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

\+ ITA 319/2024

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

Through: Mr. Vipul Agrawal, SSC along with Mr. Gibran Naushad and Ms. Sakashi Shairwal, JSCs.

versus

M/S APL APOLLO TUBES LTD. .....Respondent

Through: Mr. Somil Agarwal and Mr. Dushyant Aggarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **04.07.2024**

CM APPL. 36671/2024 (167 Days Delay), CM APPL. 36672/2024 (188 Days Delay in Refiling)

1. Bearing in the mind the disclosures made, the delay of 167 days in filing the appeal and the delay of 188 days in re-filing the appeal is condoned.

2. Applications shall stand disposed of.

ITA 319/2024

3. Learned counsel appearing for the respondent/assessee takes a preliminary objection to the maintainability of the instant appeal on the ground of low tax effect.

4. We note that the dispute itself pertains to Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 and the extent of expenditure which could have been claimed.

The Income Tax Appellate Tribunal ['**Tribunal**'] while upholding the decision of the Commissioner of Income Tax (Appeals) held that the disallowance cannot outstrip the exemption which was claimed. This is evident from paragraph 6 of the order of the Tribunal which reads thus:-

> "6. On careful consideration of rival submissions we respectfully note that in the case of Joint Investment Pvt. Ltd. vs Commissioner of Income Tax (supra) Their Lordship speaking for jurisdictional High Court has held that the disallowance u/s. 14A r.w.r. 8D of the Rules cannot be more than the exempt income claimed by the assessee. From the relevant part of first appellate order para 7 to 7.3.2 we observed that the Ld. CIT(A) has followed the order of Hon'ble Punjab & Haryana High Court in the case of PCIT vs State Bank of India to hold that the amount of disallowance u/s. 14A is to be restricted to the exempt income claim by the assessee and not a higher figure. The preposition rendered by Hon'ble jurisdictional High Court in the case of Chem Investment also rendered similar preposition which is squarely applicable to the before us in favour of the assessee. Therefore we are unable to see any valid reason to interfere with the findings arrived by the Ld. CIT(A) while restricting the disallowance to Rs. 2,65,74,425/- that is to the exempt income claimed by the assessee. Therefore sole ground of revenue being devoid of merits is dismissed."

It has thus restricted the disallowance to INR 2,65,74,425/-.

5. Undisputedly, the tax impact on the aforesaid amount would fall below the threshold as prescribed in Circular No. 5/2024 of the Central Board of Direct Taxes dated 15 March 2024.

6. The appeal consequently stands dismissed on the ground of low tax effect.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 04, 2024/RW