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

+ **ITA 764/2018**

PR. COMMISSIONER OF INCOME TAX – 18 Appellant
Through Mr. Zoheb Hossain, Sr. Standing
Counsel.

versus

M/S PREMIER BOOK COMPANY Respondent
Through Ms. Shashi M. Kapila, Mr. Pravesh
Sharma, Mr. Siddharth Kapil & Ms. Malavika
Kalra, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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18.09.2018

CM No. 29462/2018

Delay of thirty days in re-filing of appeal is condoned for the reasons stated in the application.

The application is allowed.

ITA No. 764/2018

We have heard counsel for the appellant-Revenue and the respondent-assessee in this appeal, which pertains to Assessment Year 2007-08 and arises from the order of the Income Tax Appellate Tribunal (Tribunal, for short) dated 7th November, 2017. The impugned order passed by the Tribunal in paragraph 6 sets aside the order passed by the Commissioner of Income Tax (Appeals) under Section 263 of the Income Tax Act, 1961 (Act, for short) for the following reasons:-

“6. We have heard both the parties and perused the material available on record. In-fact, the issues before the Assessing Officer were already allowed

by the ITAT in Assessment Year 2002-03 and also the CIT(A) allowed the same issues. In 2005-06 & 2006-07 the Department has not gone into appeal in those matters. Thus, the Department already accepted the interest element at assessment proceedings for earlier years. As regards royalty there was no error pointed out by the CIT as all the documents which were duly verified by the Assessing Officer at the time of assessment proceedings. Thus, the Ld. AR has rightly pointed out that the department cannot take new stand from its earlier decisions. It is pertinent to note that the order u/s 263 is merely a second opinion which is not permissible under the Act.”

2. Counsel for the respondent-assessee states that the issue of royalty was examined by the Assessing Officer and, therefore, the findings recorded by the Commissioner of Income Tax in his order under Section 263 of the Act are factually incorrect. However, we find that there is no discussion on the said aspect in the order passed by the Tribunal, except one line finding or conclusion that the question of royalty was examined by the Assessing Officer. We also find that the Tribunal has not discussed and gone into the question of disallowance under Section 40(a)(ia) of the Act on royalty, an aspect/question mentioned and referred to by the Commissioner of Income Tax in his order under Section 263 of the Act.
3. At this stage, learned counsel for the respondent-assessee fairly states that the order of the Tribunal to this extent may be set aside and remanded for fresh consideration.
4. We accept the said statement. It is directed that the Tribunal would re-examine the issue of royalty and disallowance under Section 40(a)(ia) of the Act afresh in view of the observations and findings recorded by the

Commissioner of Income Tax in his order under Section 263 of the Act and submission of the respondent-assessee. We also observe that we have not examined these aspects on merits and leave it to the Tribunal to examine the issues.

5. We are, however, not inclined to pass any order of remit on the question of inclusion of interest on the FDRs. The addition made on the said account has been deleted in earlier assessment years and these decisions have been accepted by the Revenue. These FDRs were deposited in the Court in view of pending litigation.

6. Recording the aforesaid concession given by the learned counsel for the respondent-assessee, the appeal is disposed of, without any order as to costs. It is clarified that we have not framed any substantial question of law in view of concession given by the respondent-assessee.

7. To cut delay, parties are directed to appear before the Tribunal on 29th October, 2018, when a date of hearing would be fixed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

SEPTEMBER 18, 2018

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