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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ ITA 366/2016

COMMISSIONER OF INCOME TAX-V ..... Appellant
Through: Mr. Rahul Chaudhary, Advocate.

versus

NEW DELHI TELEVISION LTD ..... Respondent
Through: Mr. Prakash Kumar with Ms. Mehvish Khan, Advocates.

And

\+ ITA 367/2016

COMMISSIONER OF INCOME TAX-V ..... Appellant
Through: Mr. Rahul Chaudhary, Advocate.

versus

NEW DELHI TELEVISION LTD ..... Respondent
Through: Mr. Prakash Kumar with Ms. Mehvish Khan, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE NAJMI WAZIRI

ORDER
% **12.07.2016**

CM APPL No. 23809/2016 (exemption) in ITA 367/2016

1. Allowed subject to all just exemptions.

CM APPL No. 23808/2016 (delay) in ITA 366/2016
CM APPL No. 23810/2016 (delay) in ITA 367/2016

2. There is a delay of 592 days in re-filing the 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 over one and a half year on this ground is wholly unacceptable. Consequently, the Court is not persuaded to condone the extraordinary delay of 592 days in re-filing the appeals.

3. The applications bearing CM Application Nos. 23808/2016 & 23810/2016 for condonation of the delay of 592 days in re-filing the appeals are dismissed.

ITA 366/2016 & ITA 367/2016

4. Nevertheless the appeals have also been examined on merits.

5. These appeals by the Revenue are directed against the common order dated 20th December 2013 in ITA Nos. 852 and 942/Del/2012 for Assessment Year (AY) 2006-07.

6. The issue in ITA No.366/2016 concerns the disallowance by the

Assessing Officer (AO) of the expenses incurred by the Assessee on account of the Employees Stock Option Plan ('ESOP'). The ITAT reversed the AO and deleted the disallowance in light of the decision of the Special Bench of the ITAT (Bangalore) in ***Biocon Limited v. DCIT (LTU), Bangalore (2013) 35 taxmann.com 335 (Bangalore-Trib.) (SB).***

7. As far as this issue is concerned, it is pointed out by the learned counsel for the Assessee that the issue stands covered in favour of the Assessee and against the Revenue by the order of this Court dated 18th August, 2015 in ITA No.107/2015 ***(Commissioner of Income Tax v. Lemon Tree Hotels).*** The Court had affirmed the order of the ITAT deciding the issue in favour of the Assessee in the said case where the addition made by the AO by way of disallowance of the expenses debited as cost of ESOP in profit and loss account was deleted by the ITAT.

8. In the present case, the ITAT has by the impugned order restored the matter to the file of the AO for re-adjudication. The impugned order of the ITAT is consistent with what has been held by this Court in ***Commissioner of Income Tax v. Lemon Tree Hotels*** (*supra*). Consequently, no substantial question of law arises as far as this issue is concerned.

9. The second issue which pertains to ITA No.367/2016 is whether the software expenses are required to be treated as capital expenditure as held by the AO or revenue expenditure as pleaded by the Assessee and accepted by the ITAT?

10. The ITAT has in the impugned order placed reliance on the decision of

this Court in ***CIT v. Asahi India Safety Glass Ltd. (2011) 245 CTR 529.*** The Revenue has made a reference to the Special Leave Petition (SLP) filed by the Revenue against the said order. Learned counsel for the Assessee has handed over a copy of the order dated 5th July, 2012 passed by the Supreme Court in ***CIT-I, New Delhi v. Asahi India Safety Glass Ltd.***, dismissing the Revenue's SLP filed against the aforementioned judgment.

11. In that view of the matter, the impugned order of the ITAT on this issue does not give rise to any substantial question of law.

12. The appeals are accordingly dismissed both on account of delay in refiling the appeals as well as on merits.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 12, 2016
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