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

\# **CNR No. DLHC011323212024**

\+ ITA 700/2026 & CM APPL. 59053/2026, CM APPL. 59054/2026

PR. COMMISSIONER OF INCOME TAX, DELHI 1

.....Appellant

Through: Mr. Indruj Singh Rai, SSC with Mr. Sanjeev Menon, JSC, Mr. Rahul Singh, JSC, Ms. Priya Sarkar, JSC and Mr. Gaurav Kumar, Mr. Prateek Bhati, Advocates

versus

M/S ESCORTS LTD .....Respondent

Through: Mr. Simran Mehta, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE AMIT SHARMA

O R D E R

% 01.10.2026

CM APPL. 59054/2026 (Exemption)

Allowed, subject to all just exceptions.

CM APPL. 59053/2026 (Delay in re-filing)

1. This application under Section 5 of the Limitation Act, 1963 read with Section 151 of CPC has been filed on behalf of the Appellant seeking condonation of delay of 781 days in re-filing the present Appeal.

2. For the reasons stated in the application, the delay is condoned.

3. The application is disposed of.

ITA 700/2026

1. The present Appeal under Section 260A of the Income Tax Act, 1961

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has been filed by the Appellant/Department against the Order dated 27.02.2024 passed by the Ld. Income Tax Appellate Tribunal in ITA No.792/Del/2010 for the Assessment Year 2006-07.

2. The following two questions are framed for consideration:

> *"A) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in dismissing the appeal of Revenue on issue of addition made by the AO amounting to Rs.6,60,66,800/- on account of disallowance of upfront fee?*
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> *B) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in dismissing the appeal of Revenue on issue of addition made by the AO amounting to Rs.1,00,75,000/- on account of disallowance of royalty payment?"*

3. As far as question (B) is concerned, the same stands squarely covered by an Order dated 13.08.2026 passed by this Court in **ITA 804/2019** in the case of 'The Pr. Commissioner of Income Tax-3 vs. Escorts Ltd.' wherein this Court has held against the Assessee itself by observing as under:

> *"1. The Revenue has preferred the present appeal for raising the following substantial questions of law:*
>
> *"2.1* *** *** ***
>
> *2.2 Whether on the facts and circumstances of the case and in law, ld. ITAT is correct in law in and in fact in deleting the disallowance of Rs.98,25,000/-i.e. 25% of royalty amounting to Rs.3.93 crorees made to M/s Harprasad & Company Ltd?"*
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> *xxx*

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> *4. In relation to question no. 2.2, reproduced hereinabove, we are of the view that 0.25% royalty has been paid by the respondent-assessee to M/s Harprasad & Company Ltd., for the use of the brand name 'Escort'. The factum of its admissibility is not in dispute, so also, the fact that it conforms to the yardsticks laid down under Section 37 of the Income Tax Act, 1961. In these circumstances, we fail to comprehend as to how the amount of 0.25% which was agreed to be paid on the sales or revenue generated by the respondent each year, can at all be considered to be a capital expenditure by any stretch of imagination !"*

4. As far as question (A) is concerned, the same also stands squarely covered by an Order dated 05.08.2026 passed by this Court in **ITA 800/2019** in the case of 'The Pr. Commissioner of Income Tax-3 vs. Escorts Ltd.' wherein this Court has again held against the Assessee itself by observing as under:

> *"1. The present appeal preferred by the Revenue/Department under Section 260A of the Income Tax Act, 1961, is directed against order dated 06.03.2019 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi (hereinafter referred to as 'the Tribunal') in ITA No.4673/Del/2005 and ITA No.84/Del/2006 for Assessment Year 2002-03. The said order was passed in an appeal preferred by the Revenue, against the order dated 31.10.2005 whereby the Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT(A)") had set aside the disallowance of the Upfront Fee paid to the bank of Rs.3,12,75,000/- made by the Assessing Officer vide his order dated 31.03.2005, on the ground that the same was of enduring nature and thus should have been capitalized.*

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4. Having heard learned counsel for the parties and upon going through the judgment of Hon'ble the Supreme Court in the case of India Cements (supra), we find that even when the loan was utilized for purchase of capital assets, then also Hon'ble the Supreme Court had held that the expenditure incurred towards securing such loan is a revenue expenditure. If that be so, in other cases, where, the loan has been put to capital as well as revenue expenditure, there cannot be any reason for the Assessing Officer to treat the same as a capital expenditure and disallow the expenditure claimed by the assessee.

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6. Further, the matter relates to Assessment Year 2002-03. Firstly, we hardly find any question of law to have been involved and even if there is some scope for arguments, ultimately it is only a question of the expenditure being revenue or capital. If after more than 20 years of passing the assessment order, we hold the expenditure to be of capital expenditure, all the returns of the assessee will have to be revised/rectified and the Assessing Officer so also the assessee will have to re-do the entire exercise, of calculating profit and allowing depreciation, which will lead to administrative hazards with no revenue generation to the Department."

5. Though learned Counsel appearing for the Appellant/Department states that the case is covered under Section 36(1)(iii) of the Income Tax Act, however, this Court is not inclined to entertain this issue under Section 260A of the Income Tax Act, leaving it open for the Appellant/Department to take up this issue if and when these questions arise in future.

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6. With these observations, the Appeal is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AMIT SHARMA, J

OCTOBER 01, 2026
S. Zakir

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