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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
35.
\+ **ITA 344/2016**

PR. COMMISSIONER OF INCOME TAX-17 ..... Appellant

Through Mr P. Roychaudhuri, Senior Standing Counsel with Ms Lakshmi Gurung, Junior Standing Counsel.

versus

BHAGIRATH AGGARWAL ..... Respondent

Through

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **24.05.2016**

CM 20181/2016

1. There is an inordinate delay of 287 days in filing the appeal.

2. The Court finds that the application for condonation of delay has been drafted on the basis that the appeal against the impugned order dated 7th January 2015 of the Income Tax Appellate Tribunal (ITAT) was first filed on 17th July 2015. However the scrutiny report of the Registry shows that the appeal was filed for the first time only on 6th May 2016. Considering that the impugned order was received by the Appellant on 23rd March 2015, the Registry has calculated the delay as 287 days. There is no explanation whatsoever offered for the delay except that there was a change of counsel.

3. The above explanation is not satisfactory. Accordingly, the application for

condonation of the delay of 287 days in filing the appeal is dismissed.

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4. The appeal has nevertheless also been examined on merits. The question sought to be urged is whether the ITAT was justified in deleting the penalty imposed on the Assessee under section 271 (1) (c) of the Income Tax?

5. The ITAT has returned a factual finding that "no books or material has been placed by the Revenue before us to support its case that there was some incriminating material found during the search" qua the Respondent Assessee. The Commissioner of Income Tax (Appeals) had in the quantum of proceedings concluded that "no property was purchased from the relevant period by any family member and the jewellery found was less than the jewellery disclosed". The cash found in the premises was stated to belong to the business of the Assessee Group and could be explained by the accounts. In the circumstances, the ITAT concluded that penalty was confirmed solely on the basis of the confirmation of the demand in the quantum proceedings and not on the basis of any independent reasoning.

6. The Court is unable to find any legal infirmity in the above reasoning or

conclusion of the ITAT. No substantial question of law arises.

7. The appeal is accordingly dismissed both on the ground of delay as well as on merits. .

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 24, 2016
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