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

+ ITA 13/2021

PR COMMISSIONER OF INCOME TAX CENTRAL II

..... Appellant

Through Mr. Sanjay Kumar, Advocate and
Ms. Easha, Advocate

versus

M/S SHARP MINT LIMITED Respondent

Through Mr. Somil Agarwal, Advocate.

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Date of Decision: 07th February, 2022

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 hearing has been conducted by way of video conferencing.
2. Present appeal has been filed challenging the order dated 29th November, 2018 passed by ITAT in ITA No. 3642/Del/2008 whereby the appeal filed by appellant-Revenue was dismissed.
3. Learned counsel for the appellant states that ITAT erred in deleting the deduction disallowed under Section 80HHC of the Income Tax Act, 1961 ['Act'] which had been confirmed on merit by CIT(A) in Assessee's own case for Assessment Years 2003-04, 2004-05 and 2005-06. She states that ITAT has erred in interpreting and applying the judgment of this Court

in *CIT vs Kabul Chawla, (2016) 380 ITR 573*. She further states that the ITAT has erred in interpreting the power and jurisdiction of the Assessing Officer under Section 153A of the Act.

4. A perusal of the paper book reveals that the Tribunal in the impugned order has held that where assessment is complete and if no incriminating material had been found during the search, then Section 153A shall have no application.

5. A Division Bench of this Court in *(2017) 82 taxmann.com 287 Del PCIT vs. Neeta Gutgutia* summarized the earlier judgment of this Court in *Commissioner of Income Tax v. Kabul Chawla, (2016) 380 ITR 573* with regard to Section 153A as under:-

"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."

6. Consequently, this Court is of the opinion that the questions of law raised in present appeal has been settled by the predecessor Division Bench in ***Kabul Chawla*** (supra) and assessment of the respondent had attained finality prior to the date of search and no incriminating documents or materials had been found and/or seized at the time of search. Accordingly, no addition can be made under Section 153A of the Act as the case of respondent is of non-abated assessment.

7. Though some of the judgments of this Court have been challenged and are pending adjudication before the Supreme Court, yet there is no stay of the said judgments till date.

8. Consequently, in view of the judgments of the Supreme Court in *Kunhayammed and Others Vs. State of Kerala And Another*, (2000) 6 SCC 359 and *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras* (1992) 3 SCC 1, the present appeals are dismissed being covered by the judgment passed by the learned predecessor Division Bench.

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 07, 2022
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