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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA 41/2016 & CM APPL No. 879 of 2016**

COMMISSIONER OF INCOME TAX-IV ..... Appellant
Through: Mr. Ashok Manchanda, Senior Standing counsel with Ms. Vibhooti Malhotra, Advocate

versus

DIGITAL RADIO (DEL) BROADCASTING LTD...... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **20.01.2016**

1. There is a delay of 392 days in re-filing the appeal. 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 a year on this ground is wholly unacceptable.

2. Consequently, the Court is not persuaded to condone the extraordinary delay of 392 days in re-filing the appeal. The application seeking condonation of the above delay in re-filing the appeal is dismissed.

3. Nevertheless the case has also been examined on merits. The question sought to be urged by the Revenue in the present appeal which is directed against the order dated 4th April 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5363/Del/2013 for the Assessment Year ('AY') 2005-06 is whether the ITAT was right in upholding the order of the Commissioner of Income Tax (Appeals) [CIT(A)] dated 30th July 2013, cancelling reopening of the assessment under Section 147 of the Act.

4. The facts in brief are that the Assessee had claimed licence fee of Rs.7,56,17,252 as revenue expenditure and this was allowed while processing the return under Section 143(1) of the Act on the ground that the licence fee was a capital expenditure on which depreciation was admissible. The Assessing Officer ('AO') realized that the licence fee was required to be proportionately allowed over the period of the license. It had been erroneously allowed as revenue expenditure and was required to be added back.

5. It appears that even before the AO issued the notice under Section 148 of the Act, the Assessee on its own filed an application for rectification under Section 154 of the Act. This, however, was not dealt with by the AO. This fact was taken into consideration by the CIT (A) and the ore-opening of the assessment under Section 148 of the Act was held to be invalid. This has been concurred with by the ITAT.

6. It is urged by the counsel for the Revenue that the AO was fully justified in the facts and circumstances of the case in invoking Section 148 of the Act. The Court is of the view that the fact that the Assessee had filed an application under Section 154 had to be taken into account by the AO before invoking the Section 148 of the Act. By filing the said application the Assessee acknowledging its mistake in claiming an excess expenditure towards licence fee. This was relevant for considering whether there was any attempt by the Assessee to conceal or fail to disclose the fully and truly the material facts.

7. The Court does not find that either the order of the CIT(A) or the ITAT suffers from legal infirmity or perversity warranting interference.

8. No substantial question of law arises. Accordingly, the appeal is

dismissed both on the ground of the extraordinary delay of 392 days in re-filing the appeal as well as on merits.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 20, 2016
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