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

\+ **ITA 677/2019**

PR. COMMISSIONER.OF INCOME TAX- 17 ..... Appellant

Through: Mr. Zoheb Hossain Senior Standing Counsel and Mr. Deepak Anand Junior Standing Counsel for the Revneue.

versus

M/s. MOTIWALA & SONS ..... Respondents

Through: Mr. Kislaya Parashar, Mrs. Mekhala Benny and Miss Umang Luthra Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **22.07.2019**

C.M.No.32666/2019 (Delay)

1. For the reasons explained in the application, the delay of 10 days in re-filing the appeal is condoned. The application is allowed.

ITA No.677/2019

2. This is an appeal filed by the Revenue against an order dated 29th November, 2018 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 2756/Del/2018 for the Assessment Year ('AY') 2013-14.

3. The short question sought to be urged by the Revenue is whether the ITAT erred in setting aside the order passed by the Commissioner of Income

Tax ('CIT') under Section 263 of the Income Tax Act, 1961 ('the Act') directing the Assessing Officer (AO) to undertake afresh the exercise of assessment for the AY in question.

4. The facts in brief are that the Assessee which is a partnership firm engaged in the business of retail trade of golden and diamond jewellery was subjected to a survey operation under Section 133A of the Act on 15th February, 2013. Thereafter on 29th September, 2013 it filed its return of income for the AY in question which was subsequently picked up for scrutiny, and notice under Section 143(2) was duly served upon the Assessee. On 9th July, 2015, the AO issued a notice under Section 143(1) of the Act enclosing therewith a questionnaire. After considering the replies of the Assessee, the assessment order was passed on 30th March, 2016 assessing the income of the Assessee at Rs.6,34,66,350/-.

5. The CIT decided to invoke the power under Section 263 of the Act and issued a show cause notice ('SCN') to the Assessee on 11th July, 2016 where the focus was on valuation of the stock with the Assessee. It was noted by the CIT that as per the inventory, the total stock was valued at Rs.33,48,49,952/- and excess stock was valued at Rs.15,95,72,922/-. According to the CIT, the AO failed to properly investigate the issue concerning the excess un-accounted stock of Rs.9,95,72,922/-. Further, with regard to the difference of Rs.55,37,754/- for diamond jewellery, the AO had simply accepted the reply of the Assessee that the 'valuer' had valued artificial stones at the rate of diamonds and this had caused the difference in valuation. In the order dated 27th March, 2018 passed under 263 of the Act,

the CIT came to the conclusion that the AO had without looking into the audit report of the Assessee accepted the valuation, and further held that on account of the lack of inquiry "the assessment order was erroneous and prejudicial to the interest" of the Revenue.

6. The above order was assailed by the Assessee before the ITAT. In the impugned order, while agreeing with the Assessee that the exercise of jurisdiction under Section 263 of the Act by the CIT was erroneous, the ITAT noted the detailed correspondence between the AO and the Assessee beginning with the notice dated 1st February, 2016 and the reply thereto of the Assessee followed by another notice dated 19th February, 2016, which again was replied to by the Assessee in detail. It was further noted by the ITAT that the exhibits 136 and 137 filed by the Assessee before the AO contained complete details of the stock of diamond on the date of the survey i.e. 15th February 2013. A reconciliation statement was also filed.

7. The ITAT concluded that the AO had during the course of Assessment proceedings after making detailed and specific inquiries in relation to the Assessee's stock, accepted the reconciliation report with respect to the variation of value of stock, having again examined the impugned order of the CIT in the light of the original assessment order of the AO. The ITAT was not persuaded to accept the plea of the Revenue that there had been a failure on the part of the AO to conduct a proper inquiry into the question of difference in the valuation of the stock and that the case fell within the parameters for interjection under Section 263 of the Act as expressed by the Supreme Court in ***CIT v. Amitabh Bachhan (2016) 11 SCC 748***.

8. Having heard learned counsel for the Revenue, and having examined the orders discussed hereinbefore, this Court is not persuaded to conclude that the impugned order of the ITAT suffers from any legal infirmity. In particular, this Court concurs with the view of the ITAT that in the present case the AO had indeed undertaken a detailed inquiry into the aspect of valuation of stock and that, therefore, the requirements for assumption of jurisdiction by the CIT under Section 263 of the Act were not fulfilled.

9. The Court does not find any substantial question of law arising from the impugned order of the ITAT. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

JULY 22, 2019/*mr* **TALWANT SINGH, J.**