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

Date of Decision: 27.11.2017

+ ITA 1045/2017 & CM No.42537/2017

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-1 Appellant

versus

MANOJ HORA Respondent

+ ITA 1046/2017 & CM No.42538/2017

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)- 1 Appellant

versus

MANOJ HORA Respondent

+ ITA 1047/2017 & CM No.42539/2017

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-1 Appellant

versus

MANOJ HORA Respondent

+ ITA 1048/2017

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-1 Appellant

versus

MANOJ HORA Respondent

Present: Mr. Sanjay Kumar, Jr. Standing Counsel with
Mr. Rahul Chaudhary, Sr. Standing Counsel for
appellant.
Dr. Shashwat Bajpai with Mr. Sharad Agarwal,
Advs. for respondent.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J.(ORAL)

1. In these appeals, the Revenue's grievance is with respect to the deletions ordered by the CIT(A) and affirmed by the ITAT.
2. The facts necessary for this case are that a search assessment was completed in respect of M/s Rajdarbar Group whose premises were subjected to search and seizure proceedings under Section 132 of the Income Tax Act, 1961 (hereafter referred to as 'the Act'). The assessee's contention before the Revenue authorities was two-fold i.e. that the statements made in the course of the search and seizure operations, having regard to Section 132(4), could not be binding upon it. The argument was that the statement made by one supplier to M/s Rajdarbar Group i.e. the proprietor of M/s Supariwala & Co., was in any case not binding upon the assessee who was a stranger and a third party. The AO had disregarded his contention and brought to tax various amounts on the basis of that statement. The assessee's second contention

that in the absence of any incriminating material recovered from its premises, the search completed in the facts of this case was untenable. The CIT(A) granted relief on the merits holding that the statement made by a stranger/third party in the course of a search, could not be attributed to or lead to adverse consequences as far as the assessee was concerned. It was further held that there was no corroborative material to connect those statements to the assessee's assessments. The ITAT affirmed the CIT(A)'s views and also cited a decision of this Court in *Commissioner of Income Tax v. Kabul Chawla* 380 ITR 573.

3. We have considered the materials on record.

4. The CIT(A) view that the statement under Section 132(4) could not bind the assessee is, in the opinion of this Court, correct. The text of Section 132(4), clarifies that the presumption arises in the case of the searched party. In case the statements by the party whose premises are searched, or to be attributed to a third party – as in the case of the assessee, there has to be a connect or corroboration. Clearly, there was none in the present case. On this score, the addition made by the AO was unsustainable; the CIT(A) correctly directed the cancellation.

5. The other factual detail is that no incriminating material was found from the assessee's premises. In the circumstances, the ruling in *Kabul Chawla* (supra) squarely applies.

6. For the above reasons, no substantial question of law arises in these appeals; they are dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 27, 2017

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