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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 77/2016 & CM No.1641/2016**

PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant
Through: Mr Ashok K. Manchanda, Senior Standing Counsel.

versus

MANUPATRA INFORMATION SOLUTION ..... Respondent
Through: Mr G. C. Srivastava, with Mr Daksh S. Bhardwaj, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% **18.01.2016**

1. There is a delay of 1250 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 three years on this ground is wholly unacceptable.

2. Consequently, the Court is not persuaded to condone the extraordinary delay of 1250 days in re-filing the appeal. The application seeking condonation of the delay of 1250 days 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 16th December, 2011 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1483/Del/2011 for the Assessment Year 'AY'2007-08 is whether the ITAT erred in deleting the expenditure of Rs.63,70,259/- being 'database development cost' by accepting the Assessee's case that it was a revenue expenditure.

4. It is pointed out by Mr Srivastava, learned Counsel for the Assessee, that this very question from the earlier AY 2006-07 in the Assessee's very case has been answered against the Revenue and in favour of the Assessee by this Court by the decision dated 28th May, 2012 in ITA No.318/2012 and to the best of his knowledge no appeal has been filed by the Revenue against the said decision. A copy of the said order has been shown to the Court. It is seen that the Court has categorically held that software improvement is a "constant process" and expenditure has to be incurred repeatedly and,

therefore, the Court was unable to agree that the software upgradation expenses should be treated as capital expenses.

5. No substantial question of law arises. Accordingly, the appeal is dismissed both on the ground of extraordinary delay of 1250 days in re-filing the appeal as well as on merits.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 18, 2016
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