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

\+ ITA 703/2016

THE PRINCIPAL COMMISSIONER OF INCOME TAX-07,

..... Appellant

Through: Mr. Dileep Shivpuri, Senior Standing Counsel, Mr. Sanjay Kumar, Junior Standing Counsel and Mr. Vikrant A. Mahehwari, Advs.

versus

SHRI BIKRAM SINGH ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 08.11.2016

The question of law urged by the Revenue in this appeal under Section 260A is - "whether in the facts of this case, the addition made by the CIT(A) on grounds of Capital Gains on sale of land of Rs.3.11 crore which the Assessing Officer (AO) was asked to compute in the assessee's appeal to the CIT(A) was justified."

The facts are that the assessee declared income which underwent scrutiny. The assessment was concluded at Rs.1.03 crore and included additions on account of commission/brokerage earned as well as on account of disallowance of part expenses claimed against vending machine amounting to Rs.2,51,325/-. The assessee's appeal against the additions made, was allowed partly on the issue of brokerage and upheld 50% addition of the agricultural income shown on the ground that the assessee had not produced any evidence to show how and when the produce was taken to the market and sold. The CIT(A), thereafter went to discuss the sale of agricultural assets and held that it yielded capital gains. The appellate order, therefore, brought the said amount to Rs.3.11 crore to tax under the head of "capital gains".

The assessee's appeal before the ITAT relied upon the ruling of this Court in ***Commissioner of Income Tax vs. Sardari Lal & Co.*** 251 ITR 864 and of the Supreme Court in ***Commissioner of Income Tax vs. Shapoorji Pallonji*** [1962] 44 ITR 891(SC).

It is evident from the above enumeration of facts that the CIT(A) for the first time brought to tax an amount under the head that had not been assessed as such by the A.O. In ***Shapoorji Pallonji*** (supra) the Supreme Court considered the views of the Patna High Court and rejected the Revenue's contention that the wide phraseology employed by Section 31(1) that precluded the Commissioner from exercising the power to bring to taxation an income under a head which was hitherto not resorted to by the Assessing Officer.

This Court is therefore of the view that the question of law urged by the Revenue does not arise. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 08, 2016/acm