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

\+ ITA 924/2019

CONSULTING ENGINEERING SERVICES (INDIA) PVT. LTD. ..... Appellant

Through: Mr. Salil Kapoor, Mr. Vibhu Jain, Ms. Ananya Kapoor & Mr. Sumit Lalchandahi, Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-1 & ANR. ..... Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semwal, JSC & Ms. Nupur Sharma, Adv.

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\+ ITA 22/2020

PR. CIT-2, DELHI ..... Appellant

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semwal, JSC & Ms. Nupur Sharma, Adv.

versus

CONSULTING ENGINEERING SERVICES (1) PVT LTD ..... Respondent

Through: Mr. Salil Kapoor, Mr. Vibhu Jain, Ms. Ananya Kapoor & Mr. Sumit Lalchandahi, Advs.

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

O R D E R

% **16.02.2024**

1. The assessee seeks to question the correctness of the judgment rendered by the Income Tax Appellate Tribunal ["**ITAT**"] on 29 May

2019 and has raised the following questions of law for our considerations in ITA No. 924/2019:

(I) Whether in view of the facts and circumstances of the case, the impugned order dated 29 May 2019 passed by the ITAT is illegal, bad in law, erroneous and perverse?

(II) Whether in view of the facts and circumstances of the case, the assessment order dated 29 June 2012 passed under Section 143(3) of the Income Tax Act, 1961 ["**Act**"] for Assessment Year ["**AY**"] 2009-10 is illegal, bad in law, without jurisdiction and barred by time limitation?

(III) Whether in view of the facts and circumstances of the case, the order under Section 142(2A) of the Act referring the case of the appellant for Special Audit is illegal, bad in law, null and void and hence the assessment order dated 29 June 2012 passed under Section 143(3) of the Act is barred by time limitation as the benefit of extended time limitation as per sub-clause (iii) to Explanation 1 to Section 153 of the Act was not available?

(IV) Whether in view of the facts and circumstances of the case, the Additional Commissioner of Income, Range – 3, could not have passed the assessment order dated 29 June 2012 passed under Section 143(3) of the Act for the AY 2009-10 without there being an order under Section 127 of the Act?

(V) Whether in view of the facts and circumstances of the case, the ITAT erred on facts and in law in restoring the entire assessment to the file of the Assessing Officer ["**AO**"] even after holding that the order under Section 142(2A) of the Act was null and void?

(VI) Whether in view of the facts and circumstances of the case, the ITAT erred on facts and in law in holding that the appellant's representative consented before it to restore the matter to the file of the AO whereas no such consent was accorded by the representative of the appellant?

2. The Revenue has also assailed the order of the ITAT and raised the following questions of law for our consideration in ITA No. 22/2020:

(I) Whether the ITAT is justified in allowing two additional grounds of appeal at the second appellate stage despite the fact that these grounds were not raised before the lower authorities?

(II) Whether the ITAT is justified in relying on an order of the High Court directing the ITAT to accept an additional ground of appeal for the AY 2008-09 when the aforesaid order of the High Court is still pending for adjudication with the Supreme Court?

(III) Whether the ITAT is justified in setting aside the assessment order dated 29 June 2012 passed u/s 143(3) of the Act and directing the AO to frame denovo assessment despite the fact that:

a. The conditions mentioned in the First Proviso to Section 142(2A) of the Act were complied with by the AO; and

b. The assessee had not objected to the jurisdiction of the AO in the time limit prescribed u/s 124(3)(a) of the Act.

(IV) Whether the order passed by the ITAT is perverse in law and on facts?

3. We, however, note that the ITAT without entering upon the merits of the issues which were raised on behalf of the assessee, has principally remanded the matter back to the AO on finding that the assessee had been denied a reasonable opportunity of being heard. This is evident from a reading of paragraphs 11 to 14 of the impugned order which are extracted hereinbelow:

> "**11.** We have already exhibited the interim order of the bench. However, even today the revenue could not furnish any order u/s. 127 of the Act. Moreover, the DR could only submit the order u/s. 120 (4) (b) of the Act and showed her inability to furnish the order sheet entries prior to 23.08.2011 though the assessment records were produced for inspection.
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> **12.** Though in the assessment order the Assessing Officer from page 1 to page 4 of his order has narrated the proceedings related to the special audit u/s. 142 (2A) of the Act and has also referred to the objection raised by the assessee to audit u/s. 142(2A) of the Act but nowhere we find that the assessee was given a sufficient opportunity to the assessee to file a reply and thereafter did not grant any opportunity of being heard. We find that the Hon'ble Delhi High Court of Punjab & Haryana in the case of Isolux Corsan India Engineering & Construction (P.) Ltd. reported in 287 CTR 92 has held "the expression the reasonable opportunity of being heard" inhers an obligation to afford a reasonable opportunity of being heard. The mere calling upon the assessee to file a reply would not fulfill the preemptory condition set out in the first proviso to Section 142(2A) of the Act. The grant of a reasonable opportunity of being heard, is a statutory pre condition to the exercise of power u/s. 42 (2A) of the Act, and if an Assessing Officer fails afford a reasonable opportunity of being heard, before passing an order u/s. 142(2A) of the Act, such an order would be null and void.
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> **13.** At the same time, the objections raised by the DR could not be brushed aside lightly since the assessee got ample opportunity to raise the objections during the assessment proceedings and also

before the first appellate authority.

14. Be that as it may, to put an end to the ongoing litigation, with the consent of the representative of both the sides we deem it fit to restore the entire assessment to the files of the Assessing Officer. The Assessing Officer is directed to frame denovo assessment. The Assessing Officer is at liberty to proceed as per the provisions of law but after giving a reasonable opportunity of being heard to the assessee."

4. On a consideration of the aforesaid aspect, the ITAT had remanded the matter to the AO and directed it to frame a de novo assessment. Since all rights and contentions of the assessee, including any objection that may be available to be canvassed by the Revenue have been kept open, we find that the appeals raise no substantial question of law, at least at this stage. Liberty in terms aforesaid stands accorded.

5. We consequently direct the AO to proceed further in light of the judgment rendered by the ITAT as well as observations appearing therein. Both the appeals shall stand disposed of in light of the above.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 16, 2024/kk