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

\+ **ITA 84/2017, C.M. APPL.3618/2017**

\+ **ITA 85/2017, C.M. APPL.3622-3623/2017**

\+ **ITA 86/2017, C.M. APPL.3628-3629/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) - 2
..... Appellant

versus

RAJEEV BEHL ..... Respondent

Through : Sh. Dileep Shivpuri, Sr. Standing Counsel with Sh. Vikrant. A. Maheshwari, Advocate, for appellants, in Item Nos. 1 to 3,for the Revenue.
Sh. N.P. Sahni, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **06.02.2017**

1. The Revenue in these appeals is aggrieved by a common order of the Income Tax Appellate Tribunal (ITAT), allowing the assessee's appeals for Assessment Years (AYs) 2007-08 to 2012-13. The ITAT rejected the assessee's appeals for 2012. However, it allowed them for the other years. Today, this Court has issued notice in ITA No. 87/2017 relatable to AY 2010-11. It is urged by the Revenue that even for these years, the ITAT's decision is incorrect inasmuch as it has not appreciated the law declared by this Court in *CIT v. RRJ Securities Limited* 380 ITR 612 (Del) and *Kabul Chawla* 2016 (380) ITR 573 (Del) correctly. A search took place in the premises of M/s. Kalra Group on 28.07.2011. The flagship company was M/s.

Consortium Securities Private Limited, a stockbroking concern with seats in various Stock Exchanges. The permanent promoter – Sh. Parminder Singh Kalra had his offices in Delhi. The present assessee is a third party. After scanning through the materials seized, the Assessing Officer (AO) of the searched party, (i.e. M/s. Consortium Securities Private Limited, its Directors etc.) was of the opinion that some documents belonged to the assessee and, therefore, issued notice on 12.08.2013 relatable to AY 2007-08, 2008-09, 2009-10, 2010-11 and 2012-13.

2. The asseessee filed his returns. The AO, after completing enquiries, added amounts in respect of various years, including AY 2007-08 to 2009-10 – which are the subject matter of present appeals. In both the proceedings, which were unsuccessful in the first instance before the CIT (Appeals), the assessee had contended that the limitation prescribed for the completion of assessment under Section 153B had long since passed, vitiating the assessment order under Section 153C. It is also urged that the assessments could not be sustained because the additions were made in respect of existing declared documents and none of the seized documents or materials pertained to such additions. Ultimately, the ITAT, in its impugned decision, accepted both these grounds. To hold that the period of limitation had passed by, vitiating the assessments, the ITAT relied upon the decision of this Court in *RRJ Securities (supra)*. The other appeals were allowed on the ground that the addition did not relate or had no connection with the seized materials, by relying on *Kabul*

Chawla (supra).

3. This Court has considered the materials on the record as well as the reasoning of the ITAT and the authorities below. The Revenue's contentions were that the assessments, though completed, had not taken note of the materials and that in the circumstances, it was open to the AO to examine them in the light of the seized materials to conclude whether additions had to be made. The decision in *Kabul Chawla (supra)* is decisive as to under what circumstances additions can be made. Pertinently, in the conclusions, this Court had observed:

> *"**Summary of the legal position***
>
> *37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*
>
> *i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
>
> *ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
>
> *iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders*

for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of *original assessment."*

4. In the present case, the AO virtually reappreciated the materials and documents that were part of the record filed by the assessee. A plain reading of the assessment order would show that no attempt was made by the AO to connect the fresh material and how it pointed out to any concealed income or led to any concealed income. The entire reliance upon the existing documents that were disclosed only reinforced that *Kabul Chawla (supra)* and its reasoning was appropriately applied. For these reasons, the Court is of the opinion that the ITAT's reasons are sound on the question of applicability of *Kabul Chawla (supra)* and the additions made in these circumstances could not have been sustained. As far as the question of the assessment being completed beyond time is concerned, the Court is of the opinion that ITA 87/2017 is the more appropriate matter or appeal to be appreciated and gone into. Hence, this question of law is kept open in the said case.

5. In view of the conclusions recorded above, no substantial question of law arises and the appeals have to fail. Consequently, the appeals are dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 06, 2017/ajk