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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 225/2024, CM APPLs. 23826/2024 & 23828/2024
M/S TRIPLE S STOCK AND SHARES PVT LTD
..... Appellant
Through: Ms. Pankhuri Shrivastava & Mr. Atreya G.C., Advs.

versus

INCOME TAX OFFICER ..... Respondent
Through: Mr.Shlok Chandra, Sr.SC with Ms.Madhavi Shukla, Jr.SC, Ms.Priya Sarkar, Jr.SC and Mr.Ujjwal Jain, Adv.

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

**O R D E R**
% **06.05.2024**

**CM APPL. 23827/2024 (Exemption)**

Allowed, subject to all just exceptions.

The application is disposed of.

**ITA 225/2024, CM APPLs. 23826/2024 & 23828/2024**

1. Having heard learned counsels for parties, we admit the instant appeal on the following questions of law:-

(a) Whether the Income Tax Appellate Tribunal **["ITAT"]** was right in upholding the order of the learned Commissioner of Income Tax (Appeals) **["CIT(A)"]** which had overlooked the pertinent fact that subsequent to the order of assessment under section 143(3) of the Income Tax Act, 1961 **["Act"],** an order dated 26

December 2011 for the same Assessment Year **["A.Y."]** under section 153A/143(3) of the Act was made wherein the claim made by appellant stood accepted and as such confirmation of disallowance in disregard of the aforesaid fact was misconceived, misplaced and untenable being against the law laid down by the Supreme Court in **Principal Commissioner of Income Tax vs Abhisar Buildwell** [(2024) 2 SCC 433] ?

(b) Whether the ITAT was right in arbitrarily dismissing the appellant's appeal ex-parte without even dealing with the merits of the case and subsequently refusing to entertain the application for restoration filed by the appellant despite bona fide reasons on part of the appellant for such non-appearance before the ITAT?

2. The appellant is constrained to approach this Court pursuant to the judgment handed down by the ITAT albeit ex parte and as a consequence of a failure on the part of the appellant to appear on the date fixed. The ITAT has essentially upheld the order of assessment as made and affirmed by the CIT(A).

3. However, and as is manifest from the record, for the A.Y. in question, namely 2006-2007, there are two assessments which appear to have been framed. While the order of assessment under Section 143(3) of the Act is dated 29 December 2008, an assessment under Section 153A of the Act was also made on 26 December 2011. The stand of the appellant in respect of the disallowances was in fact accepted in the course of the assessment undertaken in terms of Section 153A of the Act.

4. It is in the aforesaid backdrop that learned counsel seeks to

draw sustenance from the judgment rendered by the Supreme Court in *Abhisar Buildwell* to contend that there cannot be two assessments once a search has taken place. Undisputedly and in terms of the statutory scheme underlying Section 153A, the relevant assessment years become subject matter of assessment once a search is undertaken. All assessments pending on the relevant date stand abated and merge with the search assessment. This departure from the erstwhile procedure pertaining to block assessments is well settled and clearly not in doubt.

5. This aspect has clearly not been examined by the authorities below. We are thus of the considered opinion that the appellant shall be seriously prejudiced if the matter is not examined afresh in the aforesaid light.

6. In view of the aforesaid, we allow the instant appeal and set aside the order of the ITAT dated 08 February 2023. The appeal shall stand restored on the Board of the ITAT, to be heard afresh and bearing in the mind the observations made herein above.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**MAY 06, 2024/MJ**