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

\+ **ITA 817/2017**

K.V. FINLEASE PVT. LTD. ..... Appellant

Through: Mr.Ved Jain, Mr.Kislaya Prashar and Ms.Umang Luthra, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX, DELHI-5 ..... Respondent

Through: Mr.Ajit Sharma, Senior Standing Counsel, Ms.Adeeba Mujahid, Junior Standing Counsel.

**CORAM:**
**JUSTICE S.MURALIDHAR**
**JUSTICE TALWANT SINGH**

**ORDER**

% **09.07.2019**

1. This petition challenges an order dated 15th June, 2017 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 4578/De1l2016 for Assessment Year (AY) 2008-09. The Assessee is aggrieved by the impugned order of the ITAT, which while setting aside the order dated 31st March, 2016 passed by the Principal Commissioner of Income Tax (PCIT) under Section 263 of the Income Tax Act, 1961 (Act) on the ground that the notice preceding the passing of the said order was not served upon the Assessee, has remanded the matter to the PCIT for passing a fresh order after hearing the Assessee.

2. Mr. Ved Jain, learned counsel appearing for the Appellant, submits that

having cancelled the order of the PCIT on the ground of failure to serve a notice upon the Assessee, the ITAT ought not to have remanded the matter back to PCIT. It should have dealt with the other grounds raised by the Assessee challenging the order of the PCIT on merits. He placed reliance on the decision of the court dated 14th September, 2017 in ITA 853/2015 (***Tulsi Tracom Private Limited v. Commissioner of Income Tax-9***) where it was held that there is a clear bar for any order being passed pursuant to a notice under Section 263 of the Act, after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

3. Mr. Ajit Sharma, learned counsel appearing for the Revenue, on the other hand points out that the facts in the ***Tulsi Tracom*** (*supra*) were different. There was no occasion for the Court in the said case to examine the applicability of Section 263(3) of the Act which states that the time period of two years would not apply where the exercise under Section 263 of the Act is sought to be undertaken pursuant to the order of an Appellate Court or the ITAT.

4. The Court finds that the judgment in ***Tulsi Tracom Pvt. Ltd***.(*supra*) is not helpful to the Assessee as it is distinguishable of facts. As noted in para 22 of the said judgement although in that case notice was initially sent to the wrong address of the Assessee, it was subsequently sent to the correct address but only two days prior to the date fixed by the PCIT for hearing. In those facts and circumstances, this Court was of the view that sufficient opportunity was not granted to the Assessee to oppose the notice under Section 263 of the Act.

5. In the instant case, admittedly the notice preceding the order under Section 263 of the Act was sent to the Assessee at the wrong address. On this short ground, the ITAT has remanded the matter to the PCIT for passing a fresh order after hearing the Assessee. It is plain to this Court that the remand would not result in the PCIT coming up with new grounds for reopening the assessment under Section 263 of the Act. Those grounds have already been set out in the show cause notice issued by the PCIT. All that the PCIT has now to do is to give the Assessee a hearing and pass a fresh order on merits, obviously uninfluenced by the earlier order passed by the PCIT. If the Assessee is aggrieved by such a fresh order, it will obviously be open to the Assessee to seek further remedies in accordance with law.

6. Consequently, the Court finds no reason to interfere with the impugned order of the ITAT.

7. The appeal is accordingly dismissed.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**JULY 09, 2019**
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