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

\+ **ITA 440/2016**

HOUSING AND URBAN DEVELOPMENT CORPORATION LIMITED ..... Appellant

Through: Mr. Gagan Kumar and Mr. Amit Kaushik, Advocates.

versus

ADDITIONAL COMMISSIONER OF INCOME TAX RANGE 12 ..... Respondent

Through: Mr. Rahul Chaudhary, Sr. Standing Counsel

\+ **ITA 442/2016**

HOUSING AND URBAN DEVELOPMENT CORPORATION LIMITED ..... Appellant

Through: Mr. Gagan Kumar and Mr. Amit Kaushik, Advocates.

versus

ADDITIONAL COMMISSIONER OF INCOME TAX RANGE 12 ..... Respondent

Through: Mr. Rahul Chaudhary, Sr. Standing Counsel

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HOUSING AND URBAN DEVELOPMENT CORPORATION LIMITED ..... Appellant

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versus

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..... Respondent
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versus

ADDITIONAL COMMISSIONER OF INCOME TAX RANGE 12
..... Respondent
Through: Mr. Rahul Chaudhary, Sr. Standing Counsel

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% **23.03.2018**

CM Appl.No. 11721/2018 (Exemption) in Review Petition 130/2018

<u>CM Appl.No. 11740/2018 (Exemption) in Review Petition 131/2018</u>
<u>CM Appl.No. 11808/2018 (Exemption) in Review Petition 133/2018</u>
<u>CM Appl.No. 11750/2018 (Exemption) in Review Petition 132/2018</u>
<u>CM Appl.No. 11827/2018 (Exemption) in Review Petition 134/2018</u>

1. Allowed, subject to all just exception.

<u>CM Appl.No. 11720/2018 (Delay) in Review Petition 130/2018</u>
<u>CM Appl.No. 11739/2018 (Delay) in Review Petition 131/2018</u>
<u>CM Appl.No. 11807/2018 (Delay) in Review Petition 133/2018</u>
<u>CM Appl.No. 11749/2018 (Delay) in Review Petition 132/2018</u>
<u>CM Appl.No. 11826/2018 (Delay) in Review Petition 134/2018</u>

2. For the reason stated in the applications, delay in filing the review petitions is condoned and the applications are disposed of.

<u>Review Petition 130/2018 in ITA 440/2016</u>
<u>Review Petition 131/2018 in ITA 442/2016</u>
<u>Review Petition 133/2018 in ITA 444/2016</u>
<u>Review Petition 132/2018 in ITA 445/2016</u>
<u>Review Petition 134/2018 in ITA 446/2016</u>

3. The Court has examined the order dated 13th December 2017 passed by the Supreme Court of India in the Petitioner's Civil Appeal No. 23492-23496/2017 (tagged with Civil Appeal No.5796/2012) which challenged the order dated 3rd July, 2017 of this Court in ITA Nos.440/2016, 442/2016, 444/2016, 445/2016 and 446/2016.

4. In the said order dated 13th December, 2017, the Supreme Court noted the submissions of learned counsel for the present Appellant that the facts in the appeals of the present Appellant were no different from the facts involved in ***CIT v. Vasisth Chay Vyapar Ltd. (2011) 330 ITR 440 (Del)*** which judgment was affirmed by the Supreme Court by dismissing the Revenue's appeals. According to the Appellant there was "an error apparent in the

judgment as the facts are similar to the facts of all other cases whereas the High Court has segregated his case and stated that his facts are different". Accordingly, the Supreme Court permitted the Appellant to file a Review Petition before this Court.

5. This Court has heard the submissions of Mr. Gagan Kumar, learned counsel for the Appellant/Review Petitioner and Mr. Rahul Chaudhary, learned standing counsel for the Revenue.

6. Mr. Kumar first drew our attention to para 24 of the order dated 3rd July 2017 where the Court had observed that the present case was similar to ***Southern Technologies Limited v. Joint Commissioner of Income Tax, Coimbatore [2010] 320 ITR 577 (SC)*** and not ***CIT vs. Vasisth Chay Vyapar Ltd.*** (*supra*).

7. The above observation of this Court in para 24 of the judgment dated 3rd July 2017 follows a detailed discussion, in paras 21.1 and 21.2, of the decision in ***CIT v. Vasisth Chay Vyapar Ltd.*** (*supra*). The Court does not consider the above observation to be an "error apparent on the face of the record". The said observation rejects the plea to the contrary made by learned counsel for the Appellant for reasons which have been spelt out in the order. While it could constitute a ground for appeal against the order of this Court, it cannot be characterized as an "error apparent on the face of the record" justifying the entertaining of the present Review Petitions.

8. The Court heard Mr. Gagan Kumar at length. His submissions virtually amounted to re-arguing the appeal itself on merits. The Court is not

persuaded that there are grounds made for review of its judgment dated 3rd July 2017.

9. In that view of the matter, the Review Petitions are dismissed.

S. MURALIDHAR, J.

CHANDER SHEKHAR, J.

MARCH 23, 2018
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