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

\+ W.P.(C) 3475/2018

OCHOA LABORATORIES LIMITED ..... Petitioner

Through Mr. P.N.Monga, Mr. Manu Monga and Mr. Shankar Jha, Advocates

versus

INCOME TAX APPELLATE TRIBUNAL, DELHI BENCHES,NEW DELH, & ANR. ..... Respondents

Through Mr. Ashok Manchanda, Sr. Standing counsel, Mr. Balkishan Ladhania and Mr. Raghavendra Singh, Jr. Standing counsel

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **10.04.2018**

The petitioner M/s Ochoa Laboratories Limited has filed the present writ petition impugning order dated 20th December, 2017 dismissing their application under Section 254 (2) of the Income Tax Act, 1961 (‘Act’ for short).

2. Learned counsel for the writ petitioner submits that the earlier order under Section 254 (1) of the Act passed by the Income Tax Appellate Tribunal should have been recalled and the appeal heard afresh as some of the judgments referred to and relied upon by the petitioner were not noticed. It is submitted that the view expressed in the order dated 25th August, 2017 is contrary to the view expressed in orders of Coordinate Benches.

3. The impugned order dated 20th December, 2017 records that some of the judgments referred to at the time of the hearing of the application under Section 254 (2) of the Act were not cited at the time of original hearing and before order dated 25th August, 2017 was passed.

4. Order dated 20th December, 2017 refers to case law noticed in the order dated 25th August, 2017 including the decision of the Tribunal in the case of PHL Pharma and the judgment of Punjab and Haryana High Court in the case of Cap Scan Diagnostic Centre Private Limited.

5. On being questioned, counsel for the petitioner states that the petitioner would be filing an appeal under Section 260-A of the Act challenging order dated 25th August, 2017.

6. It is open to the petitioner to raise all issues and contentions in the appeal preferred impugning the order dated 25th August, 2017 filed by the petitioner.

7. We are not inclined to entertain the present writ petition against the order dated 20th December, 2017 under Section 254 (2) of the Act, leaving it open to the petitioner to raise all contentions and issues in the appeal against the order dated 25th August, 2017. Scope and ambit of interference against an order under Section 254 (2) of the Act is limited and far narrower than in an appeal under Section 260A of the Act. Duplication and multiple proceedings are not required and justified. (Reference can be made to Order XLVII, Rule 7 of the Code of Civil Procedure, 1908. This provision though not strictly applicable, should be appropriately noticed.)

8. Recording the aforesaid and without expressing any opinion on merits of the controversy and the order dated 25th August, 2017, the writ petition is dismissed as not entertained. This order would not be construed as an adverse order effecting the rights of the petitioner in case an appeal is preferred challenging the order dated 25th August, 2017.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

APRIL 10, 2018
mw/MR