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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA 39/2016**

COMMISSIONER OF INCOME TAX-III ..... Appellant
Through: Mr Ashok Manchanda, Senior Standing Counsel with Ms Vibhooti Malhotra, Junior Standing Counsel.

versus

DELHI TRANSPORT CORPORATION LTD. ..... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **20.01.2016**

CM No.877/2016

1. For the reasons stated in the application, the delay of 345 days in re-filing the appeal is condoned.

2. The application stands disposed of.

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3. This appeal by the Revenue is directed against the order dated 6th June, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4784/Del/2012 for the Assessment Year ('AY') 2008-09.

4. This is a penalty appeal. By the impugned order, the ITAT had deleted the penalty levied by the Assessing Officer ('AO') on the Respondent, Delhi Transport Corporation ('DTC'), under Section 271(1)(c) of the Income Tax Act, 1961 ('Act').

5. During the course of the assessment proceedings, the AO noticed that the interest amount in the sum of Rs. 81,83,43,431/- on account of interest paid on plan loan taken for acquisition of capital assets was claimed as revenue expenditure. This interest amount was held to be expenditure of capital nature and therefore added back.

6. One of the grounds on which the penalty was levied was that the Assessee did not challenge the assessment order by way of an appeal. As rightly pointed out by the ITAT, the fact of the matter is that the Respondent DTC is facing heavy losses and perhaps did not choose to file an appeal. Non-filing of the appeal should not lead to the presumption that the Assessee had admitted to having wrongly claimed the interest amount as revenue expenditure. In these circumstances, the deletion of the penalty by the ITAT cannot be said to be perverse.

7. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 20, 2016/MK