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

% *Decision delivered on: 19.12.2022*

+ **ITA 540/2022 & CM No.54841/2022**

PR. COMMISSIONER OF INCOME TAX- 9 Appellant
Through: Mr Zoheb Hossain, Sr. Standing
Counsel and Mr Vipul Agrawal and
Mr Parth Semwal, Jr. Standing
Counsels.

versus

M/S YKK INDIA PRIVATE LTD. Respondent
Through: None.

+ **ITA 542/2022 & CM No.54844/2022**

PR. COMMISSIONER OF INCOME TAX, DELHI- 9..... Appellant
Through: Mr Zoheb Hossain, Sr. Standing
Counsel and Mr Vipul Agrawal and
Mr Parth Semwal, Jr. Standing
Counsels.

versus

M/S YKK INDIA PVT. LTD Respondent
Through: None.

+ **ITA 543/2022 & CM No.55078/2022**

PR. COMMISSIONER OF INCOME TAX – 9 Appellant
Through: Mr Zoheb Hossain, Sr. Standing
Counsel and Mr Vipul Agrawal and
Mr Parth Semwal, Jr. Standing
Counsels.

versus

M/S YKK INDIA PVT. LTD Respondent
Through: None.

+ **ITA 544/2022 & CM No.55186/2022**

PR. COMMISSIONER OF INCOME TAX, DELHI- 9..... Appellant

Through: Mr Zoheb Hossain, Sr. Standing Counsel and Mr Vipul Agrawal and Mr Parth Semwal, Jr. Standing Counsels.

versus

M/S YKK INDIA PVT. LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.54841/2022 in ITA 540/2022

CM No.54844/2022 in ITA 542/2022

CM No.55078/2022 in ITA 543/2022

CM No.55186/2022 in ITA 544/2022 *[Applications filed on behalf of the appellant seeking condonation of delay of 465 days in re-filing the appeals]*

1. These are the applications moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeals.

1.1. According to the appellant/revenue, there is a delay of 465 days.

2. For the reasons given in the applications, the delay is condoned.

3. The above-captioned applications are, accordingly, disposed of.

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4. These appeals are directed against the common order dated 22.10.2018 passed by the Income Tax Appellate Tribunal [in short

“Tribunal”].

4.1 The Tribunal, by way of a brief order, has remitted the matter to the Transfer Pricing Officer (TPO) with a direction to decide the issues afresh, after consideration of the evidence filed by the assessee.

5. Furthermore, the TPO has been directed to give a hearing in the matter to the authorized representative of the assessee. The direction for remand was prefaced with the Tribunal invoking Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 [in short, “Rules”]. Accordingly, in exercise of the power vested under the said Rule, additional supporting evidence was admitted by the Tribunal, with a view that it required appraisal by the TPO.

5.1 It also appears that, while exercising its power to remit the matter to the TPO, the Tribunal took into account the fact that the issues which had been raised on merits before it, obtained in earlier assessment years as well, in which, no objection was raised or disallowance ordered by the Assessing Officer (AO)/TPO.

6. Thus, having regard to the fact that the assessee was under a *bona fide* belief, in view of similarity of issues, that it need not file documentary evidence, the Tribunal, as noted above, remitted the matter to the TPO.

7. We have looked at the record, with the assistance of Mr Zoheb Hossain, who appears on behalf of the appellant/revenue.

8. Mr Hossain, cannot but accept that the matter may require further examination by the TPO, notwithstanding the fact that the impugned order is rather cryptic.

9. In our view, no prejudice will be caused to either side if the matter is remitted to the TPO, as directed by the Tribunal.

10. Therefore, these appeals are closed without prejudice to the rights and

contentions of the parties.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 19, 2022

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Click here to check corrigendum, if any

