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

\+ **ITA 224/2018 and CM APPLS. 7023-7025/2018**

COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION -1 ..... Appellant

versus

ALCATEL LUCENT ENTERPRISE ..... Respondent

**ITA 225/2018 and CM APPL. 7026-7028/2018**

COMMISSIONER OF INCOME TAX-1 ..... Appellant

versus

ALCATEL LUCENT CANADA ..... Respondent

**ITA 227/2018 and CM APPLS. 7030-7032/2018**

COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION -1 ..... Appellant

versus

ALCATEL LUCENT CANADA ..... Respondent

**Present** : Mr. Sanjay Kumar and Mr. Rahul Chaudhary, Standing Counsel for the appellant.
Mr. Tarun Gulati, Mr. Kishore Kunal, Mr. Shashi Mathews and Mr. Pranav Bansal, Advs.for the respondents.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE A. K. CHAWLA**

**O R D E R**

% **23.02.2018**

The appeals are inordinately delayed. The delay in re-filing is to the tune of 1070 days. In all these appeals, the only explanation given for delay in re-filing is that the filing process was disrupted on account of electronic system introduced by the Court and also on the ground of change of counsel and the attending delay in co-ordination with the department. These grounds can hardly be sufficient cause.

As a consequence, the delay in re-filing is without sufficient cause. The applications are liable to be dismissed.

On the merits, the Court notices that the Revenue's main grievance is premised upon the retrospective amendment to Section 9(1)(vi) explanation 2 by Finance Act, 2012 with retrospective effect from 1.6.1976, which inserted explanation 4 to Section 9(1)(vi). This issue whether such retrospective effects have the effect of implementing the provisions of a treaty, which has substantially similar or are identical cause with the provisions of law has been gone into in two judgments of this Court in *DIT Vs. Ericsson A.B.,* (2012) 343 ITR 470 (Delhi) and *DIT Vs. Nokia Networks OY & Others,* 358 ITR 259. This issue was again re-considered in the judgment of the Division Bench as well as the other judgment in *Director Of Income Tax vs New Skies Satellite BV,* (2016) 382 ITR 114. Furthermore, this court had on identical ground rejected the Revenue's appeal in *Commissioner of Income Tax vs. Alcatel Lucent Canada* in a batch of appeals (ITA 119-157 of 2015) by its order dated 27.2.2015.

For these reasons, both the applications for condonation of delay (filing the appeal and re-filing the appeal) are dismissed; the appeals too are dismissed. All the pending applications stand disposed of.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**FEBRUARY 23, 2018/**rc