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

\+ ITA 5/2018

HIMLAND REAL ESTATE PVT.LTD. ..... Appellant
Through Dr. Rakesh Gupta, Mr. Somil Agarwal and Ms. Monika Ghai, Advocates

versus

PRINCIPAL COMMISSIONER OF INCOME TAX ..... Respondent
Through Mr. Asheesh Jain, Sr. Standing Counsel with Mr. Shahrukh Ejaz, Advocate

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **05.01.2018**

Issue notice. Mr. Asheesh Jain, learned Sr. Standing Counsel accepts notice on behalf of the respondent.

The assessee's grievance in this appal is that the previous order of the Income Tax Appellate Tribunal (ITAT) dated 13.12.2016 had remitted the issue with respect to addition under Section 68 of the Income Tax Act, 1961 ('the Act') to the extent of Rs.1,00,58,898/-.

The facts are that the Assessing Officer (AO) for the given period i.e. AY 2008-09 brought to tax the sum of Rs.67,87,398/- on the ground that some parts of the amounts were received in cash from one Ms. Mamta Chaudhary. It was also held that with respect to the balance, the assessee was unable to explain the source of the income in terms of the onus cast upon Section 68 of the Act. The assessee's appeals to CIT(A) were allowed. The appeal to ITAT in the first round succeeded and the matter was remitted to CIT(A). In the meanwhile, the AO initiated penalty proceedings and imposed penalty under Section 271D of the Act. That became the subject matter of separate appeal to CIT(A). The ITAT by its order rejected the assessee's appeal. It is urged on behalf of the assessee by Dr. Rakesh Gupta that when the matter with respect to the substantive addition under Section 68 of the Act is at large, in the sense that consequent to the remand order dated 13.12.2016 (in ITA 2852/Del/2013, before the ITAT), the penalty could not have been levied and upheld in a manner, ITAT did, by the impugned order. Learned counsel for the revenue did not dispute that the substantive addition under Section 68 of 'the Act' is the subject matter of remand by CIT(A).

Having regard to the circumstances, it is evident that whether the amount of Rs.67,87,398/- (which is part of the larger amount of Rs.1,00,58,898/- and constitutes the cash component that was subject to Section 271D of the Act) is itself taxable under Section 68 of the Act is, *per se,* a matter of final adjudication, which has not attained finality. In these circumstances, imposition of penalty was unwarranted. The impugned order is consequently set aside. It is open to the revenue to initiate proceeding, if necessary, under Section 271(D) in the light of the final decision of CIT(A) in this regard.

Appeal is partly allowed in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 05, 2018

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