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* IN THE HIGH COURT OF DELHI AT NEW DELHI
1.
+ ITA 1021/2015

DIRECTOR OF INCOMETAX-(EXEMPTION) ..... Appellant
Through: Mr. Kamal Sawhney, Senior Standing counsel with Mr. Raghvendra K. Singh, Mr. Shikhar Garg and Mr. Sharad Agarwal, Advocates.

versus

R.B. SETH JESSA RAM & BROS. CHARITABLE HOSPITAL TRUST ..... Respondent

AND

2.
+ ITA 1022/2015

DIRECTOR OF INCOMETAX-(EXEMPTION) ..... Appellant
Through: Mr. Kamal Sawhney, Senior Standing counsel with Mr. Raghvendra K. Singh, Mr.Shikhar Garg and Mr. Sharad Agarwal, Advocates.

versus

R.B. SETH JESSA RAM & BROS. CHARITABLE HOSPITAL TRUST ..... Respondent

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER
% **04.01.2016**

CM No. 31872/2015 (for condonation of delay in re-filing the petition) & ITA No. 1021/2015

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CM No. 31874/2015 (for condonation of delay in re-filing the petition) & ITA No. 1022/2015

1. There is an extraordinary delay of 655 days in re-filing these appeals. The explanation offered is the standard one regarding the practice directions issued by this Court for e-filing of the appeals. As has already been observed by this Court in several orders, the practice directions were issued after consultation with the bar and after giving sufficient time for the bar to get acquainted with the requirement of e-filing. Additionally, the Court has also provided scanning machines at the filing counter so that no difficulty is caused to the bar for switching over to the system of e-filing. In any event, the delay of 655 days on this ground is wholly unacceptable. Consequently, the Court is not persuaded to condone the extraordinary delay of 655 days in re-filing these appeals.

2. Nevertheless, the appeals have also been examined on merits.

3. These are appeals under Section 260A of the Income Tax Act, 1961 ('Act') by the Revenue against a common order dated 19th July 2013 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2261/Del/2010 for the Assessment Years ('AYs') 2005-06 and 2006-07.

4. The ITAT has followed the earlier order passed by the ITAT in the case of the same Assessee for AY 2008-09 where the dismissal was on account of low tax effect. However, in the said order, the ITAT took note of the decision for AY 2004-05 which involved the same question as has been raised in the present appeals. The essential point raised is that the Respondent Assessee, which is a Trust registered under Section 12AA of the Act, has by virtue of an operation and maintenance agreement entered into with Fortis Healthcare Limited ('FHL') on 29th October 2013, transferred control of the Trust to FHL and by virtue of the said agreement has agreed to pay management fees at 35% of the gross billings of the hospital to FHL.

5. The Commissioner of Income Tax (Appeals) ['CIT (A)'] has in the order dated 26th February 2010, common to both AYs, disagreed with the Assessing Officer ('AO') and held that there is no evidence to show that there has been any siphoning off of funds and that by virtue of the agreement control of the Trust has been transferred to FHL.

6. On the facts of the present case, therefore, the Court is not inclined to frame any question of law as has been urged by the Revenue. Nevertheless, the Court would leave the questions open for consideration in an appropriate

case.

7. The appeals are accordingly dismissed both on grounds of the extraordinary delay of 665 days in re-filing the appeals as well as on merits.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 4, 2016
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