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

\+ ITA 728/2018 and CM No. 27244/2018

PR. COMMISSIONER OF INCOME TAX – 7 ..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Deepak Anand, Jr. Standing Counsel for Revenue.

versus

M/S PRAGATI POWWR CORPORATION LTD ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **27.09.2018**

Learned counsel for the Revenue submits that the Income Tax Appellate Tribunal has not examined the relevant factual matrix and decided the ITA 6192/Del/2014 challenging the order of the Commissioner of Income Tax (Appeals) deleting penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961. This appeal relates to Assessment Year 2009-10.

Learned counsel for the Revenue has drawn our attention to paragraph 8 of the impugned order dated 18th December, 2017 which refers to the decision of the Tribunal in the earlier portion relating to ITA 6191/Del/2014 relating to the Assessment Year 2008-09. The factual matrix that formed basis or subject matter of penalty for the two years were different.

2. At this stage, learned counsel for the Revenue states that they would file an application under Section 254 (2) of the Income Tax Act, 1961 before the Income Tax Appellate Tribunal pointing out the aforesaid error and lapses. Learned counsel for the Revenue states that the present appeal may be treated as disposed of with liberty to revive the same in case the application under Section 254 (2) of the Income Tax Act is dismissed.

3. Revenue has filed compliance affidavit on 23rd August, 2018, which is not on record. Copy of the said affidavit, however, has been furnished to the Court and has been kept on record.

4. In view of the aforesaid position, we are not issuing notice in the application seeking condonation of delay. The statement made by the counsel for the appellant is taken on record and the appeal is disposed of with liberty as prayed for.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

SEPTEMBER 27, 2018
MR