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

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Date of Decision : 27.05.2025+ **ITA 174/2025, CM APPL. 33227/2025, CM APPL. 33228/2025 & CM APPL. 33229/2025**

PR. COMMISSIONER OF INCOME

TAX -15, DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC, Mr. Ashvini Kr.
Mr. Rishabh Nangia, Mr. Gibran,
JSC.

versus

SANJAY PRATAP SINGH

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961, **[the Act]** impugning an order dated 04.04.2024 **[impugned order]** passed by learned Income Tax Appellate Tribunal, **[ITAT]** in ITA No. 4491/Del/2019 & 4492/Del/2019 in respect of Assessment Year **[AY]** 2009-10.

2. The Revenue had preferred the said appeals before the learned ITAT against an order dated 25.03.2019 and 18.03.2019 passed by the learned Commissioner of Income Tax (Appeals)-28, New Delhi, **[CIT(A)]**. By the order dated 25.03.2019 the learned CIT(A) had set aside the order dated 29.06.2017 passed by the Assessing officer **[AO]** under Section 271(1)(c) of the Act. And, in terms of the order dated 18.03.2019, the learned CIT(A) had allowed the assessee's appeal against the assessment order dated



29.12.2016 passed under Section 143(3) of the Act and had deleted the additions made to the returned income of the assessee. The learned CIT(A) reasoned that since the assessee had prevailed in his appeal as to the quantum of additions, the order imposing penalty would be unsustainable.

3. The assessee had filed his return of income for AY 2009-10 on 25.07.2009 declaring an income of ₹10,92,498/-. The said income comprised of salary amounting to ₹9,92,492/- and income from other sources amounting to ₹2,02,706/-. The assessee's return was processed under Section 143(1) of the Act.

4. On 28.03.2016, the AO issued a notice under Section 148 of the Act after recording its reasons for reopening the assessment for AY 2009-10. The only reason as recorded for the reopening was the mismatch in the Form 26AS and the petitioner's return. The AO had noticed that the Form 26AS indicated a higher TDS and on the said basis found that there was a difference in the salary income as disclosed by the assessee in his return and Form 26AS which was based on the information as furnished by the petitioner's employer.

5. Thereafter, during the re-assessment proceedings the AO reconciled the TDS as reflected in the Form 26AS and the salary as disclosed by the assessee. Concededly, it was evident from the Form 26AS that there were duplicate entries. Resultantly, the quantum of TDS as reflected was inflated. This was the principal reason for the mismatch between the income from salary as disclosed by the assessee and as ascertained from the TDS as reflected in Form 26AS. After eliminating the duplicate entries, the AO found that there was apparent difference of only ₹1926/- and accordingly made an addition of the said amount. Additionally, the AO also found



certain entries in books of certain related parties. The AO was of the view that those entries should be imputed to the petitioner and accordingly made additions in respect of those entries as well.

6. The assessee had appealed the said assessment order dated 29.12.2016 before the learned CIT(A). The learned CIT(A) found that there was no reason for the AO to re-open the assessment as there was no tangible material available with the AO, which could furnish a reason to believe that the assessee's income had escaped assessment. Concededly, Form 26AS, was the only material on which the AO had surmised that the assessee's income has escaped assessment. The CIT(A) did not consider the same as tangible material on the basis of which the re-opening of the assessment could be premised. The learned CIT(A) faulted the AO for assuming jurisdiction and set aside the assessment order. The Revenue appealed the said decision before the learned ITAT, which concurred with the view of the learned CIT(A).

7. In the aforesaid context the Revenue has projected the following questions for consideration of this Court:-

- A. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the order of the Ld.CIT(A) passed after relying the judgment of the Hon'ble Delhi High-court in the case CIT vs. Orient Craft Ltd 354 ITR 536 (Del) whereas the facts of case of orient craft Ltd. are different from the assessee's case?
- B. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the order of the Ld. CIT(A) passed after relying the judgment of the Hon'ble Supreme court in the case of CIT vs Kelvinator of India Ltd. 320 ITR 561 (SC) whereas the facts of case of Kelvinator of India Ltd. are different from the assessee's case?
- C. Whether on the facts and circumstances of the case and



in law, the Hon'ble ITAT erred in upholding the order of CIT(A) passed after narrating the facts that the Assessing Officer did not have any tangible material in his possession for the purpose of initiating reassessment proceedings u/s 147 of the Act, whereas the Form 26AS was available on records for reason to believe for escapement of income of Rs. 4,28,880/-?

D. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in upholding the order of CIT(A) passed quashing the assessment order without going through the facts and merits of the case?

8. In our view, the present appeal does not throw up any substantial questions of law. We say so for the reason that it is clear from the findings recorded that there were apparent errors in the Form 26AS which could be discovered by merely looking at it. Certain entries were repeated, and therefore the income from salaries returned by the petitioner did not conform to the TDS reflected in the Form 26AS. Plainly, if there is material on record which on the face of it appears to be erroneous, the same cannot be considered as a tangible material for forming a belief that the assessee's income had escaped assessment.

9. It is the Revenue's case that since the assessee's return was not picked up for scrutiny, the extended period of limitation of six years would apply and, therefore, any material that could give rise to reason to believe that the assessee's income has escaped assessment would be sufficient to reopen the assessment. The Revenue relies upon the decision of this court in **Indu Lata Rangwala v. Deputy CIT: (2016) 384 ITR 337** in support of its contention.

10. It is correct that where the return filed by the assessee has not been examined by issuance of notice under Section 143(3) of the Act; therefore, the question of change of opinion may not arise. However, this is not an issue involved in this present petition. This is not a case where the



assumption of jurisdiction has been faulted on the ground that there has been a change of opinion. The decision in the case of ***Indu Lata Rangwala v. Deputy CIT***, (supra) is not an authority for the proposition that an assessment can be reopened on the material that does not furnish reasons to believe that an assessee's income has escaped assessment.

11. In the present case, we find that the learned CIT(A) as well as the learned ITAT have been persuaded to accept that there was no tangible material for the AO to believe that the petitioner's income had escaped assessment on the basis of the quality of the material as available with the AO. Given the fact that there were apparent errors in the Form 26AS and if the duplicate entries were eliminated, according to the AO, there was only a difference of ₹1926/- in the income of salary as returned by the assessee and as reflected in the Form 26AS; we are unable to accept that Form 26AS would furnish any reason for the AO to believe that the assessee's income had escaped assessment.

12. In view of the above, the present appeal is dismissed.

13. All the pending applications also stand disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 27, 2025

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