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

+ **ITA 356/2026 CM APPL. 29142/2026**

**THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -2**

.....Appellant
Through: Mr. Ruchir Bhatia SSC with Mr.
Anant Mann and Mr. Pratyaksh.
Gupta, JSCs.

versus

LITTLE FAIRY LIMITED

.....Respondent
Through: None.

**CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR**

**ORDER
30.04.2026**

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1. By way of the instant appeal the Commissioner Income Tax has challenged the order dated 25.09.2023 passed by the Income Tax Appellate Tribunal, Bench "D" New Delhi in ITA No. 1512/DEL/2022 (*hereinafter referred to as 'the Tribunal'*) for the Assessment Year 2016-17, whereby the Tribunal has annulled the Assessment order holding it to be time barred, as the Assessing Officer (AO) had passed draft assessment order for Assessment Year 2016-17 because as per the Tribunal, the AO could not have passed a draft assessment taking recourse to provision of Section 144C of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*) as there was no proposed variation in the income/loss but the variation was



only in relation to the rate of applicable tax.

2. By doing so, the Tribunal has relied upon its earlier decision dated 21.07.2022 passed in ITA No. 6144 and 6145/Del/2018 decided by the Tribunal in the case of **S. A. Chitra Ventures Ltd. v International Taxation-3**

3. Mr. Ruchir Bhatia, learned Senior Standing Counsel for the appellant argued that the Tribunal has erred in annulling the assessment by giving the reason that the AO was not justified in passing a draft assessment order, as there was no variation in the income. He added that by way of resorting to provision under Section 144C of the Act of 1961, the AO had rather given a benefit to the assessee so that he could object to levy of higher rate of tax i.e. 30% in place of 10%, as the AO was of the view that the formation of company in Cyprus is only a treaty shopping.

4. He submitted that as a matter of fact by passing a draft assessment order and making his mind clear, an opportunity was granted to the assessee to either challenge such draft assessment order before Dispute Resolution Panel (DRP) or to file an appeal before the Commissioner of Income Tax (Appeals) once the final assessment order was passed. He argued that when a provision has been used to the advantage of an assessee and assessment order has been passed as per the provision under Section 144C of that Act of 1961, such assessment order cannot be held to be time barred simply because the Tribunal felt that the exercise of passing draft assessment order, which the AO had undertaken, was unwarranted.

5. He also argued that if the AO undertook an exercise, which was not required but since the same served to the advantage of the assessee, the Tribunal was not justified in setting aside the assessment order to be time



barred, because the AO could have directly applied enhanced rate of tax by passing assessment order under normal procedure (i.e. under Section 143 of the Act of 1961).

6. Though the arguments advanced by Mr. Ruchir Bhatia, learned Senior Standing Counsel for the appellant are attractive and may give rise to a question of law to be dilated upon, but since by a detailed order dated 16.02.2024, a Coordinate Bench has rejected the Department's appeal being ITA No. 606/2023 in **International Taxation-3 v S. A. Chitra Ventures Ltd.** we propose to dismiss the appeal with a view to maintain consistency.

7. We, however, deem it appropriate to reproduce the reasoning given by the Coordinate Bench, so as to complete the factual matrix. The relevant paras of the said order are reproduced hereinfra:-

*“3. The assessee submitted a Return of Income on 26 November 2014 declaring its income for the year to be INR 26,62,42,773/-. The aforesaid Return was selected for scrutiny assessment and notices under Section 143(2) of the Act came to be issued. In the course of the assessment proceedings, the AO took notice of an international transaction between the assessee and its **Associate Enterprises**⁸ and which led to the matter being referred to the **Transfer Pricing Officer**⁹. The **Arm's Length Price**¹⁰ was thereafter determined by the TPO in terms of an order dated 31 March 2017. However, no adverse inference was drawn.*

4. The AO thereafter proceeded to frame a Draft Assessment Order on 22 December 2017 and came to form the opinion that the income as shown was liable to be taxed at the rate of 20% as per the provisions of Section 115A of the Act. The AO appears to have rejected the stand of the assessee which had claimed benefits of Article 11 of the India Cyprus DTAA. The assessee chose not to file any objections before the



DRP against the aforesaid order dated 22 December 2017. Accordingly, a Final Assessment Order came to be framed on 09 February 2018 in terms of which while the total income as declared by the assessee remained untouched, it was subjected to tax at the rate of 20%.

5. The assessee thereafter assailed the Final Assessment Order by way of an appeal before the CIT(A) which came to be allowed with the appellate authority taking the view that the assessee would be entitled to claim the benefits of Article 11 of the DTAA.

6. Aggrieved by the aforesaid, the appellants here preferred an appeal before the ITAT. In that appeal, the assessee also filed cross objections principally contending that since the changes as suggested by the AO originally would not impact the income or loss returned, the provisions of Section 144C of the Finance Act, 2020 would not be attracted and the AO would have no authority or jurisdiction to frame a Draft Assessment Order in terms of that provision. It is this objection which has ultimately come to be accepted by the ITAT in terms of the impugned order.

7. The ITAT has noticed that undisputedly the respondent was an eligible assessee in terms of Section 144C(15)(b)(ii) of the Act. It, however, took note of Section 144C of the Act as it stood at the relevant time and prior to the amendments which came to be introduced by virtue of Finance Act, 2020 w.e.f. 01 April 2020. It becomes pertinent to note that the provision as it stands presently uses the expression “any variation which is prejudicial to the interest of such assessee”. However, and prior to the provision being recast by Finance Act, 2020, the aforesaid provision employed the phrase “any variation in the income or loss returned”. It is thus manifest that it was only a “variation” which would impact the “income or loss returned” that Section 144C(1) of the Act would have stood attracted.



8. As has been noticed by the ITAT, and which fact remained uncontested even before us, there was no variation in the income as returned. The only point of dispute was with respect to whether the respondent was entitled to claim the benefits under Article 11 of the DTAA. It was that claim of the respondent which alone came to be negated by the AO. Accordingly, while the income offered became subject to tax at the rate of 20%, the total income as declared remained unvaried. As we read Section 144C of the Act as it stood at the relevant time, it would have empowered the AO to frame a Draft Assessment Order only if a variation in the income returned was suggested. This was clearly not the case which obtained.

9. We, consequently, find no error in the view as expressed by the ITAT. The appeals thus raise no substantial question of law and shall consequently stand dismissed.”

8. Though above order of the High Court does not dilate upon the issue of the assessment to be time barred on this Court, but since the Tribunal's order (which we have examined) was to the effect of annulling the assessment order, instant appeal is dismissed along with the pending application.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 30, 2026/df