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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 111/2016**

THE COMMISSIONER OF INCOME TAX-IV, ... Appellant

Through: Mr Rahul Chaudhary, Senior Standing Counsel with Mr Raghvendra Singh, Junior Standing Counsel and Mr Sharad Agarwal, Advocate.

versus

M/S. DLF LTD. ..... Respondent

Through: Ms Kavita Jha and Ms Mehak Gupta, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **09.02.2016**

CM No.3178/2016

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

CM No.3179/2016 (for condonation of delay in re-filing the appeal) & ITA 111/2016

3. There is an inordinate delay of 452 days in re-filing the appeal.

4. The Court finds that the standard excuse that the Department is putting forth in all such applications for condonation of delay in re-filing the appeal is the change of Standing Counsel for the Department and the failure by the earlier counsel to inform the Department about the appeal lying in defect. This explanation does not impress the Court. It is not possible to accept that

no one in the Department followed up on the filing of appeals and allowed a period of almost one year and three months to elapse before the appeal could be re-filed. The Department has a cell in the High Court which is under the supervision of a Deputy CIT. He ought to be keeping track of the filing of appeals and should be able to know if any appeal entrusted to the panel counsel for filing has not been listed even once before the Court for a long time.

5. The application CM No. 3179/2016 for condonation of the delay of 452 days in re-filing the appeal is dismissed.

6. Nevertheless, the case has been examined on merits as well.

7. This appeal by the Revenue is directed against the order dated 14th February, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4350/Del/2012 for the Assessment Year ('AY') 2004-05.

8. The point urged by the Revenue is regarding the quashing by the Commissioner of Income Tax [CIT (A)] of the reopening by the Assessing Officer (AO) of the assessment under Section 148 of the Income Tax Act, 1961, which order of the CIT (A) has been upheld by the ITAT.

9. Of the two items which form the subject matter of the reopening of the assessment, one concerns the rent received from the Shri Ram School and the claim towards the TDS deducted. The AO did raised specific queries in this regard during the original assessment.

10. The second item was regarding the delayed construction charges. Although, it is sought to be pointed out by the learned counsel for the Revenue that in this regard there were no specific queries as such raised by the AO, it is pointed out by learned counsel for the Assessee that in the course of the appeal before the CIT(A), a note was submitted by the Assessee in this regard. The attention of the CIT(A) was also drawn to the decision of the Supreme Court in ***DLF Universal Ltd. v. Director, T&C, Planning Haryana (2010) 14 SCC 1.***

11. Having considered the above submissions, the Court is not persuaded to hold that any substantial question of law arises from the impugned order of the ITAT.

12. The appeal is, accordingly, dismissed both on the ground of the extraordinary delay of 452 days in re-filing the appeal as well as on merits.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 9, 2016
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