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

\+ ITA 216/2024

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL - 1 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC along with Mr. Anant Mann, JSC.

versus

METRO TYRES LTD. ..... Respondent

Through: Mr. Salil Kapoor, Mr. Sumit Lalchandani, Ms. Ananya Kapoor and Mr. Tarun Channa, Advs.

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

O R D E R

% **07.05.2024**

CM APPL. 22678/2024 (Delay of 14 days in filing) & CM APPL. 22679/2024 (Delay of 95 days in Re-filing)

Bearing in the mind the disclosures made, the delay of 14 days in filing the appeal and the delay of 95 days in re-filing the appeal is condoned.

Applications shall stand disposed of.

ITA 216/2024

1. The Principal Commissioner impugns the order of 07 June 2023 passed by the Income Tax Appellate Tribunal [‘**ITAT**’] and poses the following questions for our consideration:-

> “2.1 Whether on the facts and circumstances of the case, Ld. ITAT was justified in deleting the addition of Rs.93,75,000/- by holding that no addition can be made in the order under section 153A of the

Income Tax Act, 1961 on account of an issue raised via audit objection by the Revenue audit party?

2.2 Whether on the facts and circumstances of the case, Ld. ITAT was justified in deleting the disallowance made of excess depreciation claimed on account of non-complete fee which does not fall under the category of section 32(1)(ii) of the Income Tax Act, 1961?"

2. We note that the ITAT has essentially upheld the annulment of the Section 153A assessment bearing in mind the undisputed fact that the same was not based on any incriminating material that may have been unearthed in the course of the search.

3. It is in the aforesaid backdrop that it has placed reliance on the decision of this Court in **Commissioner of Income-tax vs. Kabul Chawla** [2015 SCC OnLine Del 11555].

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

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 07, 2024/RW