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

+ **ITA 237/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Hemlata Rawat, Jr.
Standing Counsel.

versus

M/S SAM PORTFOLIO PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

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24.04.2023

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

CM APPL. 20010/2023

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

ITA 237/2023 and CM APPL. 20011/2023 [*Application filed on behalf of the appellant seeking condonation of delay of 200 days in re-filing the appeal*]

2. This appeal concerns Assessment Year (AY) 2008-09.

3. The appeal seeks to assail the order dated 20.02.2020 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"]. The record shows that a survey action was triggered against a group, namely, Aseem Kumar Gupta & Group.

3.1 The record also discloses that this led to an assessment order being framed which is dated 23.12.2011 under Section 143(3), read with Section

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153C of the Income Tax Act, 1961 [in short, “the Act”].

4. Evidently, the Commissioner of Income Tax [In short, “CIT”] in an action preferred under Section 264 of the Act set aside the assessment order dated 23.12.2011. We are informed that the CIT’s order is dated 20.03.2014.

5. It is thereafter that a notice dated 27.03.2014 was issued under Section 148 of the Act. It is this notice which has been held to be untenable by the Tribunal based on the conclusion arrived by the CIT that the assessment order dated 23.12.2011 was “null and void”.

6. It is Mr Sanjay Kumar’s contention that since the CIT has held that the assessment order was null and void, proceedings under Section 143 of the Act could have been triggered.

6.1 Mr Kumar says that this very issue is being considered in other appeals filed by the revenue i.e., ITA 378/2022, 379/2022 and 396/2022.

7. Accordingly, issue notice in the appeal, as well as in the above-captioned application to the respondent *via* all modes, including e-mail.

8. List the appeal on 09.10.2023.

9. A copy of the order passed today will accompany the notice.

10. Counsel for the parties will file their written submissions, not exceeding three pages each, at least five days before the next date of hearing.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 24, 2023 / tr

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

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