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

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**ITA 530/2017**  
**PARAS SALES CORPORATION** ..... Appellant  
 Through : Mr. Sanat Kapoor, Advocate.

versus

**COMMISSIONER OF INCOME TAX-1(CENTRAL)....** Respondent  
 Through : Mr. Sanjay Kumar, Mr. Rahul  
 Chaudhary, Advocates.

WITH

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**ITA 531/2017**  
**PARAS SALES CORPORATION** ..... Appellant  
 Through : Mr. Sanat Kapoor, Advocate.

versus

**COMMISSIONER OF INCOME TAX-1 (CENTRAL)....** Respondent  
 Through : Mr. Sanjay Kumar, Mr. Rahul  
 Chaudhary, Advocates.

**CORAM: JUSTICE S.MURALIDHAR**  
**JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**25.07.2017**

**CM APPL. No. 26088/2017 (Exemption) IN ITA 530/2017**  
**CM APPL. No. 26091/2017 (Exemption) IN ITA 531/2017**

1. Allowed, subject to all just exceptions.



**CM APPL. No. 26090/2017 (Delay in re-filing) IN ITA 530/2017**  
**CM APPL. No. 26093/2017 (Delay in re-filing) IN ITA 531/2017**

2. For the reasons stated, the delay in re-filing these appeals is condoned. Accordingly, these applications stand disposed of.

**ITA 530/2017 & CM APPL. 26089/2017(STAY)**  
**ITA 531/2017 & CM APPL. 26092/2017 (STAY)**

3. The Assessee is in appeal against the impugned order dated 20<sup>th</sup> January, 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 4917/Del/2009 and 1034/Del/2010 for the assessment years ('AYs') 2004-05 and 2005-06 respectively.

4. **Admit.** The following question of law is framed for consideration in these appeals:

Whether the ITAT was justified in remanding the matter to the Assessing Officer ('AO') for the purpose of affording the Assessee an opportunity for cross-examination of Mr. Sanjay Kumar Garg and for re-adjudicating the matter afresh?

5. The facts, in brief, leading to the filing of these appeals is that the Assessee is engaged in the business of trading in food grains in Naya Bazar, New Delhi. While passing the assessment order under Section 143 (3) of the Income Tax Act, for the AY 2004-05 on 21<sup>st</sup> December, 2006, the AO rejected the books of accounts of the Assessee and enhanced the Gross Profit (GP) ratio to 2% instead of declaration made by the Assessee of 1.4% against purchases from Mr. Garg and 1.8% against other purchases.



6. This was done on the basis of a statement purportedly made by Mr. Sanjay Kumar Garg. The AO records in the order dated 21<sup>st</sup> December, 2006, that the Assessee claimed to have made purchases from ten firms. At this stage, it was pointed out to the Assessee that “all the above named concerns were the Benami concerns of Sanjay Kumar Garg”. The AO further notes that a survey under Section 133A of the Act was conducted at the business premises of Mr. Garg, who stated that he was in the business of providing accommodation entries to various traders in Naya Bazar.

7. It is the case of the Assessee that Mr. Garg did not specifically name the Assessee. His further case is that there is no document that has been found during the survey of the premises of Mr. Garg. The ledger account was purportedly prepared by the AO himself, as the Assessee submits that there was no ledger account of the Assessee among the documents recovered from the premises of Mr. Garg.

8. When the matter was being heard in appeal, the AO informed the CIT (A) that Mr. Garg had not co-operated even in his own assessment proceedings and had never appeared in person. The CIT (A), accordingly, deleted the additions made by the AO and allowed the appeal in part by way of its order dated 9<sup>th</sup> October, 2009. A similar order was passed by the AO and a corresponding order by CIT (A) for the AY 2005-06. Against both sets of orders, the Revenue went in appeal before the ITAT wherein the impugned common order was passed.

9. The ITAT has, in the impugned order, simply noted the facts. The ITAT



noted that during the appellate proceedings before the CIT (A), a remand report was called for from the AO. In said remand report of the AO, it has been stated that all these concerns from whom the Assessee made purchases, were providing only accommodation entries. It also noted that though Mr. Garg has been summoned to appear for cross-examination during the remand proceedings, he failed to appear.

10. The ITAT noted that the statement of Mr. Garg was not confronted to the Assessee during the assessment proceedings and opportunity of cross-examination was not provided. The ITAT has also observed that it was not clear whether the AO had summoned Mr. Sanjay Kumar Garg for further examination or not. According to ITAT even if Mr. Garg was not available, the AO ought to have examined the genuineness of the concerns from which the Assessee made purchases. As a result, the ITAT considered it appropriate to remand the matter to the AO for fresh adjudication.

11. It is seen that the CIT (A) called for a remand report of the AO. The CIT (A) was informed by the AO that despite notices, Mr. Sanjay Kumar Garg did not appear and was, therefore, was not available for cross-examination. Consequently, the Court finds that no purpose is going to be served by remanding the matter to the AO for summoning and cross-examining Mr Garg.

12. As far as summoning the concerns from whom the Assessee made purchases is concerned, the Court finds that sufficient material and documents were already provided by the Assessee at the stage of the



assessment proceedings. The details provided by the Assessee have been set out in a tabular form in the memo of appeal. The details of the sales made by each of these enterprises as per their sales tax assessment orders have been set out. It shows that the percentage of purchases made by the Assessee constitutes a small percentage of the overall sales of these entities.

13. Mr. Kapoor informs this Court that the Sales Tax order passed by the Sales Tax Authorities in respect of these firms, the registration details, and the fact of the payments having been made upon paying cheques have already been furnished. It is pointed out that the AO did not make any effort to verify the above factual aspects.

14. In the circumstances, the Court is of the view that remanding the matter to the AO for the purpose of examining the above firms once again, when all details are already available on record, would not serve any useful purpose.

15. The end result is that the ITAT has not examined the issues raised before it on merits and instead remanded the matter to the AO which, in the opinion of the Court, would interminably delay the matter.

16. For the aforementioned reasons, the Court is of the view that the matter ought to have been considered by the ITAT itself particularly when all the relevant details were available with the AO.

17. Accordingly, the question framed by the Court is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The



common order dated 20<sup>th</sup> January, 2017 of the ITAT is hereby set aside.

18. The appeals of the Revenue i.e. ITA Nos. 4917/Del/2009 and 1034/Del/2010 are restored to the file of ITAT for a fresh decision on merits. It would be open to the parties to produce before the ITAT documents which form the part of the assessment record for AYs 2004-05 and 2005-06.

19. ITA Nos. 4917/Del/2009 and 1034/Del/2010 shall be listed before the ITAT on 11<sup>th</sup> September, 2017 for directions.

A handwritten signature in black ink, appearing to be 'S. Muralidhar'.

**S.MURALIDHAR, J**

A handwritten signature in black ink, appearing to be 'Prathiba M. Singh'.

**PRATHIBA M. SINGH, J**

**JULY 25, 2017/j**