$~4

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

\+ ITA 731/2018

PAVEL GARG ..... Appellant

Through: Mr. Rakesh Gupta, Mr. Rohit Kumar Gupta and Ms. Monika Ghai, Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-13 ..... Respondent

Through: Mr. Asheesh Jain, Senior Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% 28.11.2018

CM APPL.27246/2018

For the reasons stated in the application, the delay of 57 days in re-filing is condoned.

ITA 731/2018

The counsel for the respondent has obtained instructions in terms of the last order and states that this is a case of remand. The Income Tax Appellate Tribunal ('Tribunal', for short) had to record findings and make observations to set aside the order of Commissioner of Income Tax (Appeals). This was necessary to pass an order of remit to the Assessing Officer. The Assessing Officer has been asked to re-examine the claim for deduction of alleged commission payments of Rs. 53,86,004/- and Rs. 1,06,11,990/- allegedly paid to Satish Kumar Goel and JB Exports Ltd., respectively.

2. Learned counsel for the assessee submits that some of the observations made in the impugned order dated 01.11.2017 passed by the

Tribunal could be read by the Assessing Officer as final and binding findings on merits. This would cause prejudice to the assessee and foreclose the entire issue inspite of remand for fresh consideration.

3. We have heard both sides, perused the documents and observations of the Tribunal. We do not find any justification and reason to review and set aside the direction for remand. However, we are not making any comments and giving detailed reasons on merits to avoid prejudice. Observations of the Tribunal are factual.

4. Tribunal was required to set aside the findings recorded by Commissioner of Income Tax (Appeals) and therefore, certain observations have been made. These observations were only for the decision of the appeal by the Tribunal and are not to be treated as conclusive findings on merits. If the findings were final and conclusive, then no order of remit was necessary.

5. The Assessing Officer has been asked to re-examine the issue of the commission allegedly paid in its entirety on merits.

6. The Assessing Officer would examine the question of genuineness of the commission payment and all aspects relating to allowability of the stated expenditure under Section 37 or Section 28 of the Income Tax Act, 1961. We also clarify that we have not interfered with the direction of the Tribunal regarding production/appearance of the commission agents for verification about rendition of services, production of relevant information and details to prove allowability of commission expenses. In case of non-appearance, reasons for non-appearance and legal effect thereof would be examined.

7. Recording the aforesaid, we dispose of the present appeal. We clarify that we have not made any comments on merits.

Dasti under the signature of Court Master.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 28, 2018/*uj*