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

\+ ITA 707/2018 & CM No. 26526/2018

MODI RUBBER LTD. ..... Appellant

Through Mr. Rohit Jain, Ms. Kavita Jha & Mr. Udit Naresh, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME-TAX..... Respondent

Through Mr. Ruchir Bhatia, Advocate.

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

O R D E R

% **09.07.2018**

ITA 707/2018 & CM No. 26526/2018

Present appeal under Section 260A of the Income Tax Act, 1961 (hereinafter called 'the Act') impugns the order dated 21st May, 2014 passed by the Income Tax Appellate Tribunal (hereinafter called 'Tribunal') in ITA No. 6358/Del/2012 and pertains to Assessment Year 2003-04.

2. CM No. 26526/2018 has been filed for condonation of delay of 1236 days in refilling of the appeal. The appeal was e-filed on 30th September, 2014. On scrutiny, office objections were raised by the Court Registry, which remained pending though the appeal was re-filed on a number of occasions. As per the tabular chart, the appeal was last filed in the Registry on 30th December, 2014, but without application for condonation of delay in filing and re-filing alongwith affidavit. Thereafter office objection was not removed and no steps were taken by the appellant till January, 2018.

3. Application seeking condonation of delay, states that the appellant was under the *bona fide* belief that the e-appeal would be listed for hearing in due course. Appellant noticed and realised that the appeal had not been listed on 12th April, 2018, when they had preferred an appeal before the Tribunal against the penalty order affirmed by the Commissioner of Income Tax (Appeals). From the High Court website it was learnt that the e-appeal filed on 30th September, 2014 was deleted. Thereupon, the appellant had filed an application for restoration of the e-appeal, which was allowed and the e-appeal was restored in the system. The present application now seeks condonation of delay of 1236 days in re-filing the appeal.

4. It is apparent to us that the appellant did not follow up and remove office objections by filing application for condonation of delay in filing and re-filing, which objection was raised on 30th December, 2014, for more than three years. There was complete silence and inaction between 30th December, 2014 and till an application for restoration of the appeal on the system was moved in January, 2018. Acceptance that no steps and efforts were made between October, 2014 to January, 2018 would show downright inertia and gross negligence. In view of prolonged delay, which has not been satisfactorily explained, we are not inclined to issue notice.

5. Counsel submits that the appellant does not dispute and would not contest that the Additional Excise Duty (AED) of Rs.30.35 crores, which could be utilised for payment of cenvat credit, should be treated as miscellaneous income. It is, however, submitted that vide retrospective amendment by Finance Act, 2004, the appellant was denied benefit of cenvat credit of Rs.25.47 crores out of Rs.30.35 crores. The said amount of Rs.25.47 crores, therefore, has to be a set off and accounted in the books and

for tax purposes. By the impugned order the Tribunal has denied and held that the assessee would not be entitled to claim set off of Rs. 25.47 crores in the Assessment Year 2003-04. It is stated that the appellant-assessee has made a claim to set off Rs. 25.47 crores in the Assessment Year 2004-05, which is the relevant year as the amendment denying cenvat credit of Rs.25.47 crores was made by the Finance Act, 2004. However, the Assessing Officer has denied this claim for the Assessment Year 2004-05 and the appellant assessee has preferred an appeal before the Commissioner of Income Tax (Appeals) on the said aspect. Counsel submits that dismissal of the present appeal, it should be clarified, would not in any manner reflect upon the claim made by the assessee for the Assessment Year 2004-05.

6. We are not inclined to condone the delay and, consequently, the appeal is being dismissed. Therefore, we would clarify that we have not examined the question of cenvat credit or deduction of Rs.25.47 crores claimed on merits. We also clarify that we have not made any comments on merits on the appeal preferred by the assessee for the Assessment Year 2004-05 stated to be pending before the Commissioner of Income Tax (Appeals)

7. With the aforesaid observations, application for condonation of delay in re-filing is dismissed and consequently the appeal would be also treated as dismissed. There would be no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JULY 09, 2018
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