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

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**ITA 303/2017**

**SHRI ARUN MALHOTRA**

..... Appellant

Through: Dr. Rakesh Gupta, Mr. Somil  
Aggarwal & Ms. Shyamlima Borah,  
Advocates

versus

**PRINCIPAL COMMISSIONER OF INCOME TAX-2..... Respondent**

Through: Mr. Raghvendra Singh, Advocate

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE CHANDER SHEKHAR**

**ORDER**  
**17.05.2017**

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**Dr. S. Muralidhar, J.:**

1. This is the second round of litigation which, unfortunately, and inevitably is, for reasons explained hereafter, going to lead to a third round of litigation.

2. This appeal by the Assessee under Section 260 A of the Income Tax Act 1961 ('Act') is directed against an order dated 28th October 2016 passed by the Income Tax Appellate Tribunal (ITAT) in IT(SS)A No. 77/De1/2012 and IT(SS)A No. 85/Del/2012 for Assessment Year (AY) 2009-10 and Block Period.

**3. Admit.**

4. Having heard learned counsel for the parties, the following question is framed for determination:

“Did the Income Tax Appellate Tribunal (‘ITAT’) fail to adhere to the specific mandate issued to it by this Court in the previous order dated 25<sup>th</sup> November, 2013 in ***CIT v. Arun Malhotra (2014) 363 ITR 195(Del)***?”

5. The background facts of the present case have been set-out in considerable detail in the previous order of this Court in ***CIT v. Arun Malhotra*** (*supra*) and need not be repeated *in extenso*. While setting aside the previous order of the ITAT dated 5<sup>th</sup> August 20008, this Court directed as follows:

“24. In view of the aforesaid, we answer the questions of law in favour of the Revenue and against the respondent but with an order of remand to the tribunal to discuss the entire evidence in detail on all aspects. The issues and contentions will be examined afresh. Factual findings in this order and the impugned order will not be treated as conclusive and final. To cut short delay, we direct that the parties shall appear before the tribunal on 16<sup>th</sup> December 2013, when a date of hearing shall be fixed.”

6. The critical word in the above paragraph, which contains a direction, is ‘afresh’. In other words, all the issues and contentions that arose in the appeals before the ITAT had to be examined *tabula rasa*.

7. One of the principal contentions of the learned counsel for the Appellant Assessee in the present appeal, was noted by this Court in its order dated 19<sup>th</sup> April 2017, as under:

“2. It is stated by Dr. Rakesh Gupta, learned counsel appearing for the Appellant that a large portion of the impugned order of the ITAT is a mere reproduction of the order passed by this Court on

25<sup>th</sup> November 2013 in ITA Nos.923/2009 and 1157/2009 whereby the earlier order of the ITAT was set aside and the matter was remanded to the ITAT for a fresh consideration. *Prima facie*, there appears to be no application of mind afresh by the ITAT particularly in the context of the specific directions issued by this court in its earlier order.”

8. Both DR Rakesh Gupta, the learned counsel for the Assessee as well as Mr Raghvendra Singh, learned counsel for the Revenue have referred to the decision of the Supreme Court in ***CIT v. P.V. Kalyanasundaram (2007) 294 ITR 49(SC)***, where one of the contentions of the Revenue in challenging the order of the Madras High Court was that the judgment under challenge “had merely plagiarized substantial portions from the order of the Commissioner and Tribunal in arriving at its conclusion and no independent assessment on the questions of law that arose for consideration, had been made.” Although the Supreme Court ultimately dismissed the appeal of the Revenue, it observed:

“We feel that quoting from an order of some authority particularly a specialized one cannot per-se be faulted as this procedure can often help in making for brevity and precision, but we agree with Mr. Vahanvati to the extent that any 'borrowed words' used in a judgment must be acknowledged as such in any appropriate manner as a courtesy to the true author(s).”

9. If one peruses the impugned order of the ITAT in the present case, it is unmistakable that large portions of it have been virtually lifted verbatim from the order of the Assessing Officer (‘AO’) as well as the order of this Court by which the matter was remanded to it. Worse still, these portions are not placed in quotation marks. Contrary to what was expected to be done, as explained by the Supreme Court in ***CIT v. P.V. Kalyanasundaram (supra)***,

there is no attribution by the ITAT in the impugned order to the source from which the said portions have been lifted.

10. It was earnestly contended by Mr Raghvendra Singh, learned counsel for the Revenue, that this Court should ignore these aberrations in the impugned order of the ITAT and proceed to decide the matter on merits by treating the impugned order as having dealt with all the issues and contentions by either agreeing with or adopting the reasoning either of the AO or even this Court.

11. The Court is unable to agree with the above submission. There was a specific mandate before the ITAT that had been spelt out in para 24 of this Court's previous order. The ITAT was to consider afresh all the issues and contentions that arose before it. That the ITAT simply failed to do. It has chosen to adopt a shortcut by verbatim reproducing the portions of the order of the assessment order or the order of this Court whether for the purposes of setting out the facts or even the reasoning and conclusion. It is one thing the ITAT to quote from an order of the AO or the CIT (A) and then explain whether the ITAT agreed with or differed from the said portion. It is another to simply incorporate into the order those very words and passages without any attribution to the source leaving the reader wondering if that could be the actual reasoning of the ITAT. The present impugned order of the ITAT falls in the latter category.

12. Looking at it from any point of view, the Court is unable to accept the impugned order of the ITAT as having satisfied the mandate of this Court, as spelt out in para 24 of its earlier order extracted hereinbefore.

13. Consequently, the question framed is answered in the affirmative i.e. in favour of the Assessee and against the Revenue. The Court hereby sets aside the impugned order dated 28th October 2016 passed by the ITAT and restores to its file IT(SS)A No. 77/Del/2012 and IT(SS) A No. 85/Del/2012. The above appeals shall be listed in the ITAT on 17<sup>th</sup> July, 2017 for directions before a Bench of which the author of the impugned order is not a member.

14. The Court is further constrained to direct that since this will be the third round of litigation, the ITAT will, after hearing the parties, endeavour to deliver a final decision in the appeals not later than six months from the date it first hears them after this remand.

15. The appeal is disposed of in the above terms.

**S.MURALIDHAR, J**

**CHANDER SHEKHAR, J**

**MAY 17, 2017**

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