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

+ **ITA 116/2023**

INTERNATIONAL HOSPITAL LIMITED Appellant

Through: Mr Simran Mehta, Advocate.
versus

DCIT CIRCLE 12 (2) Respondent

Through: Mr Viprav Acharya, proxy for Mr
Shailendra Kishore Singh, Sr.
Standing Counsel.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

% **28.02.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 9623/2023

1. Allowed, subject to the appellant filing legible copies of the annexures, at least three days before the next date of hearing.

ITA 116/2023

2. This appeal concerns Assessment Year (AY) 2013-2014.

3. It is the appellant/assessee's case that the jurisdictional notice dated 05.09.2014 issued under Section 143(2) of the Income Tax Act, 1961 [in short, "the Act"] was served on an entity, i.e., Escorts Heart & Super Speciality Institute Ltd., which was not in existence as it had merged with

ITA 116/2023

page 1 of 3



the appellant-company pursuant to an amalgamation scheme sanctioned by the Punjab and Haryana High Court w.e.f. 01.01.2013.

4. Furthermore, the record seems to suggest that a scrutiny assessment under Section 143(3) of the Act was framed on 28.03.2016, once again against the aforementioned amalgamating entity.

5. It appears that while the appeal was pending before the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"], the Assessing Officer (AO) took recourse to provisions of Section 154 of the Act and rectified the order in appeal. The order under Section 154 of the Act was passed on 29.01.2019.

5.1 The CIT(A), after noticing that an order had been passed under Section 154 of the Act, dismissed the appeal on 15.04.2019.

6. We are informed that since the appellant/assessee had also filed an appeal against the order dated 29.01.2019 passed under Section 154 of the Act, the said appeal had also come up for hearing before the CIT(A). Thus the appeal was disallowed by the CIT(A) on 30.05.2019.

6. We are informed by Mr Simran Mehta, who appears on behalf of the appellant/assessee, that appeals have been preferred with the Income Tax Appellate Tribunal [in short, "Tribunal"] against orders dated 15.04.2019 and 30.05.2019 passed by the CIT(A).

7. We are told that appeal against order dated 15.04.2019 passed by the CIT(A) is pending adjudication before the Tribunal. It requires to be noticed that insofar as the appeal against CIT(A) order dated 30.05.2019 is concerned, the same stands dismissed *via* order dated 23.09.2022.



8. A perusal of the impugned order dated 23.09.2022 discloses that the Tribunal has not adverted to any judgment which may perhaps have had bearing in the matter, including the judgment of the Supreme Court rendered in *Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd.* (2019) 416 ITR 613 (SC) or the other judgment of the Supreme Court rendered in *Principal Commissioner of Income Tax (Central)-2 v. Mahagun Realtors (P) Ltd.* (2022) SCC OnLine SC 407.

9. We may also note that this bench has also rendered a judgment on 02.02.2023 in ITA 115/2019 titled *CIT v. Sony Mobile Communications*, in which the aforementioned judgments rendered by the Supreme Court and other judgments on the issue have been discussed.

10. Accordingly, issue notice.

10.1 Mr Viplav Acharya accepts notice on behalf of the respondent/revenue.

10.2 Mr Acharya says that he will return with instructions in the matter.

11. List the appeal on 17.03.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 28, 2023 / tr

[Click here to check corrigendum, if any](#)