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

\+ **ITA 464/2019**

THE PR. COMMISSIONER OF INCOME TAX -3 ..... Appellant
Through: Mr.Ruchir Bhatia, Advocate.

versus

DCM SHRIRAM LTD. ..... Respondent
Through: Mr.V.P.Gupta with Mr.Anunav Kumar, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE REKHA PALLI

ORDER

% **07.05.2019**

CM APPL. 21453/2019 (Delay 320 Days in re-filing (Appeal))

1. For the reasons explained in the application, the delay in re-filing the appeal is condoned and the application is allowed.

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2. This is an appeal by the Revenue against an order dated 29th December, 2017 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.5172/Del/2014 for the Assessment Year (AY) 2003-04.

3. The short question that arose for determination in the appeal before the ITAT at the instance of the Assessee was whether the Assessee was entitled to interest under section 244 (A) on the refund due to it for the period from 1st April, 2003 to 24th March, 2006?

4. Section 244 (A) (2) of the Act is reads as under:-

"244 A. (2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee or the deductor, as the case may be, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable under sub-section (1) or (1A) or (1B), and where any question arises as to the period to be excluded, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whose decision thereon shall be final."

5. The ITAT has found that the procedure to be adopted is clearly spelt out in the above provision. For determining whether delay is attributable to the Assessee, the matter had to mandatorily be referred to the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner or Commissioner. Admittedly, in the present case when the Assessing Officer (AO) in the assessment order 30th March, 2006 disallowed the interest under section 244 (A) by order dated 10th June 2013, he simply concluded that the delay was attributable to the Assessee without making any reference to the above officers.

6. The Commissioner of Income Tax (Appeal) in the order dated 23rd July, 2017 issued a direction to the AO to again refer an issue to the Chief Commissioner/Commissioner. However, this was not done. In the circumstances, the ITAT was justified in holding in the impugned order that the disallowance of the interest for the aforementioned period was not sustainable in law.

7. On the facts of the present case no substantial question of law arises.

8. The appeal is dismissed.

S. MURALIDHAR, J.

REKHA PALLI, J.

MAY 07, 2019
sr