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

+ **ITA 247/2023**

PR. COMMISSIONER OF INCOME TAX,
DELHI-7

..... Appellant

Through: Mr Puneet Rai, Sr Standing Counsel.

versus

M/S PARAMOUNT PROPBUILD PVT. LTD. Respondent

Through: Mr Anshul Mittal, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

% **01.05.2023**

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

CM Appl.21740/2023

1. Allowed, subject to just exceptions.

ITA 247/2023 & CM Appl.21741/2023 [*Application filed on behalf of the appellant seeking condonation of delay of 247 days in filing the appeal*]

2. This appeal concerns Assessment Year (AY) 2016-17.

3. The record shows that an assessment order under Section 143(3) of Income Tax Act, 1961 [in short, "Act"] was framed *qua* the respondent/assessee.

3.1 This order is dated 26.12.2018.

4. The Principal Commissioner of Income Tax [in short, "PCIT"], *via* order dated 31.03.2021, in exercise of power under Section 263(3) of the

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Act, set aside the assessment order dated 26.12.20218.

5. The matter was carried in appeal by the respondent/revenue to the Income Tax Appellate Tribunal [in short, “Tribunal”].

5.1 The Tribunal, *via* order dated 14.02.2022, set aside the order of the PCIT. The Tribunal’s conclusion was based on observations made in paragraphs 18 to 21. For the sake of convenience, the same are extracted hereafter:

“18. A perusal of the order of the PCIT framed u/ s 263 of the Act shows that it is solely based upon the letter dated 06.10.2020 sent by the Assessing Officer proposing for invoking proceedings u/ s 263 of the Act in the case of the assessee. In that very letter, the Assessing Officer has categorically stated at Para 8 as under:

“The order passed by the Assessing Officer is erroneous, as proper enquiries to arrive at a logical conclusion in light of facts available on record could not be made”.

19. The Hon'ble Bombay High Court in the case of Gabriel India Ltd 203 ITR 108 has explained the meaning of “erroneous” as an order which is not in accordance with law, or which has been passed by the Income Tax Officer without making any enquiry in undue haste.

20. The Hon'ble Bombay High Court further explained the meaning of “Prejudiced” as “an order can be said to be prejudicial to the interest of the Revenue if it is not in accordance with law in consequence whereof, lawful revenue due to the state has not be realized or cannot be realized.”

21. Facts mentioned Elsewhere [sic:elsewhere] clearly show that this is not a case of lack of enquiry or assessment being framed in haste. Proper enquiries were made by the Assessing Officer during the course of assessment proceedings and after considering all the facts and evidences, the Assessing Officer took a view which is a plausible view. Therefore, it is not open to the Id. PCIT to direct a re-enquiry as he is of a different view.”

[Emphasis is ours]

6. It appears that the interest on unsecured loan provided by Upaj Leasing & Finance Company Pvt Ltd was disallowed in the succeeding AY

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i.e., AY 2017-18 by the Assessing Officer (AO).

7. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, was queried as to what was the outcome, i.e., whether the matter has been carried in an appeal by the respondent/assessee. Mr Rai says that he does not have any instruction available with him *qua* the said issue.

8. Mr Rai will inform the court as to what was the final outcome with regard to the aspect concerning interest in the following AY, i.e. AY 2017-18.

9. We may also note that there is a delay of 247 days in filing the appeal.

10. Notice shall issue only in the application for condonation of delay to the respondent/assessee.

10.1 Mr Anshul Mittal accepts notice on behalf of the non-applicant/respondent/assessee.

11. List the matter on 25.08.2023.

RAJIV SHAKDHER, J

GIRISH KATHPALIA , J

MAY 1, 2023/pmc

Click here to check corrigendum, if any