$~A-1 and A-11

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

Date of Decision: 14.12.2020

\+ **ITA 391/2019**

THE PR. COMMISSIONER OF INCOME TAX-CENTRAL-3

… Appellant

Through: Mr. Abhishek Maratha, Senior Standing Counsel with Mr. Pratyash Gupta, Advocate.

versus

ALLIED PERFUMERS PVT. LTD. … Respondent

Through: Mr. Ajit Kumar Jha, Advocate.

WITH

\+ **ITA 380/2019**

THE PR. COMMISSIONER OF INCOME TAX-CENTRAL-3

… Appellant

Through: Mr. Abhishek Maratha, Senior Standing Counsel with Mr. Pratyash Gupta, Advocate.

versus

ALLIED PERFUMERS PVT. LTD. … Respondent

Through: Mr. Ajit Kumar Jha, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
(ORAL)

SANJEEV NARULA, J.

CM APPL. 17945/2019 (exemption) in ITA 391/2019

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

CM APPL. 17946/2019 (condonation of delay in re-filing) in ITA 391/2019

CM APPL. 17378/2019 (condonation of delay in re-filing) in ITA 380/2019

3. There is a delay of 296 days in re-filing the appeals. For the reasons stated in the applications, the delay is condoned.

4. The applications stand disposed of.

ITA 391/2019 & ITA 380/2019

5. The present appeals filed under Section 260A of the Income Tax Act, 1961 [*hereinafter referred to as the* '***Act***'], are directed against the common order dated 07.12.2017 passed by the Income Tax Appellate Tribunal [*hereinafter referred to as* ***'ITAT'***] in ITA No. 3171/DEL/2011 & ITA No. 3172/DEL/2012 along with corresponding cross objections bearing CO. No. 275/DEL/2011, & CO. No. 274/DEL/2011, for Assessment Years [*hereinafter referred to as* ***'AY'***] 2001-02 and AY 2002-03 respectively.

6. Considering the fact that the appeals arise from a common impugned order and raise identical questions of law, the same are being decided by way of this common order. The brief factual matrix giving rise to the present appeals is

that the assessee is one of the group companies of M/s Surya Vinayak Industries Ltd. It filed the return of income [*hereinafter referred to as* ***'ROI'***] for AY 2001-02 & 2002-03, declaring incomes of Rs. 17,47,261/- and Rs. 36,27,660/- respectively which were duly processed under Section 143(1) of the Act.

7. On 21.03.2007, a search and seizure operation was conducted, under Section 132 of the Act in respect of Surya Vinayak Group of cases. The Assessing Officer noticed that, the aforesaid group is headed by Sh. Sanjay Jain and his brother Sh. Rajiv Jain. The main allegation against this group was that they had taken a large number of accommodation entries in various group companies by paying cash to various entry operators. Thus, on 29.09.2008, after recording a satisfaction note, notice under Section 153C of the Act was issued to the assessee requiring it to file the ROI in the prescribed form. In response thereto, the assessee submitted that the previous returns declared be deemed as the ROI in response to notice under Section 153C of the Act. Thereafter, assessment orders were framed under Section 153/143(3) of the Act, determining total incomes of Rs. 3,64,74,420/- and Rs. 2,28,13,060/- for AY 2001-02 and AY 2002-03 respectively.

8. Aggrieved with the aforesaid assessments, the assessee filed an appeal before the CIT(A) challenging the order of the Assessing Officer, on the ground that no addition could be made in absence of any incriminating material found during the course of search. The said appeals were allowed in favour of the assessee on merits and the additions made by the Assessing Officer under Section 68 of the Act were deleted. However, CIT(A) dismissed the challenge as regards the issue of validity of assessment under Section 153A/143(3) of the Act.

9. Revenue then preferred an appeal before the ITAT, impugning the order of CIT(A). In the said proceedings, Assessee filed cross objections and contended that, the assessment order [*hereinafter referred to as* ***'AO'***] framed under Section 153A/143(3) of the Act was illegal, as consequent upon the search action under Section 132, nothing incriminating was found against the assessee, and therefore re-visiting the prior settled issues was not permissible. The ITAT allowed the cross objections of the assessee and quashed the AO following the decision of this Court in the case of ***Commissioner of Income Tax Vs. Kabul Chawla, (2016) 380 ITR 573 (Del.)***. The Revenue has thus preferred the present appeals, assailing the aforesaid impugned order of the ITAT.

10. Mr. Abhishek Maratha, learned senior standing counsel appearing on behalf of the Revenue contends that the ITAT has failed to take note that in the instant cases, incriminating documents belonging to the assessee were found and seized during the course of search under Section 132 of the Act. Thus, after recording of the satisfaction note, notice under Section 153C was issued by the Assessing Officer. Therefore, this does not happen to be a case wherein no documents were found during search operation. To support his submissions, Mr. Maratha refers to paragraph 1.3 of the AO. The same is reproduced as follows:

> *"1.3 After recording satisfaction note, a notice u/s 153C was issued on 29.09.2008 to the assessee requiring it to file the return of income in the prescribed form."*

11. Mr. Maratha, therefore, submits that the observations of the ITAT are incorrect and the assumption of jurisdiction by the Assessing Officer, based on incriminating documents seized during the search, was valid and lawful.

12. We have duly considered the contentions advance by Mr. Maratha, however, are unable to agree with him. The ITAT, after perusing the relevant records, including the orders passed by the Revenue Authorities, observed as follows:

> *10."…We find that the additions made by the AO are beyond the scope of section 153C of the Income Tax Act, 1961, because no incriminating material or evidence had been found during the course of search so as to doubt the transactions.* ***It was noted that in the entire assessment order, the AO has not referred to any seized material or other material for the year under consideration having being found during the course of search in the case of assessee, leave alone the question of any incriminating material for the year under appeal. We also find that the case laws cited by the Ld. CIT(DR) are not relevant to the present case. Therefore, in our considered opinion, the action of the AO is based upon conjectures and surmises and hence, the additions made is not sustainable in the eyes of law, because this issue in dispute is now no more res-integra, in view of the decision dated 29.08.2017 of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax- III, Pune vs. Sinhgad Technical Educational Society reported in (2017) 84 taxmann.com 290 (SC) as well as the decisions of the Hon'ble Delhi High Court passed in the case Commissioner of Income Tax vs. Kabul Chawla reported (2016) 380 ITR 573 (Del.) and in the case of Principal Commissioner of Income Tax (Central) -2 vs. Index Securities (P) Ltd.***
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> *11. Respectfully following the precedents as aforesaid, as aforesaid, we quash the assessment made u/s.153(C)/143(3) of the I.T. Act, 1961 and decide the legal issue in favour of the Assessee and accordingly, allow the Cross Objection filed by the assessee.*
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> *12. Following the consistent view taken in the assessment year 2001-02 in the Assessee's Cross objection, as aforesaid, th another Cross objection filed by the Assessee relating to assessment years 2002-03 also stand allowed."*
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> ***(Emphasis supplied)***

13. Upon reading of the aforesaid extracted portion of the impugned order, it is clearly discernable that the ITAT has given a finding of fact that the

assessments make no reference to the seized material or any other material for the years under consideration, that was found during the course of search, in the case of the assessee. Mr. Maratha is also unable to point out any incriminating material related to the assessee which could justify the action of the Revenue. Merely because a satisfaction note has been recorded, cannot lead us to reach to this conclusion, especially when the Revenue has not laid any foundation to support their contention. In the factual background as explained above, the assumption of jurisdiction under Section 153C cannot be sustained in view of the decision of this Court in the case of ***Kabul Chawla (Supra)***.

14. In view of the foregoing, we find no question of law, much less substantial question of law, that calls for a consideration. Accordingly, the present appeals are dismissed.

SANJEEV NARULA, J.

MANMOHAN, J.

DECEMBER 14, 2020
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