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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision:05.07.2023

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ITA 340/2023

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 Appellant
Through: Mr Sanjay Kumar, Senior Standing Counsel
with Ms Easha Kadian and Ms Hemlata
Rawat, Advocates.

versus

NAGAR DAIRY 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 APPL. 33413/2023

1. Allowed, subject to all just exceptions.

CM APPL. 33412/2023 *[Application filed on behalf of the appellant/revenue seeking condonation of delay of 14 days in filing the appeal]*

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

2.1 According to Mr Sanjay Kumar, senior standing counsel who appears on behalf of the appellant/revenue, there is a delay of 14 days.

3. Having regard to the delay involved, we are inclined to condone the delay in filing the appeal.

4. The prayer made in the application is allowed. The delay is, accordingly, condoned.

5. The application is disposed of, in the aforesaid terms.

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6. This appeal concerns Assessment Year (AY) 2008-09.



7. The appellant/revenue seeks to assail the order dated 23.11.2022 passed by the Income Tax Appellate Tribunal [in short, “the Tribunal”], concerning appeals filed by the appellant/revenue and cross-objections filed by the respondent/assessee against the order dated 12.06.2015 passed by the Commissioner of Income Tax Appeals [in short, “CIT(A)”].

8. Before the Tribunal, the AYs involved were 2007-08, 2008-09 and 2009-10.

9. As indicated above, this appeal concerns only AY 2008-09. To be noted in paragraph 20 of the impugned order, the Tribunal has made the following observations:

“20. As per the seized paper 34 of Annexure A-2 and page 37 of Annexure A-3 which are containing vouchers showing payment in cash for purchase of milk for AY 2010-11 & 2011-12 pertaining to assessee. Admittedly the alleged documents were seized during the search are not pertaining to the assessment year 2007-08 to 2009-10 and the same is belongs to Assessment years 2010-11 & 2011-12. But the Ld. A.O. has made additions even the years under consideration i.e. 2007-08 to 2009-10. The initiation of the proceedings u/s 153C of the Act by the Assessing Officer should be related to assessment year sought to be reopened. As discussed above the additions made for the Assessment Year 2007-08 to 2009-10 is not related to the document found during the search.”

[Emphasis is ours]

10. We notice that the questions proposed by the appellant/revenue do not advert to what has been recorded by the Tribunal in paragraph 20. Therefore, clearly, the incriminating material found during the search did not concern the AY in issue. This position is not disputed by Mr Sanjay Kumar.

10.1 Furthermore, this very aspect is covered by the judgment of the coordinate bench of this court rendered in **CIT vs. Kabul Chawla**, (2016) 380 ITR 573.

10.2 Pertinently, the **Kabul Chawla** decision rendered by this court has been affirmed by the Supreme Court via its judgment rendered in **Principal Commissioner of Income Tax vs. Abhisar Buildwell**, 2023 SCC OnLine SC 481.

10.3 Besides this, in the assessee’s own case, *via* decision dated 01.06.2023 rendered in ITA Nos. 322/2023, 323/2023 and 327/2023, this court has reached the same conclusion. Therefore, according to us, no substantial question of law arises for our consideration.



11. The appeal is, accordingly, closed.
12. The Registry will dispatch the copy of the order passed today to the respondent/assessee, via all modes including email.
13. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 5, 2023

v

[Click here to check corrigendum, if any](#)