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

% *Decision delivered on: 12.12.2023*

+ **ITA 748/2023**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel

versus

TRAVELPORT GLOBAL DISTRIBUTION SYSTEMS B.V.
(EARLIER KNOWN AS GALLILEO NEDERLAND BV)

..... 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. 64099/2023 in ITA 748/2023 *[Application filed on behalf of
the appellant seeking condonation of delay of 220 days in re-filing the
appeal]*

1. This is an application filed by the appellant/revenue, seeking condonation of delay in re-filing the appeal.
2. According to the appellant/revenue, there is a delay of 220 days in re-filing the appeal.
3. Since we intend to decide the appeal on merits, we are inclined to condone the delay.



3.1 It is ordered accordingly.

4. The application is, accordingly, disposed of.

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

6. Via the instant appeal, the appellant/revenue seeks to assail the order dated 27.09.2022 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

7. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, fairly concedes that insofar as the merits of the case are concerned, the decision of the Supreme Court rendered in the case of the group entity of the respondent/assessee holds the field.

7.1 Mr Bhatia, in this behalf, has drawn our attention to the following order passed by the Supreme Court in the case of ***Commissioner of Income-tax (International Taxation) v. Travelport L.P. USA***, [2023] 153 taxmann.com 176 (SC). Since the order of the Supreme Court refers to a judgment of this court, the order is extracted hereafter:

“1. Delay of 146 days is condoned.

2. Learned Additional Solicitor General appearing for the petitioner has submitted that the issues which arise in this petition have been considered and held against the Revenue in [Civil Appeal Nos. 6511-6518/2010] DIT v. Travelport Inc. [2023] 149 taxmann.com 470/454 ITR 289 (SC) by affirming the judgment of the High Court. His submission is placed on record.

3. In the circumstances, the special leave petition is dismissed. Pending application(s) shall stand disposed of.”

8. The moot point on merits which obtained in the appeal preferred by the respondent/assessee before the Tribunal was, whether the view taken by the Dispute Resolution Panel [in short, “the DRP”] that 75 percent of the



gross profits earned from Indian operations, attributed to the respondent/assessee, was sustainable. The Tribunal partly allowed the appeal of the respondent/assessee by following its own decision for AYs 2007-08 to 2014-15, thereby directing the Assessing Officer to adopt the attribution rate of revenue for the Indian operations of the Permanent Establishment at 15 percent of gross booking fees for the AY in issue, i.e., AY 2015-16.

8.1 The coordinate bench in AY 2006-07, while dealing with ITA 301/2022, has sustained the said conclusion and gone on to hold that no substantial question of law arose for its consideration. It is this decision which was affirmed by the Supreme Court with the dismissal of the SLP, as noted hereinabove.

9. Given this position, we are of the opinion that no substantial question of law arises for our consideration.

10. The appeals are, accordingly, closed.

11. The registry will dispatch a copy of the order passed today to the respondent/assessee *via* all modes, including e-mail.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

DECEMBER 12, 2023/rk