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

\+ **ITA 939/2016**

AGNITY TECHNOLOGIES PVT. LTD. ..... Appellant
Through : Mr. Sanat Kapoor, Advocate

versus

COMMISSIONER OF INCOME TAX-1 ..... Respondent
Through : Mr. Ruchir Bhatia, Senior Standing Counsel with Mr.Gaurav Khterapal, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>
% 19.09.2017

<u>CM APPL. 47641/2016 (delay in filing) in ITA 939/2016</u>

1. There is a delay of 439 days in filing the appeal. The reasons given by the Appellant in this application is that it was pursuing an alternate remedy 'by way of filing Miscellaneous Application before the ITAT to exclude Bodhtree Consulting Ltd. from the list of comparables.' According to the Appellant, the ITAT had in other cases consistently has been taking a view that the said comparable should be excluded.

2. In support of the plea that the period during which the Appellant was pursuing the alternate remedy should be excluded in terms of Section 14 of the Limitation Act 1963 (LA), Mr. Sanat Kapoor, learned counsel for the Appellant, relied on the decision of the Supreme Court in ***M.P. Steel***

Corporation v. Commissioner of Central Excise (2015) 7 SCC 758.

3. The Court is unable to accept the submission that the application filed before the ITAT under Section 254 (2) of the Income Tax Act 1961 ('Act') was an alternate remedy to the filing of an appeal under Section 260 A of the Act. An application under Section 254 (2) of the Act is for rectifying 'mistakes apparent from the record' which is much narrower in scope than an appeal under Section 260 A of the Act where an order of the ITAT can be challenged on substantial questions of law. Secondly, it was always open to the Appellant to have filed the appeal in this Court within the time stipulated under 260A of the Act and mention in the memorandum of appeal that its application under Section 254 (2) of the Act is pending before the ITAT. The time period for filing an appeal under Section 260 A of the Act does not get suspended on account of the pendency of an application before the ITAT under Section 254 (2) of the Act. In the circumstances, the question of invoking Section 14 of the LA would not arise at all. The decision relied upon by Mr. Kapoor has no application to the present case.

4. It is then submitted by Mr. Kapoor that the ITAT has been rejecting applications filed under Section 254(2) of the Act on the ground that the applicant has in the meanwhile filed an appeal in the High Court under Section 260 A of the Act. While the correctness of such an order if challenged would have to be examined on a case by case basis, it cannot possibly constitute a sufficient justification for not filing the appeal under Section 260 A of the Act in time.

5. No satisfactory reason has been provided by the Appellant for the extraordinary delay of 439 days in the filing the appeal.

6. The application for condonation of delay is dismissed. Consequently, the appeal is dismissed.

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 19, 2017
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