$~4

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

\+ **ITA 515/2016**

PR. COMMISSIONER OF INCOME TAX – 19 ..... Appellant

Through: Mr. Zoheb Hossain, Senior Standing Counsel.

versus

VIMAL GUPTA ..... Respondent

Through: Mr. Arvind Kumar, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% 16.10.2017

1. This is an appeal filed by the Revenue against an order dated 23rd December 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1211/Del/2010 for the Assessment Year ('AY') 2006-07.

2. Although other grounds have been pressed by the Revenue regarding the validity of the impugned order of the ITAT holding the assessment order passed under Section 148 of the Income Tax Act, 1961 ('Act') to be invalid, a threshold ground urged is that the ITAT erred in holding in the impugned order that the assessment made by the Additional Commissioner of Income Tax ('ACIT') Circle 34 (1) was without jurisdiction. It has been noticed that the matter was transferred to the said ACIT by the Income Tax Officer ('ITO') Ward 34 (4), New Delhi without an appropriate order having been issued under Section 127 of the Act. Further that the ACIT did not himself issue the notice under Section 148 of the Act.

3. The ITAT has in para 13 of the impugned order specifically adverted to the above aspect and correctly held that "The ACIT, Circle 34(1), New Delhi has admittedly not recorded that he had reasons to believe that income chargeable to tax of the Assessee has escaped assessment. He continued reassessment proceedings initiated by the ITO, Ward 34(4) of the Act without independently recording reasons for reopening or issuing a fresh notice u/s 148 of the Act." Further the ITAT noted that "There is no order u/s 127 of the Act transferring the jurisdiction of the case from ITO, Ward 34(4) to ACIT, Ward 34(1). Thus this order of reassessment passed by the ACIT u/s 34(1) of the Act is without jurisdiction and hence is bad in law."

4. In the present memorandum of appeal no attempt has been made by the Revenue to aver whether in fact there was an order under Section 127 of the Act transferring the case to the ACIT, Circle 34(1). That being the position, the impugned order of the ITAT cannot be faulted. In view of the above conclusion, there is no occasion to examine the other questions urged by the Revenue in this appeal.

5. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

OCTOBER 16, 2017/*dk*