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

+ **ITA 108/2024**

**THE PR COMMISSIONER OF INCOME
TAX IV NEW DELHI**

..... Appellant

Through: Mr. Shlok Chandra, SSC with
Ms. Madhavi Shukla, Ms. Priya
Sarkar, JSCs & Mr. Ujjawal
Jain, Adv.

versus

**HYDERABAD DISTILLERIES AND
WINERIES PVT LTD**

..... Respondent

Through: Ms. Kavita Jha, Mr. Vaibhav
Kulkarni & Mr. Udit Naresh,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

**ORDER
28.02.2024**

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CM APPL. 8246/2024 (Delay of 82 days in re-filing the Appeal)

1. This is an application filed by the appellant seeking condonation of 82 days delay in re-filing the present appeal. For the reasons stated in the application, the delay of 82 days in re-filing the appeal is condoned.

2. Application is disposed of.

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3. The Pr. Commissioner of Income Tax-4 questions the correctness of the judgment rendered by the Income Tax Appellate Tribunal ["ITAT"] dated 14 June 2023 and has proposed the following questions for our consideration:



“A. Whether on the facts and circumstances of the case and in law, the Ld. ITAT was correct in deleting the addition of Rs. 4,29,55,713/- made by the Assessing Officer on account of disallowance of expenditure without giving any reasoning and just relying on its own decisions in previous years in assessee’s own case, which were not challenged before the Hon’ble High Court due to low tax effect?

B. Whether in the facts and circumstances of the case and in law, the Hon’ble ITAT was correct in deleting the addition of Rs. 4,29,55,713/- made by the Assessing Officer, without examining the issues on merit and ignoring the findings of the Assessing Officer that the assessee is withdrawing continuously from the business of manufacturing and deriving income from passive sources like letting out of manufacturing facilities, packaging and redistillation services and such income should be assessed under the head “Other Sources”?

4. The questions themselves emanate from the deletion of certain additions which were made by the Assessing Officer [“AO”] for the concerned Assessment Year [“AY”] treating the expense of INR 4,29,55,713/- as liable to be taxed as “*income from other sources*”. The assessee had contended that the aforesaid expense constituted “*business income*”.

5. We are also informed by Mr. Chandra, learned counsel appearing for the appellant, that although the ITAT had followed the decision rendered by it and relevant to earlier AYs, the appeal which was filed for AY 2008-09 ultimately came to be withdrawn on account of low tax effect. Insofar as AYs 2010-11, 2013-14 and 2015-16 are concerned, no appeal could be filed or preferred by the Income Tax Department for identical reasons.

6. The present appeal pertains to AY 2016-17. We are further informed of another appeal which is stated to have been filed for AY 2017-18 and which is presently stated to be lying in defect.

7. Insofar as the facts are concerned, the ITAT has observed as follows:



“2. The facts in brief are that the Appellant is engaged in the manufacturing of Indian Made Foreign Liquor (IMFL) since 1977. The appellant company was having license to manufacture 69.98 lakhs Proof Litres (also referred as "PLs", for brevity) IMFL in the State of Andhra Pradesh. The appellant company is having its own Factory Building, Plant and Machinery, Technical lab, Managerial staff and skilled workers to carry on IMFL manufacturing activities. However, the appellant did not own any popular brand or IMFL. Therefore, it is manufacturing its own products using "Brands" owned by M/s Jagatjit Industries Limited against payment of royalty. The appellant company is using licensed capacity of 1.38 lacs PLs for the manufacturing of its own products supplied to Canteen Store department. The appellant company sub-leased part of its licensed capacity to the extent of 68.60 lacs PLs along with part of manufacturing unit to M/s Jagatjit Industries Limited. It was also rendering manufacturing services on contract basis to M/s Jagatjit Industries Limited for the maximum use of its core competence as an IMFL manufacturer. In the absence of its own saleable brands and to continue its manufacturing business, the appellant company decided to enter into a sub-licensing agreement with M/s JIL. It is specifically claimed that that prior to A-Y. 2008-09, Assessee was in contract manufacturing with JIL and if Andhra Pradesh Distilleries Rules were amended that contract manufacturing was possible only through subleasing of Licensed capacity. It is claimed by Assessee that it continued to be in control and possession of its IMFL manufacturing plant. The company continued to have Power connection for Industrial use. The appellant company also continued to have registration under VAT, service tax etc for the year under appeal. The appellant company continued to have water supply connection for industrial use in its name. The appellant company continued to have all its workers required for carrying out various activities of manufacturing IMFL. The appellant company paid franchise license fee and got registered IMFL brands with excise department to manufacture its own IMFL products paying royalty to JIL.”

8. From a bare perusal of the undisputed position which emerges from a reading of paragraph 2, it is apparent that the facility in question continued to be used for the purposes of manufacture of Indian Made Foreign Liquor [**“IMFL”**]. The entire manufacturing process was undertaken with the aid of workers who had been employed by the assessee. The assessee was constrained to enter into



an arrangement with M/s Jagatjit Industries Ltd. [**“Jagatjit Industries”**] since it did not own any licensed brand of its own. Even for the use of brand-name and in furtherance of the licence which was obtained, it had also paid royalty. The ITAT has also additionally found that all the IMFL brands were got registered with the Excise Department to aid the process of manufacture after paying royalty to Jagatjit Industries. Viewed in this light, it is manifest that the premises continued to be commercially exploited by the assessee in connection with its principal line of business.

9. In view of the aforesaid we find no error in the views expressed by the ITAT. No substantial question of law arises.

10. The appeal fails and shall consequently stand dismissed.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J
FEBRUARY 28, 2024/kk