$~13

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

\+ ITA 171/2022

PRINCIPAL COMMISSIONER OF INCOME TAX-6 ..... Appellant

Through: Mr. Aseem Chawla, Sr.SC with Ms.Pratishtha Choudhary, Adv.

versus

NUWAVE E-SOLUTIONS PVT. LTD. ..... Respondent

Through: Dr. Rakesh Gupta, Mr. Somil Agarwal, Mr. Dushyant Agrawal and Mr. Prateek Bhati, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **27.02.2024**

1. The Principal Commissioner impugns the order dated 27 December 2018 and has proposed a question which pertains to validity of the Income Tax Appellate Tribunal ["**ITAT**"] setting aside the order passed by the Commissioner in revision.

2. While dealing with the validity of the order passed in the exercise of revisional powers, the ITAT has held as under:

> "**7.** We have heard both the parties and perused the material available on record. From the records, the Assessing Officer has specifically raised query regarding exemption u/s Section 10A during the original assessment proceedings and all the details, were given by the assessee during the assessment proceedings which is later on deleted by the CIT(A). These facts were present before the Commissioner of Income Tax while giving show cause notice u/s 263 of the Act. <u>The order passed by the Commissioner in capacity of Section 263 is merely a second opinion and does not fall in the category of prejudicial to the interest of Revenue. Merely taking a</u>

second opinion on the issue which is already concluded by the Revenue Authorities cannot be a ground for invoking Section 263 the Act. The Assessing Officer should have done this or that is not a prerogative while invoking Section 263 of the Act by the Commissioner of Income Tax. In the present case, the Assessing Officer has taken cognizance of all the material provided by the Assessee during the Assessment Proceedings and after verifying the same has passed just and proper order. Therefore, in light of the above findings, the order of the Commissioner u/s 263 of the Act is set aside."

3. It is thus, manifest that the appeal fails to raise any substantial question of law. Consequently, the same shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 27, 2024/p