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

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Date of decision: 15.05.2023

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W.P.(C) 5524/2023 & CM APPL. 21619/2023

PALIWAL INFRASTRUCTURE PRIVATE LIMITED

..... Petitioner

Through: Dr Rakesh Gupta, Mr Somil Agarwal and
Mr Anshul Mittal, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX, PCIT, DELHI - 7 & ANR.

..... Respondents

Through: Mr Sunil Agarwal, Sr. Standing Counsel.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)**

1. After hearing the counsels for the parties, on previous date [i.e., 01.05.2023] at some length, we had etched out the broad contours of the case. For the sake of convenience, the relevant part of the orders dated 01.05.2023 are set forth hereafter.

2. Issue notice.

2.1 Mr. Sunil Agarwal, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

3. This writ petition concerns Assessment Year (AY) 2010-11.

4. The writ petition is directed against the order dated 31.03.2023, passed by the respondent no.1/revenue, in a revision petition preferred by the petitioner/assessee under Section 264 of the Income Tax Act, 1961 [in short, "Act"].

5. The revision petition was directed against the assessment order dated 29.09.2021, passed under Section 143(3)/254/144B of the Act.

6. It is averred by the petitioner/assessee that the revision petition was filed on 19.10.2021.



7. The record shows that the assessment order dated 29.09.2021 was passed, pursuant to the Tribunal allowing the petitioner/assessee's appeal in an earlier round. This order was passed by the Tribunal on 11.12.2019, thereby setting aside the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] dated 20.01.2015.

8. In the first round, the Assessing Officer (AO) via assessment order dated 20.03.2013, had made a disallowance under Section 36(1)(iii) of the Act, amounting to Rs. 4,28,65,241/-.

9.1 It is, therefore, the contention of Dr Rakesh Gupta, who appears on behalf of the petitioner, that the impugned order, whereby revision petition was dismissed on the ground that 30 days accorded for filing of the appeal from the date of the order had not expired when the revision petition was filed, came as a complete surprise.

10. Dr. Gupta, on instructions of Mr. Satish Goel, Advocate, makes a submission that no appeal was filed against the assessment order dated 29.09.2021.

11. To our minds, if this assertion of the petitioner/assessee is right, then, the impugned order dated 31.03.2023 would have to be set aside.

12. Since Mr Aggarwal does not have any instructions, at the moment, we are inclined to adjourn the matter, to enable him to obtain instructions in the matter.

12.1 In case instructions are received to resist the writ petition, counter-affidavit will be filed before the next date of hearing.

2. Mr Sunil Agarwal, who appears for the counsel for the respondent/ revenue, has returned with instructions. Mr Agarwal confirms that no appeal has been filed against the assessment order dated 29.09.2021.

3. Given this position, as indicated on 01.05.2023, we are of the opinion that the impugned order deserves to be set aside with a direction that the revision petition preferred under Section 264 of the Income Tax Act, 1961 [in short, "the Act"] be decided on merits.

3.1 It is ordered accordingly.

4. Needless to add, before rendering a decision on merits, the concerned officer will grant an opportunity of hearing to the authorised representative of the petitioner. For this purpose, notice will be issued fixing the date and time of hearing.



4.1 The concerned officer will also endeavour to conclude the proceedings within twelve(12) weeks from the date of receipt of the copy of the judgement.

5. Accordingly, the writ petition and the pending application stands disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

MAY 15, 2023

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

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