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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 398/2016**

PR. COMMISSIONER OF INCOME TAX-12 ..... Appellant
Through Ms. Lakshmi Gurung, Standing Counsel for Income Tax

versus

LAKSHYA SETH ..... Respondent
Through Mr. Harish Pandey and Mr. Harsh Khanna, Advocates

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>
% **21.04.2017**

1. While admitting this appeal by the Revenue, against the impugned order dated 7th October 2015 of the Income Tax Appellate Tribunal (ITAT) in ITA No. 218/Del/2015 for the Assessment Year (AY) 2011-12, this Court by order dated 24th November 2016 framed the following question of law for consideration:

> "Did the Income Tax Appellate Tribunal (ITAT) fall into error in interfering with Commissioner of Income Tax (Appeals) [CIT (A)] findings with respect to the contentions made under Section 263 A of the Income Tax Act, 1961, in the circumstances of the case "

2. An assessment order was passed by the Assessing Officer ('AO') on 20th December, 2013. The AO completed the assessment by making an addition of Rs. 6,11,230 as business income @ 8% of the gross receipts of Rs.

76,40,380.

3. An order was passed by the Commissioner of Income Tax, Delhi-VII on 13th November, 2014 under Section 263 of the Income Tax Act, 1961 ('Act'), where after setting out the entire order of the AO, the CIT observed that conditions for revision of the said order under Section 263 of the Act stood fulfilled. The CIT opined that the AO did not conduct any inquiry into the business of the Assessee. ON his part the Assessee could not produce any document pertaining to the so-called business activity.

4. In the appeal by the Assessee, the ITAT by the impugned order while setting aforementioned order of the CIT, came to the following conclusions:-

i. That the Assessee submitted the details of all his bank accounts as well as cash deposits;

ii. The details were submitted by Assessee in the course of inquiry by the AO;

iii. The Assessee could not produce his books of accounts as they were misplaced. He informed the AO that he had lodged an FIR for that purpose with the Police Station at Naraina, New Delhi.

5. In the facts and circumstances, the ITAT came to the conclusion that the approach of the AO in the original Assessment Order was justified, reasonable and in accordance with the Act.

6. Mr Laxmi Gurung, learned Standing counsel appearing for the Department sought to point out that in fact the AO had merely accepted the version of the Assessee and had not conducted any enquiry of his own. She

submitted that cogent reasons were given by the CIT for exercising the revisional power under Section 263 of the Act. She relied on the decision in ***ITO v. DG Housing Projects Ltd.*** (order dated 1st March, 2012 in ITA 179/2011)

7. The ITAT has in the impugned order noted

> "the AO inquired from the assessee about the amount of cash deposited during the relevant financial period and after considering the reply of the assessee wherein the assessee stated that he had lost his books of accounts and other records, then the AO had no alternative but to estimate the business income of the assessee by taking a reasonable and appropriate recourse. Thereafter, the AO proceeded to estimate the business income of the assessee @8% of gross receipts by merely referring to Section 44 AF of the Act. We cannot ignore this fact that in the letter dated 20.12.2013, the assessee pressing into service his revised computation of income pleaded that the surrendered amount may be considered as business income being 5% of gross receipts but the AO adopted higher percentage of 8% for estimation of business income which is very favourable to the revenue. It is also relevant to point out that the AO has taken 5% on gross turnover for A Y 20 I 0-11 viz. preceding assessment year to the present assessment year in the assessment order passed u/s 143(3) of the Act."

8. In ***ITO v. DG Housing Projects Ltd.*** (*supra*), this Court held that: "In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/enquiry is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in law." In the instant case, the order of the CIT did not fulfil the above test.

9. The Court is unable to discern any legal infirmity in the impugned order of the ITAT. The question framed is answered in the negative i.e. against the Revenue and in favour of the Assessee. The appeal is accordingly dismissed with no order as to costs.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 21, 2017
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