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

% **Decision delivered on: 21.12.2023**

+ **ITA 800/2023 & CM APPL. 66565/2023**

THE COMMISSIONER OF INCOME TAX –
INTERNATIONAL TAXATION -1

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Ms Deeksha Gupta,
Adv.

versus

A B SCIEX PTE LTD.

..... Respondent

Through: Mr Ajay Vohra, Senior Advocate
with Mr Aniket D. Agrawal and Mr
Abhishek Singhvi, Advocates.

+ **ITA 801/2023 & CM APPL. 66672/2023**

THE COMMISSIONER OF INCOME TAX –
INTERNATIONAL TAXATION -1

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Ms Deeksha Gupta,
Adv.

versus

A B SCIEX PTE LTD.

..... Respondent

Through: Mr Ajay Vohra, Senior Advocate
with Mr Aniket D. Agrawal and Mr
Abhishek Singhvi, Advocates.

+ **ITA 803/2023 & CM APPL. 66727/2023**

THE COMMISSIONER OF INCOME TAX –
INTERNATIONAL TAXATION -1

..... Appellant



Through: Mr Ruchir Bhatia, Sr. Standing Counsel with Ms Deeksha Gupta, Adv.

versus

A B SCIEX PTE LTD.

..... Respondents

Through: Mr Ajay Vohra, Senior Advocate with Mr Aniket D. Agrawal and Mr Abhishek Singhvi, 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 No. 66565/2023, CM No. 66672/2023 *[Applications filed on behalf of the appellant seeking condonation of delay of 162 days in re-filing the appeal]*

& CM No. 66727/2023 *[Application filed on behalf of the appellant seeking condonation of delay of 440 days in re-filing the appeal]*

1. These are applications filed on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeals.

1.1 According to the appellant/assessee, the delay in re-filing first two appeals (i.e., ITA 800/23 and ITA 801/2023) is 162 days each, while the delay in re-filing ITA 803/2023 is 440 days.

2. In view of the order that we propose to pass, the delay in re-filing in the appeals is condoned.

3. The above-captioned applications are disposed of, in the aforesaid terms.



ITA 800/2023

ITA 801/2023

ITA 803/2023

4. These are appeals concerning Assessment Year (AY) 2018-19 [ITA 800/2023], AY 2019-20 [ITA 801/2023] and AY 2017-18 [ITA 803/2023].

5. ITAs 800/2023 and 801/2023 assail a common order passed by the Income Tax Appellate Tribunal [in short, “Tribunal”] dated 26.12.2022, while ITA No. 803/2023 lays challenge to the order dated 29.04.2022 passed by the Tribunal.

6. As a matter of fact, the common order dated 26.12.2022 is pivoted on the Tribunal’s order dated 29.04.2022 rendered qua AY 2017-18.

7. The record shows that two issues arose for consideration before the Tribunal. First, whether the respondent/assessee had a Permanent Establishment (PE) in India. Second, whether the subject transaction was at Arm’s Length and, if it was so, whether any profit could be attributed to the respondent/assessee.

8. The Tribunal has dealt only with the first issue and concluded that the respondent/assessee neither a fixed place PE nor a dependent agent PE in India. Because the Tribunal reached this conclusion, it observed that the other issue was academic.

9. The record discloses that the respondent/assessee had raised an alternative plea concerning the second issue.

10. In our opinion, it would save time and costs if the Tribunal were to render a view with regard to the second issue as well, which is broadly referred to hereinabove.



11. Therefore, without disturbing the impugned orders passed by the Tribunal, with the consent of counsel for the parties, the above-captioned matters are remitted to the Tribunal for rendering a decision with regard to the second issue.

12. It is made clear that whichever party is aggrieved by the impugned order, as well as the order passed upon remand by the Tribunal, will have liberty to approach the court by way of a statutory appeal.

13. Furthermore, since the instant appeal concerned the impugned orders passed by the Tribunal as and when the appellant/revenue files an appeal, the period spanning between the date when the above-captioned appeals were instituted in this court and the date when the Tribunal passes the order post remand, will not be factored in while calculating the period of limitation.

14. The appeals are disposed of in the aforesaid terms.

15. The Tribunal is requested to dispose of the matter at the earliest, though not later than three (3) months from today.

16. Parties will act based on the digitally signed copies of the order.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

DECEMBER 21, 2023/as

Click here to check corrigendum, if any