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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
19.
\+ **W.P.(C) 4909/2016**

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

versus

INCOME TAX OFFICER, WARD 3(3) ..... 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
% **25.05.2016**

1. Notice. Mr. P Roy Chaudhuri, Senior Standing counsel, accepts notice for the Respondent.

2. The challenge in this writ petition is to an order dated 1st February 2016 passed by the Income Tax Appellate Tribunal ('ITAT') whereby the Miscellaneous Application No. 219/Del/2012 filed by the Petitioner seeking restoration of ITA No. 4873/Del/1998 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.4873/Del/1998 was dismissed in default on 3rd June 2003. 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 1st February 2016, the ITAT dismissed the M.A. No. 219/Del/2012 seeking recall of the ex parte order dated 3rd June 2003 dismissing ITA No. 4873/Del/1998 for AY 1991-92. 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 1st February 2016 passed by the ITAT and allows the M.A. No. 219/Del/2012 thereby condoning the delay on the part of the Petitioner in seeking recall of the ex parte order dated 3rd June 2003 of the ITAT dismissing the appeal.

9. The Court also sets aside the ex parte order dated 3rd June 2003 of the ITAT dismissing the Petitioner's appeal and restores ITA No. 4873/Del/98 for AY 1991-92 to the file of the ITAT.

10. The aforementioned appeal will be listed before the ITAT on 1st August 2016. The writ petition is allowed in the above terms. Order *dasti*.

S. MURALIDHAR, J

VIBHU BAKHRU, J

May 25, 2016
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