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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 409/2017

COMMISSIONER OF INCOME TAX-4 Appellant
Through: Mr Ashok Manchanda, Advocate

versus

HISTORIC INFRACON Respondent
Through: None

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE CHANDER SHEKHAR

ORDER

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19.05.2017

CM No. 18991/2017 (exemption)

1. Allowed, subject to all just exceptions.

CM No. 18992/2017 (for condonation of delay of 30 days' delay in re-filing)

2. For the reasons stated therein, the delay in re-filing is condoned. The application is disposed of.

CM No. 18990/2017 (delay of 335 days in filing the appeal)

3. There is a delay of 335 days in filing the appeal. The explanation offered for the delay is given in paras 3, 4 and 5 of the explanation, which read as under:

"3. That several orders including the Assessment order, CIT (Appeals) order and order of the I.T.A.T have been filed along with the Appeal. That as per the requirements of the High Court rules and orders, the typed copies of all the orders is required to

be filed along with the Appeal. Beside this, several other compliances have to be fulfilled by the Assessing Officer.

4. That the Id. ITAT had quashed the assessment order passed by the AO on the technical ground that there was no Satisfaction Note recorded by the AO of the searched party. This ground was taken by the assessee by introducing additional evidence in the form of letters dated 02-07-2013 by way of a Reply under the RTI Act for the first time before the ITAT. It took quite some time to trace and get the relevant files which contained the RTI Query dated 28-06-2013 and the reply dated 02-07-2013 thereto. Meanwhile the jurisdiction of the case had been transferred from Central Circle to ITO under the charge of CIT-4, Delhi. Though the case had been transferred, but the relevant records took quite some time to be located and transferred.

5. That there are other reasons concerning e-filing system, the appeals pertaining to taxation are to be filed electronically. In case, any defects are pointed out by the High Court Registry, the entire process has to be repeated and the appeal is again e-filed. At this juncture, it may be stated that the 'defect(s)' marked by the registry are, usually procedural in nature, such as

(i) the age of the concerned CIT signing the affidavit is not stated in the affidavit,

(ii) the PAN of the assessee/respondent is not mentioned,

(iii) the service to the assessee/respondent is more than one week ago etc, Usually, the registry takes two-three days' time to make fresh copy and during that time the caveat report expires and the whole process is to be repeated again."

4. The Supreme Court has in *State of U.P. v. Amar Nath Yadav (2014) 2 SCC 422* reiterated its earlier decision in *Postmaster General v. Living Media India Limited (2012) 3 SCC 563* where it was observed as under:

"In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

5. The reasons given in the present application are wholly unsatisfactory. The mere fact that the Assessing Officer was busy in other time-bearing assessments can hardly be an excuse, particularly given the fact that under Section 260A of the Income Tax Act, 1961, the time period for filing of an appeal is 120 days. No other statute prescribes the time period of over three months. Moreover, there is no explanation for every day's delay. A delay of 335 days cannot be said to be routine.

6. With there being no satisfactory explanation, the application for condonation of 335 days in filing the appeal is dismissed.

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7. Accordingly, the appeal is dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 19, 2017/*rd*

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