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

+ ITA 74/2021 & C.M.No.9974-2021

PR. COMMISSIONER OF INCOME TAX- 04, DELHI Appellant

Through Mr.Ajit Sharma, Advocate.

versus

M/S JAYPEE CAPITAL SERVICES LTD. Respondent

Through Mr.Ved Jain with Ms.Richa Mishra,
Advocates.

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Date of Decision: 03rd August, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.
2. The present appeal under Section 260A is directed against the order dated 31st January, 2020 passed by Income Tax Appellate Tribunal, in ITA No. 3321/Del/2016 for the Assessment Year 2010-11 whereby the appeal of the Revenue has been dismissed.
3. Briefly stated, the assessee is a company engaged in trading of equity shares, securities and commodities through recognized exchanges. It filed its return of income on 30th September, 2010 declaring total income of Rs.39,85,15,922/-. Subsequently, on 30th March, 2012, a search and seizure

operation under Section 132 was initiated in the case of the assessee, as part of Jaypee Group. During search, data of the computers found at the premises was cloned and seized along with certain documents. Thereafter, on 05th August, 2013, a notice under Section 153A of the Act was issued. Pursuant thereto, the assessee filed its return of income reiterating the return of income filed by them. During the course of post search proceedings, the assessing officer found evidence of Client Code Modifications done by M/s Jaypee Capital Services Ltd. and Futurz Next Services Ltd, companies registered with NSE, MCX, and NCDEX and United Stock Exchange. A Special Auditor was appointed u/s 142(2A) and directed to file a report on the aspect of Client Code Modifications done by the afore-noted companies as well the assessee company. On the basis of the Auditor Report and the response of the assessee, the AO concluded that in the case of member (broker) group companies of the assessee, the Client Code Modification is by and large not for genuine reasons and is rather for extraneous considerations. The net effect of profit and loss shifting in the code of assessee-company has been suppressed in its books of accounts. Accordingly a sum of Rs. 3,33,12,138/- was added to the income declared by the assessee on account of various additions made by the AO which included disallowance of interest under section 36(1)(iii), tour and traveling, Preliminary expenses, interest from AE under section 92 and disallowance under section 14A. The total income thus was assessed by the AO at Rs.43,18,28,060/-

4. In appeal preferred by the assessee, the CIT(A), following the dicta of this Court laid down in *CIT Vs. Kabul Chawla, 2015 SCC OnLine Del 11554*, held that no assessment/reassessment proceedings were pending on

30th March, 2012 when search action took place and hence no assessment was abated. The addition made by the AO is not based on any incriminating document/seized material found during the course of search and seizure action u/s 132 of the Act and accordingly the same were deleted. In further appeal preferred by the Revenue before the ITAT, the findings of the CIT(A) were confirmed.

5. Before us, Mr. Ajit Sharma, senior standing counsel for the Revenue, fairly submits that the facts of the present case are identical to the facts of appeals decided by this Court in the case of ***Pr. Commissioner of Income Tax (Central)-3 VS M/s Jaypee Financial Services Ltd. in ITA No 42/2021 and ITA No 44/2021*** dated 20th July, 2021 whereby the appeals of the Revenue were dismissed following the earlier order of the learned predecessor bench of this Court in the case of ***Pr. Commissioner of Income Tax (Central) -3 VS M/s Jaypee Financial Services Ltd., ITA No 47/2021*** dated 22nd February, 2021. The relevant portion of the said order is reproduced hereinbelow:-

“5. We have perused the record. Both the CIT(A) as well as the ITAT have held in the instant case that the addition is not based on any incriminating material found during the course of search and the assessment was not pending on the date of search. The observations of the assessing officer relied upon by Mr. Sharma do not give us any insight or clue about the ‘incriminating material’ which is claimed to be in existence. In the proceedings before the CIT(A) as well as the ITAT, the revenue has not made any attempt as to disclose the incriminating material. Even in the present appeal, the revenue is unable to explain or give us any indication about the same.

6. The findings of facts returned by CIT(A) and ITAT are not be interfered with lightly. The view taken by the tax authorities based on the decision of CIT Vs. Kabul Chawla (supra) cannot

be held to be perverse. The questions of law proposed by the Revenue are squarely covered by the aforesaid judgment.

7. In view of the above, no question of law, much less a substantial question of law, arises for our consideration. Accordingly, the present appeal, along with pending application, is dismissed.”

6. The facts of the present case are similar to the facts in the above case. In the instant case also both the CIT(A) as well as the ITAT have held that the addition is not based on any incriminating material found during the course of search and the assessment was not pending on the date of search. In the proceedings before the CIT(A) as well as the ITAT, the Revenue has not made any attempt as to disclose the incriminating material.

7. The view taken by the tax authorities based on the decision of **CIT Vs. Kabul Chawla** (supra) cannot be held to be perverse. The questions of law proposed by the Revenue are squarely covered by the aforesaid judgment.

8. In view of the above, no question of law, much less a substantial question of law, arises for our consideration. Accordingly, the present appeal along with pending application is dismissed.

9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 03, 2021
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