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

\+ **ITA 1229/2018**

PR.COMMISSIONER OF INCOME TAX ..... Appellant
Through: Mr.Raghvendra Singh, Sr.Standing Counsel with Mr.Vipul Agrawal, Advocate.

versus

SHREE VARDHMAN OVERSEAS LTD ..... Respondent
Through: Mr.Madhur Jain, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **30.07.2019**

1. Learned counsel for the Respondent Assessee informs the Court that after the Assessment Year (AY) AY 1998-99 for which the Assessee had filed a return showing a loss, the Assessee continued to suffer losses and its business was ultimately shut down in 2001.

2. He further states that on account of the Income Tax Department ('Department') seeking to recover the penalty amount from one of the directors of the Assessee the business of which was closed, an application under Section 254(2) of the Income Tax Act, 1961 ('the Act') was filed in the Income Tax Appellate Tribunal ('ITAT') following its judgment

dismissing the Assessee's appeal i.e. ITA 883/Del/2013 for the AY in question on 31st July 2017.

3. The question sought to be urged in the present appeal by the Revenue is whether the ITAT could have entertained the said application of the Assessee under Section 254(2) of the Act and reversed its earlier decision only on the basis that it had not taken into account the judgment of the Karnataka High Court in ***CIT v. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565*** which in turn followed the judgment of this Court in ***Madhushree Gupta v. Union of India (2009) 317 ITR 107*** where this Court considered the challenge to the constitutional validity of Section 271(1B) of the Act which had been inserted with retrospective effect from 1st April 1989 on the issue of the recording by the Assessing Officer (AO) of his satisfaction for the purpose of initiating penalty proceedings under Section 271(1)(c) of the Act. It is contended by the Revenue that in exercise of the power under Section 254(2) of the Act, the ITAT could not have reviewed its earlier order as the judgment on the basis of which the earlier decision was reversed was not of the 'jurisdictional' High Court (i.e. this Court) but of the Karnataka High Court.

4. While the Court is conscious that the question that has been raised by the Revenue merits consideration, in the facts of the present case where the business of the Respondent Assessee has closed way back in 2001 and the proceedings pertain to AY 1998-1999 which is more than two decades ago, the Court is not inclined to interfere with the impugned order of the ITAT.

5. The appeal is disposed of. However, the questions of law urged by the Revenue are left open for consideration in an appropriate case.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 30, 2019
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