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

\+ **ITA 259/2017**

PR COMMISSIONER OF INCOME TAX-3 ..... Appellant

Through : Mr. Rahul Chaudhary, Senior Standing Counsel for Revenue.

versus

FRESENIUS KABI ONCOLOGY LIMITED (FORMERLY DABUR PHARMA LIMITED) ..... Respondent

Through : Mr. Shashwat Bajpai, Mr. Sharad Agarwal, Advocates.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 11.07.2017

CM APPL. No. 12303/2017

1. This is an application by the Revenue seeking condonation of the delay in filing the appeal. According to the Registry, there is a delay of 215 days in filing the appeal. According to Mr. Rahul Chaudhary, learned Senior Standing Counsel for the Revenue, the actual number of days of delay in filing the appeal is 130 days.

2. Under Section 260A of the Income Tax Act, 1961, the Revenue already has a period of four months to file an appeal. This is more than the limitation for filing appeals under other statutes. Therefore, the requirement of the Revenue having to explain every day's delay, and for cogent and convincing reasons, is a *sine qua non.*

3. Turning to the reasons for the delay in filing the appeal, it is stated in para

(2) of the application as under:

> "2. That the order of the Tribunal was received by the CIT (Judicial) on 27.06.2016, which was sent to the concerned CIT on 20.07.2016. Thereafter, process of obtaining approval for filing appeal was initiated and note for approval was put before CCIT on 21.10.2016. The communication for approval for filing appeal in the present case was accorded by the CCIT on 31.10.2016. The approval regarding filing of appeal before the Hon'ble High Court of Delhi was finally communicated to Counsel on 07.11.2016, who, after going through the documents, requested for all the orders/ documents pertaining to assessee mentioned in the impugned order/ central scrutiny report. Since the matter was transferred from one charge to another, it took some time to collate the documents. Thereafter, the appeal was drafted and sent for approval on last week of · December 2016. Some clarifications were sought by the Department before approving the same for filing on 04.01.2017. However, in the process, the time limit for filing appeal expired."

4. The above explanation offered by the Revenue is not satisfactory at all. The internal arrangements in the Appellant Department and the processes it has evolved for taking a decision for filing an appeal are a matter entirely within its domain. It is for the Department to ensure that its processes ensure that a decision in that regard is taken within time so that the limitation period of 120 days is not exceeded. An excuse of administrative delay, with nothing more, cannot constitute a valid justification for the delay, and that too of 130 days, i.e. more than four months' delay.

5. To accept the above explanation would be contrary to the decision of the

Supreme Court in ***Postmaster General v. Living Media India Limited (2012) 3 SCC 563*** wherein it was observed as under:

> "In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

6. The above observation has been reiterated by the Supreme Court in ***State of U.P. v. Amar Nath Yadav (2014) 2 SCC 422***.

7. In that view of the matter, this Court declines to condone the extraordinary delay of 130 days in filing the appeal. The application is, accordingly, dismissed.

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8. Consequently, this appeal is dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 11, 2017/j