



% 23.12.2010

Present: Ms. Sonia Mathur, Advocate for Ms. Prem Lata Bansal, Advocate for the appellant.
Ms. Kavita Jha, Advocate with Mr. S. Shukla, Advocate for the respondent assessee.

+CM APPL. 408/11 (to be numbered)

This is an application for condonation of delay in filing the appeal. The delay has occasioned as in the meantime the Revenue had moved an application under Section 254 (2) of the Act which was dismissed by the Tribunal only on 9th October, 2009 and thereafter the present appeal was filed. In view thereof, we condoned the delay in filing the appeal.

Application stands disposed of.

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The impugned order passed by the Tribunal reveals that the appeal of the Revenue was dismissed only on the ground that the Revenue had not filed the complete assessment order.

Though, learned counsel for the Revenue argues that the complete record was made available for perusal of the Tribunal, even if it is correct that the complete assessment order was not filed, the Tribunal could have given an opportunity to the Revenue to file the complete assessment order. It is clear that non-filing of the complete assessment order was mere unintentional omission and the appellant could not be non-suited for the aforesaid technical lapse. The Tribunal should keep in mind that substantial



justice should be done and it should have heard the appeal on merits rather than dismissing the appeal on hyper-technical grounds.

We, therefore, set aside the order of the Tribunal and direct the Tribunal to decide the appeal on merits. The Department/Revenue shall file the complete assessment order before the Tribunal in the meantime.

The present appeal disposed of in terms of above directions.


A.K. SIKRI, J.


SURESH KAIT, J.

DECEMBER 23, 2010

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