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

+ **ITA 383/2019, CM APPLs.17659/2019 (delay in filing) and
17661/2019 (delay in refiling)**

**THE PR.COMMISSIONER OF INCOME TAX -1
CHANDIGARH**

..... Appellant

Through: Mr.Ruchir Bhatia, Sr.Standing
Counsel.

versus

PARABOLIC DRUGS LTD

..... Respondent

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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29.07.2019

Dr. S. Muralidhar, J.:

1. This appeal by the Revenue is directed against an order dated 17th June, 2011 passed by the Income Tax Appellate Tribunal in ITA No. 2111/Del/2010 for the Assessment Year ('AY') 2006-07.

2. The appeal is accompanied by two applications. One is for condoning the delay of 928 days in filing the appeal and the other is for condoning the delay of 1656 days in re-filing the appeal. The notice issued in the present appeal and applications have been returned unserved, with the remarks that the premises of the Respondent has been lying vacant since long.

3. In the application for condonation of the delay of 1656 days in re-filing, i.e. over four and half years, it is stated that after the Revenue's appeal was returned to it by the Punjab and Haryana High Court by the order dated 11th October 2012 to be refiled in the appropriate Court, the learned Standing Counsel filed it in August 2014 and it was treated as defective. He resigned from the panel in that month itself. It is simply stated thereafter that the appeal was refiled by the present counsel 'in 2015', without even indicating the date. This was again treated as defective. It is stated that since the process of reallocation of appeals took time, it was allocated ultimately only in March 2016 to another Standing Counsel who, however, 'never informed the Appellant about the status of appeal nor the defect pointed out by the Registry'. It is then stated that 'recently' the Appellant came to know that the appeal had not been listed before the Court and it is only thereafter on 19th November, 2018 that the CIT (Judicial) reallocated the appeal to the present counsel. Even thereafter the appeal was not refiled till 3rd January, 2019.

4. The above explanation is on the face of it most unconvincing. It displays a lackadaisical attitude on the part of the Appellant in pursuing the appeal, knowing fully well that even in the first instance the filing of the appeal itself was inordinately delayed.

5. The explanation given for the delay of 928 days in filing the appeal is that it was first filed in the High Court of Punjab and Haryana, which held by its order dated 11th October, 2012 that it did not have territorial jurisdiction, since the order was passed by the Assessing Officer ('AO') at Delhi.

6. Even accepting this position, it is seen from para 7 of the application for condonation of delay that the present appeal was filed only in August 2014 i.e. nearly 2 years after the order of the High Court of Punjab and Haryana. There is not even a single line of explanation for this delay.

7. The Supreme Court in ***Office of the Chief Post Master General v. Living Media India Ltd. (2012) 3 SCC 563*** held that the lethargy by the government in prosecuting its matters will not be accepted as a legitimate reason for the delay in filing of appeals or special leave petitions. This was reiterated subsequently in ***State of UP Through Executive Engineer v. Amar Nath Yadav (2014) 2 SCC 422***.

8. Recently, by an order dated 9th May 2019 in SLP (C) Diary No.13348 of 2019 (***The State of Bihar v. Deo Kumar Singh***), where the delay of 728 days in filing the special leave petition was sought to be attributed by the State to the delay in ‘obtaining all the sanctions from the respective departments’ and in receiving the ‘affidavit and vakalatnama from the concerned department’, the Supreme Court observed as under:

“We are of the view that a clear signal has to sent to the Government Authorities that they cannot approach the Court as and when they please, on account of gross incompetence of their officers and that too without taking any action against the concerned officers. No detail of this delay of 728 days have been given as if there is an inherent right to seek condonation of delay by State Government. The law of limitation apparently does not apply to the State Government according to its conduct.

That such condonation of delay is no more admissible on the

pretext of Government working lethargy is clear from the judgment of this court in *The Chief Post Master General v. Living Media India Ltd.* [2012 (3) SCC 563].

We stongly deprecate the casual manner in which the Division Bench was approached and also this Court has been approached; the objective possibly being to get a certificate of dismissal from this Court. This is complete wastage of judicial time and the petitioners must pay for the same.

We, thus, dismiss the special leave petition on delay and impost cost on the petitioners of Rs.20,000/- to be recovered from the officers responsible for this delay and be deposited with the Supreme Court Mediation Centre, within four weeks. Certificate of recovery be filed in this court.”

9. For the aforementioned reasons, the Court finds that no convincing explanation has been given by the Appellant for the extraordinary delay in filing and refiling the present appeal. The applications are dismissed. Accordingly, the appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 29, 2019

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