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

Date of Decision: 15th December, 2021

\+ **ITA 112/2020 & CM APPL. 6464/2020**

PRO COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE ..... Appellant

Through: Mr.Zoheb Hossain, Sr. Standing Counsel with Mr.Vipul Agarwal, Jr. Standing Counsel for Revenue.

versus

VIKAS TELECOM LTD ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This appeal has been filed by the appellant challenging the order dated 02.07.2018 passed by the learned Income Tax Appellate Tribunal (Delhi Benches: "D" New Delhi) (hereinafter referred to as "ITAT") dismissing the appeal of the appellant being I.T. Appeal No. 6683/Del/2013.

2. It is the case of the appellant that on 31.10.2008 a search and seizure operation under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') was carried out in the Raj Darbar

Group of cases. During the search operation certain incriminating documents belonging to the respondent company were also seized and, therefore, proceedings under Section 153C of the Act were initiated against the respondent vide notice dated 21.07.2010. It is claimed that during the post search enquiries and assessment proceedings, it was gathered that about 25 companies all having addresses in Kolkata applied for allotment of shares of the respondent and later family members/companies of the Raj Darbar Group bought back the shares at a much lower price than the price at which the shares were allotted to these Kolkata based companies. It is further claimed that efforts to serve summons under Section 131 of the Act through Inspectors also revealed that these companies could not be located and the identity of these concerns were also doubtful. Therefore, the Assessing Officer, vide assessment order dated 22.12.2010, treated the amount of Rs.3.32 crores received from these companies as unexplained cash credits under Section 68 of the Act and added the said amount back to the income of the respondent company.

3. The respondent being aggrieved of the above, filed an appeal before the Commissioner of Income Tax (Appeals)-XXXI [hereinafter referrred to as 'CIT(Appeals)'], which was allowed vide order dated 11.10.2013. The appellant challenged the said order before the learned ITAT which has dismissed the said appeal vide the Impugned Order.

4. The learned counsel for the appellant submits that the learned ITAT has failed to appreciate that in the present case, the assessment order was passed on the allegation of 25 companies, all having addresses in Kolkata and having applied for allotment of shares of the

respondent company, been found not in existence. He submits that in the facts of the present case, therefore, the learned ITAT has erred in placing reliance on the judgment of this Court in ***Commissioner of Income Tax (Central)-III vs. Kabul Chawla***, 2015 SCC OnLine Del 11555 : (2016) 380 ITR 573 (Del).

5. We find no merit in the submissions made by the learned counsel for the appellant. Both, the learned CIT (Appeals) as also the learned ITAT, have found that the Assessing Officer has not made use of any seized documents while making additions to the total income of the respondent under Section 68 of the Act. The finding of the learned ITAT in this regard is reproduced hereinbelow:

> "*9. We further observe that the learned Assessing Officer while farming the assessment order has not referred to any seized documents belonging to the assessee found during the course of search proceedings. In the remand proceedings the learned Assessing Officer has also submitted that no any incriminating materials have been referred to while framing the assessment order. A perusal of the seized documents and their description revealed that the seized documents mentioned in the satisfication note do not relate to the accommodation entry transactions. The case laws relied by the learned Departmental Representative are not applicable in the present facts of the case and the learned DR could not bring any cogent material for justifying the order of the Assessing Officer. There was no pending*

assessment for the assessment year 2003-04 at the time of search. Therefore, in our considered opinion, no addition could be made u/s. 153C of the Act without reference of any incriminating material found in the course of search……

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10. In the instant case, it is an admitted fact that no incriminating material belonging to the assessee was also found during the search, based on which the impugned addition could have been made in the assessment order u/s. 153C. We also do not find any reference to any such material found during the search which led the Assessing Officer to make the impugned addition. The assessment order does not outline any details of the documents which were belonging to the assessee and were seized in the search dated 31.07.2008 so as to acquire the jurisdiction to reopen the assessment u/s. 153C of the Act. Therefore, in view of the decision rendered by Hon'ble jurisdictional High Court in the case of CIT vs. Kabul Chawla (supra), in our opinion, no addition can be made in proceedings u/s. 153C in case of completed assessment. The learned Department Representative could not be able to controvert the contention of the assessee that no assessment was pending for the impugned year for abatement, as the time for making any

> *scrutiny assessment u/s. 143(3) stood expired on 31.12.2005. The ld. DR also failed to adduce any incriminating material found in the search leading to the impugned addition.*"

6. This Court in its order dated 19.02.2020 directed the appellant to file an affidavit disclosing whether any of the books and papers seized relating to the respondent is relevant to the additions made by the Assessing Officer under Section 68 of the Act while passing the assessment order dated 22.12.2010. The relevant extract from the order is as under:

> "*2. During the course of submissions, Mr. Hussain, Sr. Standing counsel placed before us a copy of the satisfaction note for proceedings under Section 153C of the Income Tax act, 1961 which discloses that various books and papers were found and seized relating to M/s Vikas Telecome Ltd. during the search and seizure operation conducted on Raj Darbar Group of cases on 31.07.2008. The books and papers seized relating to assessee/M/s Vikas Telecome Ltd. have been enlisted in the said note.*
>
> *3. We direct the Appellant to file an affidavit disclosing whether any of the books and papers seized relating to the assessee/Ms Vikas Telecome Ltd. is relevant to the additions made by the*

> *Assessing Officer under Section 68 of the Income Tax Act while passing the assessment order dated 22.12.2010. The relevant documents should also be placed on record.*"

7. Today, the learned counsel for the appellant has placed before us the instructions received by him from the Deputy Commissioner of Income-Tax, Central Circle-1(3), Bengaluru vide communication dated 26.08.2020, which records as under:

> "*On perusal of assessment records and the available seized material, it is observed that the additions amounting to Rs.3,32,00,000/- were made u/s 68 of the IT Act in the said assessment year. The Assessing officer has used the extensive enquiries made by the Investigating wing, Kolkata as the basis for the said additions. On perusal of the seized material, it is seen that the material referred to in the Satisfaction note does not pertains to AY 2003-04 in most cases. It is further seen from the records that no seized material or statement has been relied upon by the AO while making the addition and that the addition was made when conditions of section 68 of the Act were not fulfilled during the post search proceedings and during the proceedings before the AO.*"

8. In view of the above admission, the appeal is squarely covered by the judgment of this Court in ***Kabul Chawla*** (Supra).

9. Accordingly, we find no merit in the present appeal. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

DECEMBER 15, 2021/*rv*/U.