Mr Chopra raises a preliminary objection to the maintainability of the appeal. He says that no appeal under Section 260A of the Income Tax Act, 1961 [in short, 'the Act'] would lie against the impugned order, which as noticed above, was passed in the miscellaneous application moved by the appellant/revenue. Mr Chopra says that, if the appellant/revenue is aggrieved, its remedy, if at all, would be by way of a petition under Article 226 of the Constitution.

8.1 In support of his plea, Mr Chopra places reliance on the decision of this Court dated 06.08.2010, rendered in a bunch of appeals, including ITA 724/2010 titled ***Lachman Dass Bhatia Vs. Assistant Commissioner of Income Tax.***

9. We may note that although the Full Bench concluded that no appeal would lie, it permitted conversion of the appeals into writ actions, upon a proper application being filed and compliance being made of the relevant rules made in that behalf.

10. At this juncture, Mr Kumar says that instead of filing an application for conversion, a writ petition would be filed. Leave in that behalf is granted.

11. Liberty is granted to the appellant/revenue to file a writ petition.

11.1 The appeal is disposed of, in the aforesaid terms.

12. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 4, 2023/v

Click here to check corrigendum, if any