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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 687/2016, C.M. APPL.36826/2016**

\+ **ITA 600/2016, C.M. APPL.29878/2016**

COMMISSIONER OF INCOME TAX- IV ..... Appellant

versus

M/S. ENERGY INFRATECH PVT. LTD. ..... Respondent

Through : Sh. Ruchir Bhatia, Sr. Standing Counsel with Sh. Puneet Rai, Jr. Standing Counsel, for petitioners in Item Nos. 77 and 9..

Ms. Kavita Jha and Ms. Roopali Gupta, Advocates, for respondent in Item Nos. 77 and 9.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 05.10.2016

Both these appeals are hopelessly time-barred by 785 days. The explanation for the delay and ground for its condonation urged by the revenue is that though originally the appeals were filed within reasonable time, yet, the defective filing led to the return of the papers. The revenue thereafter explained that its panel of Standing Counsel was reorganized and that the erstwhile counsel took time to return the papers after which they were re-examined and re-filed. This explanation cannot be called “sufficient cause”.

Though the above observations are dispositive of the appeals, yet the Court is of the opinion that even on merits, the question urged with respect to the rules of depreciation applicable to the plant and machinery in the present case, i.e. civil work associated with installation of the windmill are to be answered against the revenue and there is no infirmity with the ITAT's order. The nature of the business activity of the assessee, in our opinion, dictated that the windmill and its sub-assembly components etc. were integrally connected with the civil works and that the latter had no independent use other than a separate base/platform. Likewise, the civil works pertaining to the construction of a small room were also an integral part of the windmill operations. This Court also notices that the ITAT has segregated the assessee's claim with respect to construction of road and left it to be dealt with separately by the Assessing Officer. In the circumstances of the case, the higher depreciation claimed by the assessee was undoubtedly warranted.

The appeals are accordingly dismissed on the ground of delay as well as on merits.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 05, 2016
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