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

\+ W.P.(C) 12402/2018, CM APPL. 48082/2018

GNYANDEEP KANTIPUDI ..... Petitioner
Through: Mr. Rajesh Mahna, Mr. Manu Giri, Mr. Ramanand Roy & Mr. Rohit Sharma, Advs.

versus

ACIT CIRCEL 54(1) NEW DELHI ..... Respondent
Through: Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

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

% **20.11.2018**

Issue notice.

Mr. Zoheb Hossain, Senior Standing Counsel accepts notice on behalf of the Revenue.

With the consent of the counsels, the petition is heard finally.

The petitioner is aggrieved by the rejection of its application under Section 254(2) of the Income Tax Act, 1962. The appellant had sought the restoration of its appeal and recall of the order finally disposing of its appeal before the ITAT. The appeal was dismissed on 14.03.2018. It is contended that the Miscellaneous application wished to point out the essential facts. The date of hearing fixed in the appeal was 06.03.2018, and the petitioner's counsel had sought a short accommodation. The Tribunal appears to have adjourned it to

08.03.2018. On that date, the counsel was not available. The ITAT thereafter proceeded to decide the merits of the appeal. In these circumstances, the petitioner has approached this Court claiming that the application should have been allowed, and the appeal should have been decided after a hearing. It is contended that on the merits, the Tribunal had fallen into error inasmuch as the penalty imposed was unjustified.

This Court has heard counsel for the parties. The premise upon which the petitioner's counsel sought adjournment i.e. postponement from 06.03.2018 to another date was that he was unavailable on the date of hearing. The ITAT granted the request, and adjourned the hearing by just two days, i.e. to 08.03.2018. Having regard to the circumstances of this case, the request made for restoration of the appeal appears to have been reasonable. In the interest of justice, the Court is of the view that the petitioner's appeal should be restored to its original position and heard on its merits. Accordingly, the impugned order dated 08.10.2018 is hereby set aside, and the petitioner's application under Section 254(2) is allowed.

Consequently, the order dated 14.03.2018 is hereby set aside. ITA No.6182/2017 is restored to the file of the Income Tax Appellate Tribunal and shall now be proceeded with on merits and decided in accordance with law.

Learned counsel submits that the appeal under Section 260A filed by it before this Court, against the order dated 14.03.2018, would be withdrawn.

The parties are directed to be present before the concerned

Bench of the Tribunal on 10.12.2018, which shall then proceed to decide the appeal in accordance with law.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 20, 2018/akv