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

\+ ITA 133/2021

PRINCIPAL COMMISSIONER OF INCOM TAX DELHI 10 ..... Appellant

Through: Mr. Abhishek Maratha, Sr.SC.

versus

SHRI NASIR ALI ..... Respondent

Through: Mr. Arvind Kumar, Adv.

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

O R D E R

% **20.03.2024**

CM APPL. 22753/2021(Delay of 74 days in filing) & CM APPL. 22754/2021 (Delay of 266 days in Re-filing)

1. These applications are filed on behalf of the appellant seeking condonation of 74 days' delay in filing and 266 days' delay in re-filing the present appeal.

2. Bearing in the mind the disclosures made, the delay of 74 days in filing the appeal and the delay of 266 days in re-filing the appeal is condoned.

3. The applications shall stand disposed of.

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4. The Principal Commissioner impugns the order passed by the Income Tax Appellate Tribunal ["**ITAT**"] dated 25 September 2019 and has proposed the following questions of law for our consideration:

> "(1)Whether the Ld. Income Tax Appellate Tribunal was correct in the eyes of the law in passing the impugned order, overlooking the

provisions of law specifically clauses (a) and (b) sub-section (3) of Section 124 of the Income Tax Act, 1961, wherein it has been stated that no person can call in question jurisdiction of an Assessing Officer in case of noncompliance and/or after the period stipulated in clauses (a) and (b)?

(2)Whether the Ld. Income Tax Appellate Tribunal was justified in the eye of law and in the facts and circumstances of the present case, in holding the assessment-order being illegal, because it has been passed by the Assessing Officer without assuming valid jurisdiction as the case of the assessee was transferred to the Assessing Officer without passing an order under-section 120 of the Income Tax Act, 1961?

(3)Whether Hon'ble Income Tax Appellate Tribunal was correct in the eyes of law in passing the impugned order overlooking the judgements of Hon'ble High Court of Delhi (it's Jurisdictional High Court) in the case of *Abhishek Jain Vs Income-tax officer (Writ Petition (Civil) No. 11844 of 2016) Dated 01/06/2018 and in the case of Commissioner of Income-tax Delhi-XVI Vs. S.S. Ahluwalia (Income-Tax Appeal No. 255/2002) Dated 14/03/2014?*

(4)Whether the Ld. ITAT was justified in the eyes of law in not taking into consideration that the assessee is barred from questioning the validity of jurisdiction assumed by an Assessing Officer after the time stipulated, according to clauses (a) and (b) of sub-section (3) of section 124 of the Income Tax Act, 1961?"

5. Before us Mr. Maratha has essentially addressed submissions on the ambit of Section 124(3) of the Income Tax Act, 1961 ["**Act**"] to contend that since the respondent-assessee had failed to raise any question with respect to the jurisdiction of the Assessing Officer ["**AO**"] in accordance with the provisions made in Section 124(3) of the Act, it would clearly not amount to an illegality nor would it lead to irreversible consequences. According to Mr. Maratha, the ITAT has clearly erred in holding the order to be void ab initio.

6. In our considered opinion, the provisions of Section 124(3) of the Act and the questions surrounding that provision would have warranted further consideration, provided the appellant had been able to establish that the Addl. CIT Range-23, New Delhi was duly empowered to act as the AO.

7. We note from the judgment rendered by the ITAT that the Addl. CIT Range-23 New Delhi is stated to have been assigned to be the AO by virtue of an order of the CIT dated 09 December 2013.

8. The ITAT however has noted that despite opportunity having been granted, the appellant had failed to place that authorisation for its perusal. It is the aforesaid aspect which has constrained the ITAT to observe that the mere mentioning of such an order in the assessment order which was framed would not suffice.

9. In view of the aforesaid, we find no ground to interfere with the views expressed by the ITAT. The appeal raises no substantial question of law and shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 20, 2024/p