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

\+ ITA 410/2022

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1
..... Appellant

Through: Mr. Ruchir Bhatia, Advocate for Revenue

versus

GAUTAM BHALLA ..... Respondent

Through: Mr. Ravi Pratap Mall, Advocate

% Date of Decision: 18th October, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

1. Present Income Tax Appeal has been filed challenging the order dated 31st July, 2020 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3584/Del./2017 for the Assessment Year 2010-11.

2. Learned counsel for the Appellant states that the ITAT has erred in holding that the addition which was not based on incriminating material found during the search could not be made in assessment under Section 153A of the Income Tax Act, 1961 (for short 'Act') and, consequently, deleted the addition without going into merits of the same.

3. He states that the ITAT has erred in relying upon the judgement of this Court in ***CIT vs Kabul Chawla (2016) 380 ITR 573*** ignoring the fact

that Revenue's SLPs on similar issue are pending before the Supreme Court in many other cases including ***CIT v Continental Warehousing Corporation (Nhava Sheva) Ltd., (2015) 374 ITR 645.***

4. Upon a perusal of the paper book, this Court finds that both the CIT(A) and the ITAT have given concurrent findings of fact that no incriminating material / evidence had been found during the search. The ITAT also recorded that the present case of the Respondent was of non-abated assessment. The relevant extract of the impugned order is reproduced herein below:

> *"13. In such a scenario, we have to see the discovery of incriminating material vis-a-vis two stages of assessment i.e. abated and non-abated assessment. It is not the dictate of the Hon'ble High Court that in the absence of any incriminating material, in any of the years, no additions can be made. The Hon'ble High Court is very clear in its findings. So, to apply the principle laid down by the Hon'ble High Court (supra), it is the first step to find whether the proceedings had abated or non-abated and also to determine any incriminating material was found or not.*
> *14. The Ld.AR before us has pointed out that no incriminating material was found and also that the proceedings are non-abated. In these facts and circumstances, following the dictate of Hon'ble Delhi High Court in Kabul Chawla (supra), we hold that no addition u/s 68 of the Act is warranted.*
> *15. In the result, the appeals of the assessee are allowed and appeals of the Revenue are dismissed."*

5. This Court finds that the conclusion reached in ***Kabul Chawla (supra)*** was summarized in ***PCIT vs. Meeta Gutgutia, (2017) 82 taxmann.com 287 Del***. The relevant portion of the judgment

passed in ***PCIT vs. Meeta Gutgutia (supra)*** is reproduced hereinbelow:-

> *"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. Even, this Court in ***Principal Commissioner of Income Tax vs. Bhadani Financiers Pvt. Ltd., 2021 SCC OnLine Del 4430*** has held that where the assessment of the respondents had attained finality prior to the date of search and no incriminating documents or materials had been found and seized at the time of search, no addition could be made under Section 153A of the Act as the cases of the respondents were of non-abated assessment.

7. Though, the issue involved in ***Kabul Chawla (supra)*** has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date.

8. Consequently, in view of the judgments passed by 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 appeal is covered by the judgment passed by this Court in ***Bhadani Financiers Pvt. Ltd. (supra)*** and ***Kabul Chawla (supra)***.

9. Keeping in view the aforesaid mandate of law as well as the facts, this Court is of the view that no substantial question of law arises for

consideration in the present appeal. Accordingly, the present appeal is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 18, 2022
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