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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
15.
\+ **W.P.(C) 1694/2016**

ASIAN CONSOLIDATED INDUSTRIES LTD. ..... Petitioner
Through: Mr. Rakesh Kumar and Mr. P.K. Sachdeva, Advocates.

versus

ACIT, CENTRAL CIRCLE-12,NEW DELHI ..... Respondent
Through: Mr. P.Roy Chaudhuri, Senior Standing counsel with Ms. Lakshmi Gurung, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **26.04.2016**

1. No counter affidavit has been filed despite the final opportunity granted to the Respondent.

2. The challenge in this writ petition is to an order dated 10th June 2015 passed by the Income Tax Appellate Tribunal ('ITAT') whereby the Miscellaneous Application No. 191/Del/2014 filed by the Petitioner seeking restoration of ITA No. 1448/Del/1997 was dismissed.

3. The facts leading to the filing of the present petition are that the Petitioner was ordered to be wound up by the High Court of Punjab & Haryana in C.P. No. 8/1998. It is stated that the Official Liquidator ('OL') attached to the High Court of Punjab & Haryana was appointed and took complete control

of the Petitioner Company. The appeal of the Petitioner which was pending before the ITAT being ITA No.1448/Del/1997 was dismissed in default on 14th March 2002. It is stated that the Income Tax Department filed an application before the High Court of Punjab & Haryana on 18th April 2012 claiming outstanding demand of Rs.135 crores from the Petitioner.

4. A revival petition was filed before the High Court of Punjab & Haryana in the aforementioned proceedings on 21st January 2013. In these proceedings an order was passed on 8th May 2013 by the said High Court granting liberty to the Petitioner to approach the Income Tax Department for settlement.

5. The said revival application appears to have been finally allowed by the High Court of Punjab & Haryana on 12th May 2014.

6. On 10th June 2015, the ITAT dismissed the M.A. No. 191/Del/2014 seeking recall of the ex parte order dated 14th March 2002 dismissing ITA No. 1448/Del/1997 for AY 1992-93. The ITAT concluded that there was no power conferred on the ITAT to condone the delay in preferring an application under Section 254(2) of the Act after expiry of four years of the passing of the order of the ITAT. The ITAT also expressed inability to act on the observation of the High Court of Punjab & Haryana that a sympathetic view should be taken in condoning the delay in filing the appeal as the company was under liquidation since that observation did not apply to the filing the restoration application of an appeal that had already been dismissed.

7. Having examined the entire documents including the orders of the High

Court of Punjab & Haryana as well as the impugned order of the ITAT, the Court is of the view that in view of the special circumstances explained in the petition, with the Petitioner company having been in liquidation for several years, the Petitioner should not be prejudiced in pursuing the appeal which has been decided ex parte against it by the ITAT.

8. In the peculiar facts and circumstances, the Court sets aside the impugned order dated 10th June 2015 passed by the ITAT and allows the M.A. No. 1448/Del/1997 thereby condoning the delay on the part of the Petitioner in seeking recall of the ex parte order dated 14th March 2002 of the ITAT dismissing the appeal.

9. The Court also sets aside the ex parte order dated 14th March 2002 of the ITAT dismissing the Petitioner's appeal and restores ITA No. 1448/Del/1997 for AY 1992-93 to the file of the ITAT.

10. The aforementioned appeal will be listed before the ITAT on 16th May 2016. It will be open to the Petitioner to bring to the notice of the ITAT that the quantum appeal of the Assessee for the same AY has already been allowed by the ITAT. The writ petition is allowed. Order *dasti*.

S. MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 26, 2016/dn