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

\+ ITA 327/2019

PR. COMMISSIONER OF INCOME TAX
CENTRAL -2 NEW DELHI ..... Appellant
Through: Ms. Lakshmi Gurung, & Mr.Siddharth Gupta, Advocates.

versus

PICO DEEPALI OVERLAYS CONSORTIUM ..... Respondent
Through: Mr. Salil Kapoor, Mr. Abhishek Gupta & Mr. Sumit, Advocates along with Mr. Gulshan, C.A. in person.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **09.10.2019**

C.M. No. 44518/2019

By this application, the respondent seeks clarification of the order dated 30.07.2019, whereby the appeal preferred by the Revenue was dismissed by this Court. The clarification sought relates to the scope of the hearing to be granted to the applicant in the eventuality of it being found to be a member of the AOP by the Assessing Officer upon remand.

Learned counsel for the applicant submits that the Assessing Officer has found the applicant to be a member of the AOP, however, while undertaking the assessment, the Assessing Officer is restricting the right of the applicant to advance submissions only in relation to the additions made under Section 69A and disallowances under Section 37 of the Income Tax Act in the light of the directions issued by the Tribunal in its order dated 19.09.2018, relevant part whereof reads as follows:

"… … … In view of this, we set aside ITA No. 4929/Del/2018 for Assessment Year 2011-12 filed in the name of PICO Deepali Overlays Consortium and signed by Deepali Design and Exhibits Pvt. Ltd back to the file of the ld AO, with a direction to first decide whether Deepali Design and Exhibits Pvt. Ltd is a member of AOP or not. If it is held to be a member, then Deepali be given a proper opportunity of hearing on the merits of the various additions made in the assessment order u/s 69A and other disallowances u/s 37 of the Act in the hands of assessee AOP. After that ld AO may pass an order on assessee AOP in accordance with law and all other consequences u/s 177 (3) of the act Shall also be applicable on Deepali."

The applicant, therefore, seeks a clarification that the applicant should be heard by the Assessing Officer in relation to all the issues.

In our view, such an application is properly maintainable before the Tribunal. The same is not maintainable before this Court considering the fact that we have only dismissed the appeal of the Revenue. We, therefore, dispose of this application with liberty to the applicant to move an application before the Tribunal. In case such an application is made within one week from today, the Tribunal shall deal with the same without raising the issue of limitation. In the meantime, the assessment proceedings may continue before the Assessing Officer but the Assessing Officer shall not pass its final order unless the application that the applicant may move is decided. Dasti.

VIPIN SANGHI, J

SANJEEV NARULA, J

OCTOBER 09, 2019
B.S.Rohella