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

\+ CO.APP. 25/2016

COMMISSIONER OF INCOME TAX ..... Appellant

Represented by: Mr.Zohab Hossain, Sr Standing Counsel & Mr.Deepak Anand, Jr Standing Counsel.

versus

IDEA CELLULAR LIMITED & ANR ..... Respondents

Represented by: Ms.Shally Bhasin & Ms.Parul Shukla, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% **22.03.2017**

CM No.47126/2016

Allowed subject to just exceptions.

CM No.47125/2016

1. There is a delay of 2633 days in re-filing the appeal.

2. Notwithstanding the reasons for delay in re-filing not being very convincing, but since the default is by the counsel we are inclined to dispose of the matter on merits, especially keeping in view the consent by both the counsel for parties.

3. The application is allowed.

CO.APP. 25/2016

1. On similar scheme of merger, the view taken by the High Courts was against the Income Tax Department. The petitions for special leave to

appeal bearing Nos.29819/2012 and 22679/2013 were disposed of by the Supreme Court by passing an order as under:-

> *"Heard learned counsel for the parties.*
> *We are not inclined to entertain the special leave petitions. The special leave petitions are, accordingly, dismissed. We only state that the Income Tax Department is entitled to take out appropriate proceedings for recovery of any tax statutorily due from the transferor or transferee company or any other person who is liable for payment of such tax due."*

2. Appellant prays that the instant appeal may be disposed of in similar terms. Counsel for respondents concurs.

3. We accordingly dispose of the appeal recording that the Income Tax Department would be entitled to take out appropriate proceedings for recovery of any tax statutorily due from the transferor or transferee company or any other person who is liable for payment of such tax due.

4. Needless to state if the Income Tax Department initiates any proceedings the respondents would be entitled to raise all issues and defences of law and facts.

5. No costs.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

MARCH 22, 2017
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