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

+ ITA 1044/2018 and CM APPL. 39286/2018

+ ITA 1049/2018

**PR. COMMISSIONER
OF INCOME TAX-4, DELHI**

..... Appellant

Through : Mr. Kunal Sharma, Senior Standing
Counsel for Revenue along with
Ms.Zehra Khan, Advocate.

versus

GEE ISPAT PVT. LTD.

..... Respondent

Through : Mr. Rohit Jain and Mr.Aniket D.
Agrawal, Advocates.

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Date of Decision: 18th October, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (ORAL):

1. Present Income Tax appeals have been filed challenging the judgment and order dated 18th January, 2018 passed by the Income Tax Appellate Tribunal, New Delhi ('the Tribunal') in ITA Nos. 420/Del/2016 and 3794/Del/2014 for the Assessment Year ('AY') 2010-11 under Section 263 of the Income Tax Act, 1961 ('the Act') The relevant portion of the

impugned order is reproduced hereinbelow :

“On the merits of the case, it can be seen that order under Section 263 of the Act passed, was on the basis of some diary which was allegedly stated to be incriminating material by the Revenue and the said diary found in the possession of the third party was held not sufficient to draw an inference about the alleged undisclosed income by the Tribunal vide order dated 18/5/2015 in ITA No.5550/Del/2012 and all the advances were deleted by the Tribunal. Thus, order u/s. 263 of the Act passed by the CIT is set aside. Therefore, the appeal of the assessee is allowed. As related to Revenue Appeal, the same will not sustain as the main issue is already decided by the earlier decision of this Tribunal.”

(emphasis supplied)

2. On 18th February, 2020, this Court has passed the following order:

“1. Learned counsel for the Appellant states that he has not yet received the paper book of the case and the case has been recently assigned to him. We are in dismay at the manner in which the matter has been pursued by the Revenue. As early as on 25.09.2018, this Court had noticed the submission of the Revenue that against the order dated 18.05.2015, passed by the ITAT, which has been relied upon, while passing the impugned order, the appeal has been preferred in this Court and is lying under office objections. The matter was adjourned at the request of counsel for the Revenue while making it clear that no further adjournment shall be granted. Despite that order, on three occasions, the matter was adjourned. It appears that the appeal preferred against the order dated 18.05.2015 has still not been listed before this Court. Learned counsel for the Appellant is not in a position to make the statement in that regard. As a very last and final opportunity, we adjourn the matter while making it clear that under no circumstances, no further adjournment shall be granted.

2. List on 28.04.2020.”

(emphasis supplied)

3. Subsequently, on 2nd March, 2021, this Court had passed the following order :

“1. Mr. Kunal Sharma, who appears on behalf of the appellant/Revenue, says that due to the onset of Covid-19, inspection of the case papers concerning the earlier appeal filed by the appellant/Revenue against the Income Tax Appellate Tribunal’s (in short -Tribunal') order dated 18.05.2015 could not be carried out.

1.1. The record shows that the several opportunities have been taken by the appellant/Revenue since 25.09.2018. However, given the fact that in March 2020, on account of Covid-19, Court proceedings were generally disrupted, we are inclined to grant one more opportunity to the appellant/Revenue.

2. To be noted, the order dated 18.05.2015 was passed by the Tribunal, in respect of an order passed under Section 263 of the Income Tax Act, 1961. It appears that the Tribunal, via the said order, came to the conclusion that addition to the income of the assessee could not be made based on purported incriminating material found by the appellant/Revenue, in a diary, which was in the possession of a third party as it was not sufficient to draw an inference that it was the undisclosed income of the assessee.

3. The order, which is assailed by the appellant/Revenue and is the subject-matter of the instant appeals [i.e., the order of the Tribunal dated 18.01.2018], is pivoted on the order dated 18.05.2015.

4. Therefore, it is made clear that if the appellant/Revenue is unable to bring up its appeal against the order dated 18.05.2015, on the next date of hearing, then, these appeals shall stand closed without further recourse.

5. Accordingly, at the request of Mr. Kunal Sharma, list the captioned matters on 20.04.2021.”

(emphasis supplied)

4. Today, also the appeal against the order dated 18th May, 2015 is not listed.

5. Learned counsel for the appellant prays for an adjournment once again.

6. However, keeping in view the clear, categorical and peremptory directions given by the learned Predecessor Division Benches vide orders dated 18th February, 2020 and 2nd March, 2021, the prayer for adjournment is declined and present appeals are dismissed in accordance with the said orders.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 18, 2022

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