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

\+ ITA 120/2019 & CM Appl. 5312/2019

PRINCIPAL COMMISSIONER OF
INCOME TAX (CENTRAL)-1 ..... Appellant
Through: Mr. Ruchir Bhatia, Advocate

versus

SHRI MAHESH KUMAR GUPTA ..... Respondent
Through: Ms. Kavita Jha, Ms. Devika Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **04.02.2019**

This is an appeal preferred by the Revenue raising substantial question of law with respect to the correctness of ITAT's order. It is urged that the ITAT's approach was erroneous.

Pursuant to search and seizure proceedings, assessee had filed its return under Section 153A after receipt of notice. The assessment was completed; however, the jurisdictional Commissioner felt that the assessment order was prejudicial to the Revenue's interest and accordingly sought to initiate revisional proceedings under Section 263 by issuing notice. The Commissioner proposed additions under Section 2(22)(e) of the Income Tax Act, 1961. The decision of the jurisdictional Commissioner was appealed against invocation of the revisional power. The ITAT set aside the jurisdictional Commissioner's order. The Revenue's appeal was rejected by this

Court on 22.11.2016 (ITA No.810/2016 titled as *Principal Commissioner versus Shri Mahesh Kumar Gupta*).

In the meanwhile, pursuant to the order of the jurisdictional Commissioner (which was later set aside) assessment was completed on 25.06.2014. CIT set aside the order of the Assessing Officer on the strength of the ITAT's order, which had been passed in the meanwhile. The Revenue's appeal has been dismissed by the ITAT, in view of this court's final order dismissing the ITA No. 810/2016 on 22.11.2016.

The factual narration would disclose that the assessment order which was the subject matter of these proceedings was pursuant to invocation of the revisional power which had been held to be incompetent, as eventually upheld by this court in ITA No. 810/2016, by order dated 22.11.2016. As such the assessment could not have independently persisted, in a disembodied manner as it was, without the authority of the revisional proceedings. The ITAT's decision in the opinion of this court cannot be faulted. No substantial question of law arises in the present appeal. Accordingly, the appeal filed by the appellant is dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 04, 2019
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