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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 789/2017**

PR. COMMISSIONER OF INCOME TAX, DELHI-8 ..... Appellant
Through: Mr Rahul Kaushik, Senior Standing Counsel

versus

OKS SPAN TECH. PVT. LTD. ..... Respondent
Through: Mr Ved Jain and Mr. Pranjal Srivastava, Advocates

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R
% **09.10.2017**

C.M. No. 33471/2017 (delay of 19 days in re-filing)

1. For the reasons stated therein, the application is allowed.

C.M. No. 33470/2017 (delay of 158 days in filing)

2. There is a delay of 158 days in filing and 19 days in re-filing the present appeal. In the application for condonation of delay in filing the appeal, the reasons furnished are as under:

> 2. That there is a delay in preferring the aforesaid Appeal. It is respectfully submitted that the delay in filing Appeal is not deliberate and intentional but it is on account of the departmental administrative procedures involved in for filing Appeal before this Hon'ble Court..."

3. The Supreme Court in ***Postmaster General v. Living Media India Limited (2012) 3 SCC 563*** 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 bona fide 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."

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

5. The above explanation offered by the Appellant is insufficient for the Court to be persuaded to condone the delay.

6. The Court has nevertheless also examined the merits of the case. This is an appeal by the Revenue against the order dated 9th June 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 481/Del./2014 for the Assessment Year ('AY') 2009-10.

7. The first question of law sought to be urged by the Revenue concerns the exclusion and inclusion of comparables for the purpose of determination of arm's length price of the international transactions entered into by the Assessee with its associated enterprises.

8. The Court finds that the ITAT has given cogent reasons for the exclusion and inclusion of comparables and therefore, no substantial question of law arises on this issue.

9. As far as the issue concerning Section 14A of the Income Tax Act 1961, apart from the tax effect being inconsequential, the ITAT has relied on its orders for the earlier AYs. Consequently, no subsequent question of law arises on this aspect as well.

10. The appeal is dismissed both on delay and merits. The application is dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

OCTOBER 09, 2017
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