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

% *Date of Decision: 06.04.2023*

\+ **ITA 196/2023**

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant
Through: Mr Shlok Chandra, Standing Counsel with Ms Priya Sarkar, Adv.

versus

MODIPON LTD. ..... Respondent
Through: Mr Shashwat Bajpai with Mr Akshay Anurag and Ms Sanjana Sachdev, Advs.

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 Appl.16017/2023 ***[Application filed on behalf of the appellant/revenue seeking condonation of delay of 640 days in re-filing the appeal.]***

1. This is an application filed on behalf of the appellant/revenue, seeking condonation of delay in re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 640 days.

2. Mr Shashwat Bajpai, who appears on behalf of the non-applicant/respondent/assessee, does not oppose the prayer made in the application.

3. The delay is condoned. The application is, accordingly, disposed of.

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2. This appeal concerns Assessment Year (AY) 1987-88. The appeal seeks to challenge the order dated 13.08.2018 passed by the Income Tax Appellate Tribunal [in short, the "Tribunal"].

3. The short issue which arose for consideration before the Tribunal was whether interest under Section 220(2) of the Income Tax Act, 1961 [in short, the "Act"] was payable by the respondent/assessee, in respect of the demand raised *via* the order dated 29.03.1990.

3.1 This assessment order was passed under Section 143(3) of the Act.

3.2 By virtue of this order, the respondent/assessee's income was assessed at Rs. 11,40,79,686/-.

4. It is important to note that the appellant/revenue, being aggrieved by the aforesaid order, preferred an appeal with the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].

4.1 The CIT(A), *via* the order dated 30.06.1999, reduced the respondent/assessee's income to Rs.5,83,45,420/-.

5. The record shows that the Assessing Officer (AO), while giving effect to the order passed by the CIT(A), reduced the income to Rs.5,60,33,906/-.

5.1 It appears that since the respondent/assessee was dissatisfied with the order of the CIT(A) dated 30.06.1999 (which is referred to hereinabove), an appeal was preferred with the Tribunal.

5.2 Likewise, the appellant/revenue also preferred an appeal with the Tribunal.

6. The Tribunal, *via* order dated 22.07.1996, passed a common order. Resultantly, the assessed income of the respondent/assessee was got scaled

down to Rs.92,49,259/-.

7. The AO gave effect to the said order passed by the Tribunal on 29.04.1997. The appeal effect order, i.e., the order dated 29.04.1997, pegged the respondent/assessee's assessed income at Rs.66,80,645/-.

8. What is not in dispute is that the CIT(A), with regard to the preceding assessment year, i.e., AY 1986-87, had passed the order on 07.06.2002, directing the AO to consider allowing deduction towards excise duty paid by the respondent/assessee amounting to Rs.88,80,941/- in the said AY, with a caveat that if the deduction was allowed for AY 1986-87, the AO should withdraw the equivalent claim which had already been allowed in the subsequent AY, i.e., AY 1987-88.

9. Pursuant to the order dated 07.06.2002, the AO on 15.09.2014 passed an order qua AY 1986-87, allowing the deduction of Rs. 88,80,941 for AY 1986/87.

9.1 Consequently, via a separate order i.e., order dated 21.05.2014, the AO recomputed the taxable income of the respondent/assessee for AY 1987-88, by adding Rs.88,80,914/- to the respondent/assessee's income.

9.2 Furthermore, the AO also levied interest amounting to Rs. 1,62,85,376 under Section 220(2) of the Act for the period spanning between 01.05.1990 and 15.09.2014.

10. It is against this order of the AO that the respondent/assessee preferred an appeal with the CIT(A). The CIT(A), *via* order dated 14.11.2014, concluded that as the demand under Section 156 of the Act was raised for the first time on 15.09.2014, and since there was no default, interest under the said provisions should not be levied.

11. This time around, the appellant/revenue, being aggrieved, preferred an

appeal with the Tribunal. The Tribunal, *via* the impugned order, sustained the view taken by the CIT(A) as regards levy of interest under Section 220(2) of the Act.

11.1 In reaching this conclusion, the Tribunal has noted the following facts, which decidedly emerged from the record:

(i) First, that the assessment order dated 29.03.1990 did not morph into a demand notice.

(ii) Second, that the income assessed initially at Rs. 11,40,79,686/- *via* the assessment order dated 29.03.1990, i.e., did not concern itself with the excise duty component which, as noticed above, was later on added to the assessed income of the respondent/assessee in respect of the AY in issue i.e., AY 1987-88.

(iii) Third, that the demand arose for the first time pursuant to the order of the CIT(A) concerning the earlier assessment year i.e., AY 1986-87.

12. Given these facts, there is no dispute that no demand notice was raised under Section 156 of the Act, when the assessment order dated 29.03.1990 was passed.

13. As noticed hereinabove, the demand notice, for the first time, was issued only on 15.09.2014. The crucial question which, therefore, arises for consideration is: whether the period prior to 15.09.2014 will come within the sway of sub-section (2) of Section 220 of the Act.

14. To our minds, plain language of sub-section (2) of Section 220 shows that the liability to pay interest would arise only with respect to the amount specified in the notice of demand issued under Section 156 of the Act, which

is not paid within the prescribed time.

15. Given the facts which have emerged in this case, the demand noticed was issued only on 15.09.2014. Therefore, the order of the AO seeking to levy interest for the period spanning between 01.05.1990 and 15.09.2014, in our view, cannot be sustained. This conclusion reached by both the CIT(A) and Tribunal, in our opinion, does not call for interference.

16. Resultantly, no substantial question of law arises for our consideration. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 6, 2023/pmc