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

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Decision delivered on: 31.07.2023

+ **ITA 124/2023**

MERILINA FOUNDATION

..... Appellant

Through: Mr Yogesh Jagia and Mr Hriday
Minocha, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX.... Respondent

Through: Mr Sunil Agarwal, Sr Standing
Counsel with Mr Shivansh B. Pandya,
Standing Counsel and Mr Utkash
Tiwari, 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):

1. This appeal concerns Assessment Year (AY) 2011-12.
2. *Via* this appeal, the appellant/assessee seeks to assail the order dated 16.11.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
- 3 The record shows that the impugned order concerns the appeal filed by the respondent/revenue and cross-objections filed by the appellant/assessee, against the order dated 21.08.2020 passed by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].
4. *Inter alia*, the Tribunal was confronted with the issue as to whether



the CIT(A) had dealt with the aspect concerning validity of the reassessment proceedings initiated under Section 148/147 of the Income Tax Act, 1961 [in short, “Act”].

5. The Tribunal took the view that since this issue had not been dealt with by the CIT(A), the best course would be to remit the issue to the CIT(A).

5.1 Based on this approach, the cross-objections filed by the appellant/assessee were allowed “for statistical purposes”. As a result of this direction, the appeal preferred by the respondent/revenue, was also allowed, *albeit*, “for statistical purposes”.

6. Mr Yogesh Jagia, who appears on behalf of the appellant/assessee, says that the Tribunal ought to have dealt with the appeal preferred by the respondent/revenue on merits.

7. On the other hand, Mr Sunil Agarwal, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that the appeal and cross-objections go hand in hand, and that one cannot be divorced from the other.

7.1 In support of his submission, Mr Agarwal relies upon the judgment rendered by the Supreme Court in *Commissioner of Sales Tax, U.P., Lucknow v. Vijai Int. Udyog, G.T. Road, Sikandrarao, Hathras*, (1984) 4 SCC 543.

8. Both counsels submit that, in the present circumstances, the best course would be to set aside the impugned order and remit the matter to the Tribunal.

8.1 We tend to agree with learned counsel for the parties.

9. Accordingly, the impugned order is set aside. The matter is remanded



to the Tribunal for a fresh hearing, concerning both the appeal preferred by the respondent/revenue, and the cross-objections lodged by the appellant/assessee.

10. The appeal is disposed of, in the aforesaid terms.
11. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 31, 2023

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