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

+ **ITA 296/2026 & CM APPL. 22926/2026**

PR. COMMISSIONER OF INCOME TAX, DELHI 1Appellant

Through: Mr. Vipul Agarwal, SSC with Mrs.
Sakshi Shainwal, JSC.

versus

M/S. EBONY RETAIL HOLDINGS LTD.Respondent

Through: Mr. Saurabh Chaturvedi, Advocate.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

% **09.04.2026**

CM APPL. 22925/2026 (delay in re-filing)

1. Instant application has been filed under Section 151 of the Civil Procedure Code, 1908, read with Section 5 of the limitation act seeking condonation of delay of 254 days in re-filing the appeal.
2. For the reasons stated in the application, the delay of 254 days in re-filing the appeal is condoned.
3. Application stands allowed.

CM APPL. 22924/2026 (delay in filing)

4. Instant application has been filed under Section 151 of the Civil Procedure Code, 1908, read with Section 5 of the limitation act seeking condonation of delay of 558 days in filing the appeal.
5. The reason for substantial delay given in the application supported by oral submission is, that the instructions to file an appeal were earlier given to



a counsel who did not continue with the department and thereafter the papers were handed over to present counsel in which process some more time has been consumed.

6. Learned Senior Standing Counsel for the department submitted that it was because of the communication gap and procedural reasons, the substantial delay of 558 days in filing the appeal has occurred.

7. Learned counsel for the respondent vehemently opposed the application by contending that the reason given in the application is not sufficient.

8. Having heard learned counsel for the parties, we are of the view that though the delay is substantial, but the reasons with which the department has come up, are valid reasons. Hence, considering that the delay was caused due to the fault of the counsel, we do not propose to non-suit the appellant on the ground of delay.

9. The application is, therefore, allowed. The delay of 558 days in filing the appeal is condoned.

ITA 296/2026

10. By way of present appeal the department has challenged the order dated 17.07.2023 passed by the Income Tax Appellate Tribunal, Bench - B, New Delhi (*hereinafter referred to as 'Tribunal'*) in ITA No. 7339/Del/2019.

11. The dispute arose when the Assessing Officer while framing the assessment order disallowed expenditure to the tune of Rs. 6.25 Crores being the amount spent for obtaining a loan of about Rs.42 Crores.

12. Learned Senior Standing Counsel for the appellant-department argued that the disputed amount spent for obtaining the loan is not allowable as the



loan of Rs.42 Crores was not used for the business purposes and was utilised as under:

- (i) Rs. 33 Crores for discharging previous loan of Standard Chartered Bank.
- (ii) Rs. 6.28 Crores for refund of Share Application Money.
- (iii) Rs. 2.55 Crores for investment in Subsidiary Company, Sandur Bypass Projects Ltd.
- (iv) Rs. 1.05 Crore for advance to related party.

13. The Commissioner of Income Tax (Appeals) (*hereinafter referred to as 'CIT(A)'*) vide order dated 25.06.2019 partly allowed the appeal filed by the Respondent-assessee and upheld that the addition of Rs. 52,84,966/- made by the assessing officer as Finance Cost (interest) in relation to the proportionate expenditure of Rs. 2.55 Crores loan given to subsidiary company and Rs. 1.05 Crores loan disbursed to related party. The CIT(A) however deleted the remaining addition amounting to Rs. 5,72,22,087/-.

14. The department, so also the assessee preferred appeals against the above referred order of the CIT(A), both of which have been rejected by the Tribunal vide order dated 17.07.2023.

15. In the present appeal, the appellant-department has challenged deletion of the proportionate/corresponding expenditure on the amount relating to repayment of loan to Standard Chartered Bank and return of share application money.

16. Mr. Agarwal, learned Senior Standing Counsel for the appellant-department, vehemently argued that the CIT(A) has erred in deleting the addition as the assessee had no plausible reason to offer as to why the loan



was taken for paying off the previous loan which the respondent-company had taken from the Standard Chartered Bank. Similar arguments were advanced in relation to return of share application money.

17. Having heard learned counsel for the appellant, we are of the view that the view taken by the CIT(A) was perfectly justified and legally correct.

18. It is the business acumen or wisdom of an assessee to take a loan to repay previous loan. Such repayment may necessitated for a score of factors, maybe because of the strained relationship with the existing banker or because of the fact that the assessee is able to get loan at a lesser rate because of the fluctuation in interest rates and may be because of any other reason. The Assessing Officer cannot undertake the exercise of finding fault in the commercial wisdom or business acumen of an assessee.

19. Even stronger is the position, when it comes to return of Share Capital Money. Return of Share Capital Money is a bounden duty of the assessee and if it finds itself to be in financial requirement to pay off its statutory obligation and loan has been taken, it cannot be said that such loan was taken for pleasure or for luxury. Both the above referred expenses are indisputably a business necessity and therefore, an expenditure relating to business or amount spent to carry on the operations to earn income. Hence, the contentious amount has rightly been allowed by the CIT(A).

20. The remaining two components of utilisation of loan were really doubtful. Because an assessee company cannot take loan and disburse it to its related party or to its subsidiary company. This approach definitely amounts diversion if not siphoning of funds.

21. We find that the order of the CIT(A) was perfectly justified and in tandem with the law and hence, the Tribunal has committed no error of law



in upholding such order of the CIT(A).

22. Appeal is, therefore, rejected. Pending application also stands disposed of.

DINESH MEHTA, J.

VINOD KUMAR, J.

APRIL 9, 2026/nk