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

\+ **ITA 394/2017**

COMMISSIONER OF INCOME TAX-4 ..... Appellant
Through: Mr.Ashok K.Manchanda, Advocate with Mr.Raghvendra Singh, Advocate.

Versus

HISTORIC INFRACON PVT LTD ..... Respondent
Through: None.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

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

% **12.05.2017**

<u>C.M.No.18104/2017 (Exemptions)</u>

1. Allowed subject to all just exceptions

<u>C.M.No.18105/2017 (delay in re-filing)</u>

2. For the reasons stated in the application, the delay of 30 days in re-filing is condoned. The application is allowed.

<u>C.M.No.18103/2017 (delay of 335 days in filing) in ITA No.394/2017</u>

3. There is an inordinate delay of 335 days in filing the appeal.

4. The impugned order of the ITAT is dated 29th October 2015. The Department claims that it received a certified copy thereof on 7th December 2015. The computerised log information of the Registry shows that the

appeal was filed on 4th March 2017.

5. A perusal of the application for condonation of delay reveals that it has been drafted most casually and as if the issue is regarding delay in re-filing the appeal, whereas the explanation had to be given for the delay in filing itself. Secondly, no attempt has been made to explain every day's delay in filing the appeal.

6. The Supreme Court has in ***State of U.P. v. Amar Nath Yadav (2014) 2 SCC 422*** reiterated its earlier decision in ***Postmaster General v. Living Media India Limited (2012) 3 SCC 563*** where 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.”

7. The present application does not satisfy the above legal requirement. The only explanation offered, if at all it can be called that, is in Para 7 of the application which reads as under:

> "7. That a holistic view of the situation shall reveal that the delay caused in filing is unintentional and bonafide. That it is to be appreciated that there is substantial difference between physical filing of the appeal vis-a-vis filing the appeal electronically. The latter process is more cumbersome and time consuming especially for the Department which follows certain hierarchy and internal procedures for compliances peculiar to it. However, the Appellant is taking

> sincere steps that the common objections raised by the registry are not repeated at the time of fresh filing and the appeal are listed in the first attempt itself only."

8. As regards the electronic filing system introduced by this Court, 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. The Department has itself been filing appeals after introduction of the e-filing system, without any difficulty. In any event the change could not have entailed a delay of nearly one year in filing the appeal.

9. As regards the hierarchies and internal procedure of the Department that has been mentioned in the above paragraph, it requires to be noted that 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.

10. Resultantly, the explanation offered by the Department is not acceptable.

11. With there being no satisfactory explanation offered, the application for condonation of the delay of 335 days in filing the appeal is dismissed.

12. Accordingly, the application is dismissed.

<u>ITA No.394/2017</u>

13. Accordingly, the appeal is dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 12, 2017

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