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

1.

\+ **ITA 57/2016**

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

Through: Ms. Vibhooti Malhotra, Advocate.

versus

FAIREVER TRADERS & CONSULTANTS (P) LTD.... Respondent

Through: Mr. S.K. Bagaria, Advocate with Mr. Jatin Zaveri and Mr. Neel Kamal Mishra, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **01.02.2016**

CM No. 971/2016(for condonation of delay in re-filing the appeal) & ITA 57 of 2016

1. There is an inordinate delay of 772 days in re-filing the appeals.

2. The Court finds that the standard excuse that the department is putting forth in all such applications for condonation of delay in re-filing the appeal is two-fold. The first is regarding the budgetary constraints of the Department which delayed payment of the differential court fees as a result of the Court Fees Delhi Amendment Act, 2012 which came into force on 1st August 2012. The second is regarding the practice directions issued by the Court pertaining to filing of soft copies of the paper books in tax matters.

3. The first ground is entirely unconvincing. Much prior to the initial filing of the appeal, the Court Fees Act applicable to Delhi stood amended. As

regards the second ground, sufficient advance notice had been given to the litigants and Advocates about the filing of soft copies of the paperbooks. Further, the Registry of the Court had made appropriate arrangements for scanning services at the filing counters to facilitate the making of soft copies so that the inconvenience if any caused to the Advocates and the litigants is minimised. In any event the change could not have entailed a delay of more than two years.

4. It is not possible to accept that no one followed up on the filing of appeals and allowed a period of more than two years to elapse before the appeal could be re-filed. The Department has a cell in the High Court which is under the supervision of a Deputy CIT. He ought to be keeping track of the filing of appeals and should be able to know if any appeal entrusted to the panel counsel for filing has not been listed even once before the Court for a long time.

5. Nevertheless the case has been examined on merits as well. The facts are that in consideration for Asish P Deora agreeing to obtain right of way for laying fibre cable in 50000 buildings, 1 crore shares of Reliance Infocomm Ltd. were transferred by Ganesh Infrastucture Capital Fund in favour of three companies (i.e. the Assessee company and two other companies (Prerna Auto Pvt. Ltd. and Softnet Traders and Consultants Pvt. Ltd.) in which Mr. Deora was Director. The benefit arising out of such transfer was sought to be taxed on substantive basis in the hands of Mr. Deora and on protective basis in the hands of the three companies. However, as noted by the ITAT in the impugned order, both the additions made on substantive

basis in the hands of Mr. Deora and on protective basis in the hands of two of the three companies, i.e. Prerna and Softnet have been deleted on appeal by the CIT (A) and confirmed by the ITAT. The order of the ITAT in the case of Mr. Deora has been upheld by the High Court of Bombay which declined to frame a question in the Revenue's appeal. Consequently, no substantial question of law arises for determination.

6. Consequently the appeal is dismissed both on grounds of the delay of 772 days in re-filing the appeal as well as on merits.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 01, 2016
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