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

\+ W.P.(C) 5932/2019

M/S. QUEENS INN PVT. LTD. .....Petitioner

Through: Ms. Ananya Kapoor, Adv.

versus

INCOME TAX OFFICER, WARD 20(3) & ANR. .....Respondents

Through: Mr. Debesh Panda, SSC with Ms. Zehra Khan, Mr. Vikramaditya Singh, JSCs, Mr. Anauntta Shankar & Mr. Isha Puri, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **29.08.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "a. Issue a writ in the nature of Certiorari to quash order u/s 154 dated 24.11.2010, order dated 18.07.2017 and order u/s 264 dated 18.01.2019 being illegal, bad in law and without jurisdiction.
> b. Issue a writ in the nature of Mandamus directing the Respondents to correctly process the return of income and issue refund alongwith upto date interest as the action of the Respondents is unjust, arbitrary and against the provision of the Income Tax Act, 1961.
> c. Issue any other Writ, order or Direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and
> d. To allow the writ petition with cost in favor of the petitioner and against the Respondents."

2. The petitioner is essentially aggrieved by the order under Section 264 of the Income Tax Act, 1961 [**"Act"**] dated 18 January 2019 and in terms of which its prayer for refunds pursuant to the

operative directions framed by Commissioner of Income Tax (Appeals) [**"CIT (A)"**] has come to be rejected. The order of the CIT (A) dated 29 April 2013 carried the following operative directions:

> "4. Ground No. 1 is against the rejection of 154 application and assessing the appellant's income at Rs.14,89,920/- under the head income from business or profession. The order u/s 154 is silent regarding the appellant's income from business or loss from house property income. Instead it only mentions that the appellant had not filed depreciation schedule or claimed depreciation. The appellant's AR filed a copy of the e-filed return during the appellate proceedings and as per the same the appellant had shown loss of Rs. 14,22,707/- under the head income from house property. Income from business was shown at nil in this e-filed return and depreciation of statement was mentioned as nil. <u>Therefore, it appears that there was an error in computing the appellant's income at Rs. 14,89,920/- and the appellant's rectification application was rejected without verifying the e-filed return of income. Therefore. the AO is hereby requested to verify the e-filed return and pass a speaking order as per law. As a result, this ground is treated as allowed</u>.
>
> 5. Ground No. 2 is consequential in nature therefore requires no adjudication in this regard.
>
> 6. As a result, the appeal is allowed."

3. When the matter came before the respondents pursuant to remand, the petitioner was informed of the fact that a Depreciation Schedule had not been appended along with the return. The respondents thus appear to have taken the position that no cause for rectification existed since they were only required to verify the claim of refund bearing in mind the e-filed Return of Income. This led to the petitioner approaching the revisional authority which too has come to uphold the order passed on the rectification petition.

4. Before us, Ms. Kapoor, learned counsel appearing in support of the writ petition, pointed out that it was the consistent stand of the writ petitioner that it was not claiming benefits of depreciation pegged at INR 14,89,920/- since the same had already been factored in the Profit

and Loss Account. It was her submission that the same in any case emanated from a transaction of immovable property and was also not subject matter of contestation before the CIT (A).

5. In view of the aforesaid, and in our considered opinion, bearing the aforesaid undisputed facts in mind, there was no justification for the respondents insisting upon the submission of or seeking to discover the existence of a Depreciation Schedule as part of the Return of Income.

6. In view of the above, we allow the instant writ petition and quash the order dated 24 November 2010 as well as the order dated 18 July 2017. We require the Assessing Officer [**"AO"**] to examine the claim for refund bearing in mind the observations made hereinabove.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 29, 2024
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