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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4886/2015

JAY DEE EXPORTS

..... Petitioner

Through: Mr. S. Krishnan, Advocate.

versus

**ADDITIONAL COMMISSIONER OF
INCOME-TAX**

..... Respondent

Through: Mr. Raghvendra Singh, Junior Standing
counsel for Mr. Rahul Chaudhary, Senior
Standing counsel.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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20.05.2016

1. The main issue in this writ petition is whether the ITAT has erred in declining to rectify the error pointed out in para 8 of its order dated 26th October 2012 in ITA No. 2001/Del/2011. In that paragraph, the ITAT had recorded that the Petitioner had never asked for cross-examination of Mr. N.K. Jain.

2. According to learned counsel for the Respondent, the assessment in any event was not based on the statement of Mr. N.K. Jain.

3. From what has been pointed out to this Court by learned counsel for the Petitioner, it appears that the statement as recorded in para 8 of the aforementioned order of the ITAT appears to be erroneous. The documents

show the Petitioner did ask for cross-examination of Mr. N.K. Jain and to that extent the ITAT by the impugned order dated 23rd May 2014 ought not to have declined to correct the error. The Court accordingly orders that the following sentence in para 8 of the ITAT's order dated 26th October 2012 viz., "Further, the assessee has never requested to the Assessing Officer to issue summons Sh N.K. Jain for cross-examination" shall stand deleted.

4. However, that would not make a difference to the conclusion of the ITAT as far as the order dated 26th October 2012 itself is concerned. The fact remains that the Petitioner did not challenge the said order in an appeal before this Court. If the Petitioner hereafter chooses to challenge the said order dated 26th October 2012 of the ITAT along with an application seeking condonation of delay, that will be considered by the Court in accordance with law.

5. The writ petition is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 20, 2016

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