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

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Decision delivered on: 03.11.2023

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ITA 603/2023**KANTI COMMERCIALS PVT. LTD.**

..... Appellant

Through: Mr Rishi Raju and Mr Viven Bansal,
Advs.

versus

COMMISSIONER OF INCOME TAX

..... Respondent

Through: Mr Gaurav Gupta, Sr. Standing
Counsel with Mr Puneet Singh, Mr
Shivendra, Ms Deepika and Ms
Mahima, Standing Counsels.**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 No.56886/2023**

Allowed, subject to just exceptions.

**CM No.56885/2023 [Application filed on behalf of the appellant seeking
condonation of delay of 47 days in re-filing the appeal]**

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

1.1 According to the appellant/assessee, there is a delay of 47 days in re-
filing the appeal.

2. Mr Gaurav Gupta, learned senior standing counsel, who appears on
behalf of the respondent/revenue, says that having regard to the period



involved, he does not oppose the prayer made in the application.

3. Accordingly, the delay in re-filing is condoned.

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

ITA 603/2023 & CM APPL. 56884/2023 [*Application filed on behalf of the appellant seeking interim relief*]

5. This appeal concerns Assessment Year (AY) 2010-11.

6. *Via* the instant appeal, the appellant/assessee seeks to assail the order dated 18.01.2023 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

7. Before the Tribunal, an appeal was preferred by the respondent/revenue against the order dated 29.03.2018 passed by the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”].

8. The CIT(A) *via* the said order deleted an addition of Rs. 1,90,00,000/- made under Section 68 of the Income Tax Act, 1961 [in short, “Act”].

9. This addition was made on account of purported unexplained credit entry concerning share capital/share premium.

10. A perusal of the impugned order shows that the Tribunal concluded in favour of the respondent/revenue, inter alia, based on the judgment dated 28.06.2017 rendered by its Kolkata Bench in ITA No. 271/Kol/2014, titled ***ITO vs Blessings Commercial Pvt. Ltd.*** This decision concerned AY 2010-11.

11. To be noted, according to the AO, Blessings Commercial Pvt. Ltd. was one of the investors in the share capital/share premium received by the appellant/assessee.

12. Mr Gupta has placed before us a soft copy of the order dated



13.12.2022 passed by the Tribunal, wherein the aforementioned fact, i.e., decision rendered in ***Blessings Commercial Pvt. Ltd.***, has been noticed.

13. Mr Gupta fairly states that the appellant/assessee was not represented before the Tribunal. Clearly, in view of this circumstance, the appellant/assessee had no opportunity to deal with the decision on which the Tribunal has relied while passing the impugned order dated 18.01.2023.

14. Concededly, no hearing was held between 13.12.2022 and the date on which impugned order was passed.

15. In these circumstances, the impugned order is set aside and the matter is remanded to the Tribunal for a fresh hearing.

16. Needless to add that, we have not examined the merits of the matter. The Tribunal will, thus, be free to arrive at its own conclusion while deciding the matter on merits.

17. To hasten the proceedings, we direct that the matter will be placed before the concerned bench of the Tribunal, *albeit*, for directions, on 01.12.2023. The Tribunal will thereafter progress the matter further.

18. The appeal and the pending applications are disposed of, in the aforesaid terms.

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

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

NOVEMBER 03, 2023/RV

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