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

\+ **ITA 706/2017 & C.M.No.31338/2017 (stay)**

MANISH AGARWAL ..... Appellant

Through: Mr.Siddharth Garg, Advocate.

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX-12, NEW DELHI ..... Respondent

Through: Mr.Zoheb Hossain, Sr.Standing Counsel.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

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

% **29.08.2017**

<u>C.M.No.31340 /2017 (Exemptions)</u>

1. Allowed subject to all just exceptions.

<u>C.M.No.31339/2017 (delay of 278 days in filing)</u>

2. There is an extraordinary delay of 278 days in filing the appeal. The explanation offered in the application for condonation of the said delay reads as under:

> "3. There was a delay of 278 days in filing the present Appeal, since against the impugned order, the Petitioner had preferred M.A. No. 303/Del/2016 before Ld. ITAT, which was only decided by Ld. ITAT on 15.05.2017. The Appellant received the copy of the order in M.A. No. 303/Del/2016 only on 20.06.2017. Thereafter, the unclear annexures were also to be typed, which took time. This delay was unintentional and only for the reasons stated above.

> 4. It is stated that it is only for this reason that the present Appeal could not be filed in time."

3. The mere pendency of an application filed by the Appellant under Section 254 of the Income Tax Act, 1961 before the ITAT cannot extend the limitation for filing the appeal in this Court under Section 260A(1) of the Act. If the application filed by the Appellant was not taken up by the ITAT for some reason, the Appellant ought to have filed the present appeal within time and mentioned in the memorandum of appeal that the Appellant has also moved an application before the ITAT. In fact, there are numerous occasions when appeals are filed by the parties in this Court without waiting for the decision of the ITAT in the application filed under Section 254 of the Act. Invariably, in such event, the party mentions in the memorandum of appeal the fact of the pendency of such application before the ITAT. Therefore, this is neither a *bona fide* nor a valid justification for the inordinate delay of 278 days in filing the appeal. The Court is, therefore, not inclined to condone the delay. The application is dismissed.

4. Consequently, the appeal is also dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 29, 2017

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