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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ ITA 689/2023

PR. COMMISSIONER OF INCOME TAX, DELHI-1 .....Appellant

Through: Mr. Vipul Agarwal, SSC with Mr. Gibran Naushad, Ms. Sakshi, Advs.

versus

M/S CBS HOLDING PVT. LTD. .....Respondent

Through: None.

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

<u>O R D E R</u>

% 19.09.2024

1. The order sheet would reflect that although the respondent assessee was represented at previous occasions, none has appeared on its behalf today.

2. Having heard Mr. Agarwal, learned counsel appearing for the appellant, we formally admit this appeal on the following questions of law:-

> A. Whether on the facts and circumstances of the case and in law, Income Tax Appellate Tribunal ["**Tribunal**"] has erred in setting aside the order of the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] by way of a non-speaking order and restoring all issues to the file of the CIT(A) with direction to pass a fresh order, without appreciating that the assessee was given sufficient opportunity by the CIT(A)?
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> B. Whether the impugned order has been passed without application of mind to the facts of the case by Tribunal as the application under the Right to Information Act, 2005 ["**2005 Act**"] was filed by the assessee on 10 May 2022 and the same

does not have any relevance or bearing on the order passed by CIT(A) on 11 May 2018?

3. We note that the Tribunal has proceeded to interfere with the order of the CIT(A) merely on the basis of an application made by the assessee under the 2005 Act. That application was dated 10 May 2022. However, and which fact has clearly been ignored from consideration is that the CIT(A) had disposed of the appeal on 11 May 2018.

4. The mere filing of an application under the 2005 Act thereafter for any information provided in pursuant thereto would clearly have no bearing on the validity of the order passed by the CIT(A). We consequently find ourselves unable to sustain the order rendered by the Tribunal.

5. We accordingly allow the instant appeal and answer the questions framed in favour of the appellant. The order of the Tribunal dated 08 December 2022 is hereby set aside.

6. As a consequence of the above, the appeal shall stand restored on the board of the Tribunal to be heard afresh and on merits with due notice to the respondent assessee.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 19, 2024/*neha*