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

\+ **ITA 326/2017**

PR.COMMISSIONER OF INCOME TAX-09,NEW DELHI

..... Appellant

Through: Mr. Arun Khatri, Junior Standing Counsel

versus

USHA INTERNATIONAL LTD. (FORMERLY KNOWN AS THE JAY ENGINEERING WORKS LTD.) ..... Respondent

Through: Mr. V.P. Gupta & Mr. Arunav Kumar, Advocates

**CORAM: JUSTICE S.MURALIDHAR**
**JUSTICE CHANDER SHEKHAR**

**O R D E R**

% **01.05.2017**

**CM No.16419/2017**

1. There is a delay of 190 days in filing the appeal. The explanation offered for the delay is given in paras 3, 4 and 5 of the explanation, which read as under:

> "3. That the said delay in fining the appeal has arisen in bona fide circumstances and for no fault or omission or negligence on the part of the Applicant/ Appellant herein and earnest efforts had been made by the Applicant /Appellant to expedite the process at various stages of finalizing the accompanying application, within the earliest possible time.
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> 4. That the appeal has been filed on the basis of records maintained in the office of concerned Assessing Officer. The appeal has to be processed through official channel/hierarchy

> and the appeal has been filed by the Appellant as he is authorized to file appeal under the Income Tax Act, 1961.
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> 5. That the Assessing Officer was busy in several other time bearing assessments and was involved in scrutiny assessment works. Further, this office has also received other CIT (Appeals) and ITAT, High Court order and same was required to be seen with regard to taking decision for filing further appeal along with this appeal. Beside this, several other compliances have to be fulfilled by the Assessing Officer, which has caused an inadvertent delay. Also, there had been frequent transfer and posting at the level of AO which caused undue delay in filing this appeal."

2. 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."

3. The reasons given in the present application are wholly unsatisfactory. The mere fact that the Assessing Officer was busy in other time bearing assessments can hardly be an excuse, particularly given the fact that under Section 260A of the Income Tax Act, 1961, the time period for filing of an appeal is 120 days. No other statute prescribes the time period of over three

months. Moreover, there is no explanation for every day's delay. The delay of 190 days cannot be said to be routine.

4. With there being no satisfactory explanation, the application is dismissed. Consequently, the appeal is also dismissed.

**S.MURALIDHAR, J**

**CHANDER SHEKHAR, J**

**MAY 01, 2017**
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