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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 8/2016**

PR. COMMISSIONER OF INCOME TAX-06 ..... Appellant
Through: Mr Rahul Chaudhary, Senior Standing Counsel.

versus

MATANGI RUBBER PVT. LTD. ..... Respondent
Through

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% 12.01.2016

1. This appeal is directed against the order dated 29th May, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4498/Del/2013 for the Assessment Year 'AY' 2009-10.

2. The question sought to be urged was whether the ITAT was legally justified in allowing deduction under Section 80IC of the Income Tax Act, 1961 ('Act') notwithstanding that the Assessee had failed to file its return within the time prescribed under Section 139(1) of the Act and holding that the provisions of Section 80AC are directory?

3. The Assessee filed its return of income on 1st October, 2009 declaring Nil income after claiming deduction of Rs. 2,34,41,162/- under Section 80IC of the Act. While, completing the assessment by an order dated 5th December, 2011 the Assessing Officer ('AO') disallowed the deduction claimed since the return was not filed within the due date prescribed under Section 139(1) of the Act. The ITAT has in the impugned order while concurring the order of the Commissioner

of Income Tax (Appeals) noted that the e-return that was filed was actually uploaded and filed on the website of the income tax department at 12:46 am on 1st October, 2009 whereas the deadline was the midnight of 30th September, 2009/1st October, 2009. As a result, there was a technical delay of 46 minutes in filing the return. In the circumstances, the ITAT observed that it would be a travesty of justice if a technical delay of 46 minutes in filing the return lead to the deduction as claimed by the Assessee being denied.

4. The learned counsel for the Revenue argues that on a collective reading of Section 80IC and 80AC, the power to condone the delay in filing the return in terms of Section 139(4) of the Act this would be with the Central Board of Direct Taxes as per Section 119 of the Act and, therefore, the ITAT could not have usurped that power and condoned the delay in filing the return.

5. Considering that in the present case, as pointed out by the ITAT, the delay of 46 minutes was really a technical one and it was shown that the Assessee had tried to file the return within the time but was able to upload it only at 12:46 am, the view taken by the ITAT cannot be said to be perverse. Consequently, while leaving the question regarding the mandatory nature of Section 80 AC of the Act for adjudication in an appropriate case, the Court declines to frame the question of law as urged by the Revenue in this appeal.

6. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 12, 2016
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