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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 153/2016

THE PRINCIPAL COMMISSIONER OF
INCOME TAX-24

..... Appellant

Through Mr Zoheb Hossain, Junior Standing
Counsel for Mr Dileep Shivpuri, Senior Standing
Counsel.

Versus

YASHODHARA OBEROI

..... Respondent

Through Ms Prem Lata Bansal, Senior Advocate
with Mr Paras Chaudhary, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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26.02.2016

1. This Appeal has been filed by the Revenue against the order dated 3rd June, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3267/Del/2013 for the Assessment Year ('AY') 2009-10.
2. The Assessee, a resident of Mumbai, filed her return of income on 30th July 2009 declaring an income of Rs. 2,95,400/-. Noticing a mistake in the return, the Assessee filed revised return on 13th July 2010 declaring an income of Rs. 41,31,810/- claiming a refund of Rs. 25,892/-.
3. In relation to the said return, the Income Tax Officer, Ward 48(1) New Delhi issued notice under Section 143(2) of the Act on 20th August, 2010.

Since no reply was filed against the said notice, the Assessing Officer ('AO') passed the assessment order dated 29th December, 2011 making an addition of Rs.1,03,71,149/- and Rs. 1,00,000/-.

4. The matter was taken in appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)']. One of the grounds urged before the CIT(A) was that the AO had no jurisdiction to ignore the revised return and proceed on the basis of original return. This ground was accepted by the CIT(A) and a categorical finding was returned that the AO "had no jurisdiction to proceed in the proceeding on the basis of original return". The CIT(A) observed that AO did not have jurisdiction in view of the revised return in which the disclosed income was shown as Rs. 41,31,510/- which was more than Rs. 10 lakhs, the monetary limit placed by the Central Board of Direct Taxes ('CBDT'). However, the CIT (A) did not stop with the said finding. He examined the merits and held that even on merits the addition made by the AO was not justified.

5. The Revenue then went in appeal before the ITAT. While the Revenue urged grounds regarding admission of additional evidence under Rule 46A of the Income Tax Rules, 1962 and the merits of the addition made by the AO, the Revenue did not challenge the finding of the CIT(A) that the AO had no jurisdiction to proceed with the original assessment. This was pointed out to the ITAT by the Assessee leading to the ITAT to hold in the impugned order that the Revenue's Appeal was defective since the finding of the CIT(A) on the lack of jurisdiction was not challenged by it.

6. The Court finds no error having been committed by the ITAT in coming to the above conclusion. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 26, 2016

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