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

\+ **ITA 61/2017, C.M. APPL.2768/2017**

\+ **ITA 62/2017, C.M. APPL.2769-2770/2017**

THE PR. COMMISSIONER OF INCOME TAX -9..... Appellant

versus

RAM AVTAR VERMA ..... Respondent

Through : Sh. Ruchir Bhatia, Sr. Standing Counsel Dr. Rakesh Gupta, Sh. Abhimanyu Jhamba and Ms. Monika Ghai, Advocates.

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

O R D E R

% 07.02.2017

1. The Revenue is aggrieved by the common order of the Income Tax Appellate Tribunal (ITAT) for AYs 2000-01 and 2001-02 inasmuch as the order of the CIT(A) was not interfered with to the extent it favoured the assessee.

2. The brief facts are that the assessee, an individual, who reported salary income, besides income from house property etc. was subjected to search of his premises on 20.01.2006. Claiming that incriminating documents were found, notice was issued under Section 153A of the Income Tax Act [hereafter "the Act"] which led to the assessee filing returns for the relevant years. For AY 2001-02, the Assessing Officer (AO) disallowed ₹43,94,953/- (as deduction under Section 80HHC of the Act) on a recalculation of net profit rate; besides, he also disallowed standard deduction of ₹24,000/- originally claimed by the assessee, and added over ₹23,73,378/- as unexplained investment. For

AY 2000-01, he made additions on standard deductions and also recalculated the net profit rate under Section 80HHC resulting in additions.

3. CIT(A), after considering the record, was of the opinion that the additions could not be justified, and accordingly granted relief, holding that no incriminating material was recovered during the search. The Revenue's appeal was rejected.

The ITAT held as follows:

> *"10. As per the paper book ·filed by the ld AR showing the Panchnama from where LD DR could not point out any material found during the course of search which could give even remote possibilities of altering the income of the assessee based on any incriminating documents. Admittedly both the assessment years in these appeals are completed assessments in case of the assessee. The reliance placed upon by the ld AR on the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla Vs.CIT (·Supra) where original assessment have been made u/s 143{1) of the Act is apt and squarely covers issue in favour of the assessee. The Hon'ble High Court in para No. 37 of that decision has held that no addition can be made in the hands of the assessee in absence of any incriminating material unearth during the course of search or requisition of documents. On reading of the order of the AO we could not found that there is any incriminating material referred by the AO which is found during the course of search for making these additions. Therefore respectfully following the decision of the Hon'ble.Delhi High Court in the case of Kabul Chawla Vs. CIT (supra) we confirm the order of the learned Commissioner of Income-tax (Appeals) and dismiss the appeal of the revenue."*

4. The Revenue urges that the *non-obstante* clause in Section 153A together with Section 158BD removes the barrier *vis-a-vis* restriction upon search assessments being confined to "undisclosed income". In other words, it is stated that none of the provisions confine the enquiry of the AO to evaluating incriminating materials. This aspect, in the opinion of the Court, was extensively dealt with in *Kabul Chawla v. CIT* 380 ITR 173 which has, by now, been followed consistently in several appeals. The *non-obstante* clause, in the opinion of the Court, was necessary, given that there is a departure from the pre-existing provisions, which applied for the previous years and had a different structure where two sets of assessment orders were made by the AO during block periods. With the unification of assessment years for the block period, i.e. only one assessment order for each year in the block period, it was necessary for an overriding provision of the kind actually adopted in Section 153A. But for such a *non-obstante* clause, the Revenue could possibly have faced hurdles in regard to unadopted/current assessment years as well as reassessment proceedings pending at the time of the search in respect of which proceedings were to be completed under Sections 153A/153C. Having regard to the above directions, we are of the opinion that the ITAT decision does not call for interference. Both the appeals are accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 07, 2017/ajk