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

\+ W.P.(C) 1761/2017, CM APPL. 7812/2017 (Exemption)

BTC INDUSTRIES LTD. ..... Petitioner

Through: Mr. Rohit Madan, Mr. Amol Sinha, Mr. Nitin Gulati, Mr. Vijay Verma, Advs.

Versus

INCOME TAX APPELLATE TRIBUNAL & ANR. ..... Respondent

Through: Mr. Dileep Shivpuri, Sr. St. Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **28.02.2017**

CM APPL. 7812/2017 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 1761/2017

1. Issue notice. Mr. Dileep Shivpuri accepts notice.

2. The relief claimed in these proceedings is a direction to the I.T.A.T. to fix an early date of hearing of the appeal preferred by the writ petitioner.

3. The writ petitioner has suffered an adverse order in the assessment proceedings inasmuch as the A.O. held that it was liable for not filing returns and also for the amount it was bound to pay. Since the deduction under Section 80 IC was not claimed within the time stipulated, the A.O. proceeded to determine the liability. The petitioner was proceeded against, the appeal was rejected. During the pendency of a further appeal before the ITAT, initially, an interim order staying the demand recovery was given subject to payment of ₹10.00 lakhs. The petitioner, however, defaulted and consequently

suffered vacation of stay. In the meanwhile the petitioner has been proceeded with penally inasmuch as criminal proceedings have been launched.

4. The petitioner's explanation for the late filing of the return is that its Director, who was authorised to digitally sign the return, expired and that authorisation could be obtained only on 04.10.2011; the next date, the return was filed.

5. The learned counsel for the revenue urges that whilst this might be an adequate explanation, there is no rationale why the petitioner did not satisfy the tax liability in the first instance and that consequently it is not entitled to the relief.

6. After hearing the learned counsel for the parties, the Court is of the opinion that it may not be appropriate to direct the ITAT to fix an early date given that the appeal in this case was filed in 2016, but at the same time the Court is of the opinion that the petitioner can be spared hardship during the pendency of its appeal before the ITAT, if a suitable direction to balance the interest of all the parties is given.

7. Accordingly, the respondent is hereby directed not to proceed with the criminal prosecution till a decision is rendered by the ITAT.

8. The writ petition is disposed off in the above terms.

9. Order *dasti.*

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 28, 2017/acm