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

\+ ITA 547/2019

PR. COMMISSIONER OF INCOME TAX - 20

..... Appellant

Through: Mr. Sanjeev Menon, Adv. for Mr. Zoheb Hossain, SSC.

versus

M/S. CHOPRA PROPERTIES, ... Respondent

Through: Dr. Rakesh Gupta, Mr. Somil Aggarwal, Mr. Dushyant Aggarwal, Advs.

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

ORDER

% **28.03.2024**

1. Our order of 13 December 2022 would indicate that the respondent assessee had taken a preliminary objection to the maintainability of the appeal by contending that the tax effect in this case would not exceed INR 35,18,713/-. The aforesaid position in defining the question of quantification was also conceded to by learned counsel appearing for the appellant on that date.

2. However, and as would be evident from a reading of that order, the appellants have sought to place their case in clause (a) of paragraph 10 of the Circular No.3/2018 dated 11 July 2018 which reads as follows:

> "10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect :

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or…"

3. We find ourselves unable to sustain that submission bearing in mind the evident fact that clause (a) pertains to circumstances and contingencies where the constitutional validity of the provision of an Act or a Rule may have been questioned. That is clearly not the position which prevails here.

4. While the appellant may be correct in their contention that the principal issue stands conclusively answered in their favor by the judgment of the Supreme Court in **Shree Choudhary Transport Company vs. Income Tax Officer** [2020 SCC OnLine SC 610], that in itself would not place the instant appeal in the category of exceptions which are spoken of in paragraph 10.

5. In fact, the decision in *Shree Choudhary* would also take care of the apprehension of a cascading effect since it would be the law declared by the Supreme Court which would prevail.

6. In view of the above, we find no justification to entertain the instant appeal. We consequently dismiss this appeal on ground of low tax effect.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 28, 2024/neha