$~4

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

\+ **ITA 949/2016 & CM Nos. 48243-44/2016**

COMMISSIONER OF INCOME TAX-III ..... Appellant

Through: Mr. Dileep Shivpuri, Mr. Sanjay Kumar and Mr. Vikrant Maheshwari, Advocates.

Versus

SOJITZ INDIA PVT. LTD. ..... Respondent

Through: None.

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

O R D E R

% 30.01.2017

The present appeal is grossly time barred by 996 days; which is the time taken by the Revenue to refile the appeal. The explanation given is that the official panel was changed and that there was an unusual pendency of cases and other administrative difficulties. This can hardly be categorized as "sufficient cause" to justify condoning the delay. Even otherwise, the Court is of the opinion that the question of law urged, is covered by the previous order of this Court dated 10.01.2017, which was for Assessment Year 2011-12. The Court had in ITA No.28/2017 – decided on 10.01.2017, observed as follows:-

> " *The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) which followed the previous orders for assessment years 2008-09, 2009-10 and 2010-11. The assessee had for assessment years 2011-12 relied upon its transfer pricing report which had indicated that no such transfer pricing adjustments were necessary having regard to the data*

reported. The assessee carried out trading activities as well as indenting activities both in its AEs and unrelated parties. The Transfer Pricing Officer after considering the materials on record determined the ALP having regard to the unrelated businesses. In other words, for trading activities, the rate of commission applicable for indenting business was followed and vice versa. This approach was corrected by the Disputes Resolution Panel (DRP) and affirmed by the ITAT. At the outset, it was pointed out that the ITAT's impugned order is in tune with the judgment of this Court in Sumitomo Corporation India Pvt. Ltd. v. CIT, 387 ITR 611.

In view of this discussion, no substantial question of law arises; the appeal is, therefore, dismissed."

In view of the above position, the application for condonation of delay is, accordingly, dismissed. The appeal also fails on merits.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

JANUARY 30, 2017
sb