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

\+ ITA 275/2023

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 ..... Appellant

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

versus

SILVER BELLA HOLDING LTD. ..... Respondent

Through: Mr.S.S.Tomar and Mr.Vishal Kalra, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **05.03.2024**

CM APPL. 24991/2023 (Delay in re-filing)

1. This is an application filed by the appellant seeking condonation of 300 days delay in re-filing the present appeal.

2. For the reasons stated in the application, the delay of 300 days in re-filing the appeal is condoned.

3. Application is disposed of.

ITA 275/2023

1. Learned counsels for parties are ad idem that the issues which are sought to be canvassed on this appeal stand answered against the appellants in light of the decision rendered by this Court in **The Commissioner of Income Tax International Taxation-3 v. S. A. Chitra Ventures Ltd.** [ITA 606/2023].

2. We note that the instant appeal also pertains to Assessment Year 2014-2015 and consequently, the issue will have to be considered bearing in mind the language which was employed in

Section 144C of the Income Tax Act, 1961 ["**Act**"] at the relevant time.

3. On taking note of the challenge raised on identical terms, this Court in *S. A. Chitra Ventures Ltd.* had held as follows:-

> " 7. The ITAT has noticed that undisputedly the respondent was an eligible assessee in terms of Section 144C(15)(b)(ii) of the Act. It, however, took note of Section 144C of the Act as it stood at the relevant time and prior to the amendments which came to be introduced by virtue of Finance Act, 2020 w.e.f. 01 April 2020. It becomes pertinent to note that the provision as it stands presently uses the expression "any variation which is prejudicial to the interest of such assessee". However, and prior to the provision being recast by Finance Act, 2020, the aforenoted provision employed the phrase "any variation in the income or loss returned". It is thus manifest that it was only a "variation" which would impact the "income or loss returned" that Section 144C(1) of the Act would have stood attracted.
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> 8. As has been noticed by the ITAT, and which fact remained uncontested even before us, there was no variation in the income as returned. The only point of disputation was with respect to whether the respondent was entitled to claim the benefits under Article 11 of the DTAA. It was that claim of the respondent which alone came to be negated by the AO. Accordingly, while the income offered became subject to tax at the rate of 20%, the total income as declared remained unvaried. As we read Section 144C of the Act as it stood at the relevant time, it would have empowered the AO to frame a Draft Assessment Order only if a variation in the income returned was suggested. This was clearly not the case which obtained."

4. In view of the aforesaid, we find no merit in the instant appeal. It shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 5, 2024/MJ