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

% *Decision delivered on: 04.05.2023*

+ **ITA 253/2023 & CM No.22628/2023**

INDER SINGH

..... Appellant

Through: Mr Subas Acharya, Mr P.C. Yadav,
Mr Harsh Raj Singh and Mr Akash
Agarwalla, Advs.

versus

INCOME TAX OFFICER

..... Respondent

Through: Mr Puneet Rai, Sr Standing Counsel
with Mr Ashvini Kumar and Ms
Madhavi Shukla, Jr Standing
Counsels along with Mr Nikhil Jain,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J. (ORAL):

CM No.22628/2023

1. Allowed, subject to just exceptions.

ITA 253/2023

2. Issue notice.

2.1 Mr Puneet Rai, learned senior standing counsel, accepts notice on behalf of the respondent/revenue.

3. With the consent of learned counsel for the parties, the appeal is taken up for hearing and final disposal, at this stage itself.

4. This appeal concerns Assessment Year (AY) 2009-10.

5. The appellant/assessee has assailed the order dated 23.08.2018,



passed by the Income Tax Appellate Tribunal [in short, “Tribunal”] in ITA No.3727/DEL/2016.

5.1 Besides this, challenge is also laid to the order dated 12.01.2023 passed by the Tribunal in M.A.No.791/DEL/2018.

6. Learned counsel for the appellant/assessee raises a singular grievance, which is that the addition amounting to Rs.1,29,15,000/- made by the Assessing Officer (AO) under Section 68 of the Income Tax Act, 1961 [in short, “Act”] is untenable.

6.1 It is submitted that the appellant/assessee had earned income only from interest and agriculture and, therefore, did not maintain books of accounts, in the regular course.

6.2 In effect, it is submitted by learned counsel for the appellant/assessee that addition under Section 68 of the Act, which relates to unexplained cash credit entries found in the books of accounts, is not sustainable.

7. It is submitted by learned counsel for the appellant/assessee that this plea taken by the appellant/assessee was accepted by the Tribunal in the appeal concerning AY 2010-11.

7.1 For this purpose, our attention is drawn to the order dated 05.12.2018 passed by the Tribunal *qua* AY 2010-11.

8. It is also pointed out by learned counsel for the appellant/assessee that this aspect was sought to be brought to the notice of the Tribunal by moving a miscellaneous application. The fact that this aspect had been adverted to, is sought to be demonstrated by referring to sub-para (c) of the application.

8.1 As indicated hereinabove, this application was dismissed by the order dated 12.01.2023.

9. Mr Rai, cannot but accept, that the fundamental basis for moving the



miscellaneous application was the misalignment in the two orders passed on merits by the Tribunal, concerning the addition *qua* which the appellant/assessee had expressed a grievance.

10. We have also queried learned counsel for the appellant/assessee as to when the aforementioned miscellaneous application was filed before the Tribunal.

10.1 Learned counsel for the appellant/assessee affirms that the aforementioned miscellaneous application was filed on 31.12.2018.

11. The order dated 12.01.2023 deals with only the aspect concerning the absence of the error apparent on record, *vis-à-vis* the order on merits dated 23.08.2018.

12. In our view, the Tribunal is required to deal with the order on merits dated 05.12.2018 passed by it *qua* AY 2010-11.

13. In these circumstances, we are inclined to set aside the order dated 12.01.2023 passed by the Tribunal in the miscellaneous application. The miscellaneous application is restored to its original number and position.

14. The Tribunal will accord hearing to the parties and/or their authorized representatives, then decide as to whether it needs to recall the order dated 23.08.2018.

15. The appeal is disposed of, in the aforesaid terms.

16. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 4, 2023/aj