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

\+ ITA 217/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -2 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC along with Mr.Anant Mann, JSC.

versus

URVASHI NARAIN ..... Respondent

Through: Mr. Ved Jain, Mr. Nischay Kantoor and Ms. Soniya Dodeja, Advs.

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

O R D E R

% **03.05.2024**

CM APPL. 22683/2024 (Delay of 14 days in filing) & CM APPL. 22684/2024 (Delay of 100 days in re-filing)

1. Bearing in the mind the disclosures made, the delay of 14 days in filing the appeal and the delay of 100 days in re-filing the appeal is condoned.

2. Applications shall stand disposed of.

ITA 217/2024

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal ['**ITAT**'] dated 31 May 2023 and posits the following questions of law for our consideration:-

"2.1 Whether Hon'ble ITAT has erred in not appreciating that as per provision of section 144C, the Assessing officer has no power to straight way pass an order under section 143(3) in an eligible assessee's case in the event of making any variation prejudicial to interest of assessee and has to instead pass a draft order first?

2.2 Whether the Hon'ble ITAT erred in not remanding the matter to the Ld. DRP for fresh consideration, in view of the corrigendum order?

2.3 Whether Ld. ITAT erred in failing to note that the action of Assessing officer to term the order under section 143(3) as a draft order u/s 144C(1) issued through corrigendum was permissible in terms of section 292B, when the corrigendum had been issued limitation date?"

2. We take note of the following conclusions which have come to be recorded by the ITAT and as they appear in Paras 14 to 16 of the order impugned before us:-

"14. As could be seen from the observations of learned DRP in paragraph 3.5 and 3.6, it is not uncertain direction, learned DRP has held that once the final assessment order has been passed on 15.09.2021 under Section 143(3) of the Act, the same cannot be annulled, modified, amended at a subsequent date on the ground that the same was passed inadvertently. Further, learned DRP has upheld the objection raised by the assessee in ground no. 4(ii). For this reason, learned DRP, thought it prudent not to adjudicate rest of the grounds. Thus, the direction of learned DRP is clear and categorical enough to indicate that the draft assessment order passed under Section 144C(1) of the Act is without jurisdiction, hence, invalid.

15. Surprisingly, while implementing the directions of learned DRP in terms of section 144C(13) of the Act, the Assessing Officer has virtually replicated the draft assessment order. This, in our view, is contrary to the statutory mandate of section 144C(13) of the Act, hence, in excess of jurisdiction or wholly without jurisdiction. Once, learned DRP has held that after passing of the assessment order under section 143(3) of the Act on 15.09.2021, the same cannot be annulled, modified, amended at a subsequent date, the only course left open to the Assessing Officer was to implement the directions of learned DRP in letter and spirit and drop the assessment proceedings and nothing else.

16. As per the scheme of the Act, once an assessment order has been passed under Section 143(3) of the Act: in respect of any assessment year, the Assessing Officer cannot tinker with that assessment. Of course, he can either reopen the assessment or rectify the assessment order after strictly complying with the conditions of section 147 and

154 respectively. The statue does not confer any powers on the Assessing Officer to either withdraw or modify or substitute the assessment order passed under Section 143(3) of the Act with another assessment order. If the Assessing Officer is allowed to do so, it will lead to disastrous consequences and will give a free hand to the Assessing Officer to pass an assessment order and subsequently withdraw or modify it according to his own whims and caprices. This is not only against the scheme of the Act but against all cannons of law."

3. In view of the aforesaid, we are of the considered opinion that no substantial question of law arises. The appeal is clearly misconceived. It shall accordingly stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 03, 2024/RW