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

\+ **ITA 247/2017**

THE COMMISSIONER OF INCOME TAX-5 ..... Appellant
Through: Mr. Ruchir Bhatia, Advocate

versus

LPS BOSSARD PVT.LTD ..... Respondent
Through: Mr. Pranjal Srivastava, Advocate

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

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

% **25.04.2017**

<u>CM No. 12297/2017</u>

1. This application seeks the condonation of an extraordinary delay of 1177 days in re-filing the appeal of the Revenue under Section 260-A of Income Tax Act, 1961 directed against an order dated 10th May, 2013 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1686/Del/2010 for the Assessment Year 2004-05.

2. The explanation for the delay is set out in para 3 of the application and reads as under:

> "a) Initially the aforesaid Appeal was filed on 16.11.2013 before this Hon'ble Court vide Diary No.17579512013.
>
> b) However, the same was scrutinized by the Registry of this Hon'ble Court and objections were marked and the Appeal was returned to the then Senior Standing Counsel of the Income Tax Department who had filed the Appeal.
>
> c) It is humbly submitted that as per the usual practice, once the Appeal stands filed, officials verily believe that the matter will be pursued by the Standing Counsel(s) and it is only

after the disposal of the Appeal that the Applicant/Department is made aware of the outcome of the same.

The Applicant/ Department is contacted during the pendency of the Appeal only if some assistance/instructions are needed/ required from Applicant's/Department's end.

d) That however, the then Senior Standing Counsel resigned in the month of August 2014 and returned all the matters allocated to him including appeals which were filed but lying in defect during the period September 2014 to December 2014 to the High Court Cell of the Judicial Office of the Income Tax Department.

e) That the High Court Cell of the Judicial Office of the Income Tax Department reallocated the matters to other Senior Standing Counsels. However, the process was time consuming as the then Senior Standing Counsel was handling large number of matters. Further, there was restructuring of jurisdiction within the Department in the month of April, 2015. Hence, the original jurisdiction of the concerned CIT also underwent a change. It is further humbly submitted that there have also been frequent changes in the officer incharge of the judicial office of the High Court cell. In these circumstances, reallocation of the matters was not an easy task.

f) It is only in the month of August, 2015 in pursuance to order dated 20.08.2015 passed by this Hon'ble Court in I.T.A. No. 143/2013 that the Department has been shocked to know that there are large number of appeals which have been marked as defective and yet to be listed. The present appeal is one of such Appeals.

g) It is humbly submitted that the Department has taken serious note of the past situation and has already put up a standard

> operating procedure (SOP) in place so that there is no deficiency in filing and listing of appeals and also to ensure that no such situation arises in future."

3. It is also stated in the application that in the aforementioned circumstances, "the Applicant had to restructure the entire Appeal to ensure that the same is in order, including typing of dim/ illegible annexures."

4. None of the above reasons can justify the extraordinary delay of 1177 days in re-filing the appeal. After the appeal was initially filed on 20th August, 2014, the Department actually forgot about it entirely. It is not possible to accept that no one in the Department followed up on the filing of appeals and allowed a period of over two and a half 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. The Court is not convinced by the reasons given for the delay of 1177 days in re-filing the appeal. The application for condonation of delay is dismissed.

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6. The appeal is, accordingly, dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 25, 2017/tp