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

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Decision delivered on: 22.12.2023+ **ITA 809/2023****THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3**

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

SAIF PARTNER INDIA IV LTD

..... Respondent

Through: Dr Shashwat Bajpai and Mr Saransh
Bhardwaj, Advs.**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. 67282/2023** *[Application is filed on behalf of the
appellant/revenue seeking condonation of delay in re-filing the appeal]*

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

1.1 According to the appellant/ revenue, there is a delay of 130 days in re-filing the appeal.

2. Dr Shashwat Bajpai, learned counsel, who appears on behalf of the respondent/assessee, says that he would have no objection if the delay in re-filing is condoned.

3. It is ordered accordingly.

4. The application is disposed of.

**ITA 809/2023**

5. This appeal concerns Assessment Year (AY) 2017-18.
6. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 13.02.2023 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
7. *Via* the impugned order, the Tribunal has set aside the order dated 27.03.2022 passed by the Commissioner Income Tax (Appeals) [in short, “CIT(A)"] in exercise of its power under Section 263 of the Income Tax Act, 1961 [in short, “Act”].
8. The CIT(A) has *via* the said order set aside the assessment order dated 09.12.2019 framed by the Assessing Officer (AO) under Section 143(3) of the Act.
9. The CIT(A)’s view is that the loss claimed by the respondent/assessee upon transfer of shares concerning Indian entities was both erroneous and prejudicial to the interest of revenue.
10. The record shows that in the notes of accounts appended to the balance sheet as on 31.03.2017, the respondent/assessee had clearly indicated that it was not carrying forward the cumulative loss amounting to Rs.62,85,40,289/-. This aspect also emerges on perusal of paragraph 11 of the impugned order.
- 10.1 For convenience the details of the loss registered are set forth hereafter:



S No.	Name of Company	Long term Capital Gains / (Loss)	Short term Capital Gain / (Loss)	Net Gain / (Loss)
1	A2 Media Private Limited (Unlisted)	(219,855,449)		(219,865,449)
2	Malpasand Beverages Limited (Listed)	(229,185,105)		(229,185,105)
3	Youngmonk Technologies Pvt. Ltd (Unlisted)	40,056,781	(219,546,516)	(179,489,735)
	Total	(408,993,773)	(219,546,516)	(628,540,289)

11. It is not in dispute that the respondent/assessee has not carried forward the aforementioned loss registered upon transfer of the shares of the Indian entities.

12. Dr Shashwat Bajpai, learned counsel, says that he has instruction to convey to the court that the said loss amounting to Rs.62,85,40,289/- will not be carried forward.

13. It is, therefore, the submission of Dr Shashwat Bajpai that in these circumstances, no prejudice can be caused to the revenue.

14. Concededly, for invoking powers under Section 263 of the Act, twin conditions have to be satisfied i.e., the order of the AO should be erroneous and prejudicial to the interest of the revenue.

15. In view of the statement made by the Dr Shashwat Bajpai, the other condition is not fulfilled. Therefore, the appeal is disposed of, based on the statement made by Dr Shashwat Bajpai; which shall bind the respondent/assessee.

RAJIV SHAKDHER, J.

GIRISH KATHPALIA, J.

DECEMBER 22, 2023/as