**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

107 **ITA No.42 of 2023(O&M)
Date of decision: 11.01.2024**

The Pr. Commissioner of Income Tax … Appellant

Versus

Perfetti Van Melle India Pvt. Ltd. … Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present : Mr. Saurabh Kapoor, Sr. Standing Counsel
for the appellant.

Mr. Deepak Chopra, Advocate,
for the respondent.

G.S. SANDHAWALIA, J. (Oral)

1. The present appeal has been filed against the order passed in ITA No.789/DEL/2016 dated 28.06.2022 and 28.04.2017 for the assessment year 2011-12.

2. On 01.06.2023, the following order was passed:-

> *"Learned counsel for the appellant seeks time to prepare the case.*
>
> *At this stage, learned counsel for the respondent says that this appeal cannot be filed against the order passed under Section 254 (2). He states that one appeal i.e. ITA-514-2014 against the Tribunal order is pending. The present appeal has been filed along with the order passed in the miscellaneous application which they can challenge only by way of filing writ petition and this too is filed after a gap of 5 years.*
>
> *Learned counsel for the appellant will examine this issue.*
>
> *Adjourned to 26.07.2023.*
>
> *Registry is directed to tag ITA-514-2014 along with this case."*

3. Thereafter, on 08.11.2023, we passed the following order:-

> *"Matter has been heard through hybrid mode on the request of learned counsel for the respondent.*
>
> *Earlier order dated 01.06.2023 has not been complied with. Counsel for the appellant prays for another opportunity to seek necessary instructions in terms of the order dated 01.06.2023.*
>
> *Last opportunity is granted otherwise costs will be imposed on the appellants if instructions are not completed by the next date.*
>
> *Adjourned to 11.01.2024."*

4. We have also perused the paper book of ITA-514-2017, wherein the appeal against the main order of the Tribunal dated 28.04.2017 already stands admitted. Substantial question of law which arose for consideration is at paragraph 9 of the said appeal, on which question the appeal stands admitted.

5. Faced with this situation, Mr. Kapoor submits that he may be permitted to withdraw the present appeal with liberty to avail his remedy, if any, against the subsequent order passed on 28.06.2022 in civil miscellaneous application bearing No.447/DEL/2017, which was dismissed by the Tribunal on the ground that the revenue was seeking review of the order.

6. Disposed of accordingly.

(G.S. Sandhawalia)
Judge

11.01.2024
monika

(Lapita Banerji)
Judge

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No