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

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Date of Decision: 10.07.2023

+ **ITA 354/2023**

**PR. COMMISSIONER OF INCOME
TAX (CENTRAL)-2**

..... Appellant

Through: Mr Sanjay Kumar, Sr Standing
Counsel with Ms Hemlata Rawat,
Standing Counsel.

versus

N. S. SOFTWARE

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

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

RAJIV SHAKDHER, J. (ORAL):

CM Appl.34152/2023 [*Application filed by the appellant revenue seeking
condonation of delay of 23 days in filing the appeal*]

CM Appl.34153/2023 [*Application filed by the appellant revenue seeking
condonation of delay of 90 days in re-filing the appeal*]

1. These applications have been filed on behalf of the appellant/revenue seeking condonation of delay in filing and re-filing the appeal.
2. According to the appellant/revenue, there is a delay of 23 days in filing and 90 days in re-filing the appeal.
3. For the reasons given in the applications, the delay in filing and re-filing the appeal is condoned.
4. The applications are, accordingly, disposed of.

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5. This appeal concerns Assessment Year (AY) 2015-16.



6. The sole issue which arose for consideration before the statutory authorities was: whether interest paid to the bank by the respondent/assessee could be disallowed, on account of the fact that the funds/loan received from the bank had been diverted as interest-free advances to the partners?

7. The Assessing Officer (AO) concluded that the disallowance was mandated in view of the fact that the respondent/assessee had not been able to demonstrate “commercial expediency”.

7.1 Accordingly, the AO disallowed interest expenses amounting to Rs.5,16,16,215/- in proportion to the non-interest bearing advances extended to each of the partners.

8. The respondent/assessee, being aggrieved by the order, preferred an appeal with the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”]/ CIT(A), *via* order dated 03.04.2019, reversed the view taken by the AO.

9. The appellant/revenue carried the matter in appeal to the Income Tax Appellate Tribunal [in short, “Tribunal”]. The Tribunal concurred with the CIT(A) and dismissed the appeal of the appellant/revenue.

10. Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant/revenue, submits that it was incumbent on the respondent/assessee to demonstrate commercial expediency and, having failed to do so, the interest expenditure was rightly disallowed by the AO.

11. We have heard Mr Kumar and perused the record. What has emerged is as follows:

11.1 In and about AY 2005-06 respondent/assessee had taken loan from the bank.

11.2. During the period spanning between AY 2005-06 and AY 2011-12,



interest paid by the respondent/assessee to the bank was allowed as deductible expenditure.

11.3 It is only in AYs 2012-13, 2013-14 and 2014-15, that the concerned officer veered away from this and disallowed the interest expenditure. As noticed above, in the instant AY as well, i.e., AY 2015-16, the AO has chosen to disallow the interest expenditure.

12. On being queried, Mr Kumar says that appeal concerning AY 2012-13 was not preferred before this Court against the order of the Tribunal which was not in favour of the appellant/revenue, on account of the fact that the tax effect was below the prescribed threshold monetary limit.

12.1 Insofar as AY 2013-14 and 2014-15 are concerned, it appears that the appeals preferred by the appellant/revenue are pending adjudication by the Tribunal.

13. Therefore, what we must, at this stage, determine is whether, in the instant case, any substantial question of law arises for our consideration?

13. As noticed above, consistently, over the period spanning between AY 2005-06 and AY 2011-12, interest paid by the respondent/assessee to the bank has been allowed as expenditure under the provisions of Section 36(1)(iii) of the Act. 13.1 The odd years are AY 2012-13, 2013-14, 2014-15 and 2015-16. The CIT(A), however, made a course-correction by reversing the view of the AO even for those years. The Tribunal has sustained the view taken by CIT(A) in AY 2015-16, which is the AY under consideration in the instant appeal lodged before us.

14. Given this backdrop, the moot point which arises for consideration is, two-fold.



15.1 First, does the respondent/assessee need to demonstrate commercial expediency in each year concerning a loan transaction which took place in and about AY 2005-06?

15.2. Secondly, ultimately, would the appellant/revenue incur any loss of revenue whether interest is allowed in the hands of the respondent/assessee i.e., the partnership firm or its partner?

16. The answer to the first question is obvious. If the loan availed on account of stated commercial expediency, which has, in a sense, received the imprimatur of the appellant/revenue when the loan was first taken and several years thereafter, surely, the respondent/assessee is not required, once again, to demonstrate commercial expediency in each year. The AO seems to have disregarded this aspect in the AY in issue.

17. Second, the revenue cannot but accept that the interest expenditure is revenue neutral. In case this was to be disallowed in the hands of respondent/assessee i.e., the partnership firm, it would have to be allowed in the hands of the partners.

18. Thus, for the foregoing reasons, we are not inclined to interfere with the decision of the Tribunal.

19. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

MANMEET PRITAM SINGH ARORA, J

JULY 10, 2023/pmc