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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 509/2015

P.R. COMMISSIONER OF INCOME TAX
(CENTRAL-II)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Advocate.

versus

AAKASH AROGYA MANDIR PVT. LTD.

..... Respondent

WITH

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ITA 510/2015

P.R. COMMISSIONER OF INCOME TAX
(CENTRAL-II)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Advocate.

versus

AAKASH AROGYA MANDIR PVT. LTD.

..... Respondent

AND

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ITA 513/2015

P.R. COMMISSIONER OF INCOME TAX
(CENTRAL-II)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Advocate.



versus

AAKASH AROGYA MANDIR PVT. LTD.

..... Respondent

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

28.07.2015

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CM Nos. 13239/2015 & 13240/2015 (for exemption)

1. Exemption allowed subject to all just exceptions.

2. The application is disposed of.

ITA 509/2015

3. These appeals by the Revenue under Section 260-A of the Income Tax Act, 1961 ('Act) are directed against the common order dated 28th November 2014 passed by the Income Tax Appellate Tribunal (ITAT) in ITA Nos.5440 /Del/2013 [relating to Assessment Year (AY) 2006-2007], ITA No. 5438/Del/2013 [relating to AY 2004-2005] and ITA No.5437/Del/2013 [relating to AY 2003-2004].

4. The question that is sought to be urged by the Revenue in these appeals is whether the Assessing Officer (AO) is required, for the purposes of Section



153- C of the Act, to record satisfaction even when the AO of the person searched and the AO who exercises jurisdiction *qua* the Assessee is the same? The ITAT has in the impugned order held that the AO has not recorded his satisfaction *qua* the searched person in terms of the law explained by this Court in *Pepsi Foods Pvt. Ltd. v. ACIT (2014)367 ITR 112 (Del)*.

5. Ms. Suruchi Aggarwal, learned Senior Standing counsel for the Appellant tried to distinguish the cases on hand from the decisions in *Pepsi Foods Pvt. Ltd. v. ACIT (supra)* and *Pepsico India Holdings Pvt. Ltd. v. ACIT (2015) 370 ITR 295 (Del)*. According to her when the AO of the searched person and of the Assessee is the same, the AO need not separately record his satisfaction *qua* the Assessee. She referred to an order dated 4th December 2014 passed by this Court in ITA Nos. 662/2014, 663/2014 and 664/2014 where one of the questions of law framed concerned the ITAT having set aside the initiation of proceedings under Section 153 C of the Act on the ground that no written satisfaction has been recorded by the AO of the persons searched.

6. In the first place, we do not find from the order dated 4th December 2014



in ITA Nos. 662, 663 and 664 of 2014 that a question was framed as to the statutory requirement of the AO recording satisfaction for the purposes of Section 153 C of the Act being any different where the AO of the searched person and the Assessee is the same.

7. Secondly, as far as the facts of the present cases are concerned, the Revenue has placed no material to challenge the following factual finding recorded by the ITAT in paras 5, 7.1 and 8 of the impugned order:

“5.Information obtained by Ld. A.R. from A.O. of searched persons as placed at paper book pages 34-38 clearly mentions that the satisfaction note with respect to other entities was not available/recorded by A.O. of searched person and further on the direction of Ld. D.R., A.O., Central Circle -17, written to Ld. DR vide letter dated 09.09.2014 wherein he had mentioned to have enclosed satisfaction note recorded by the A.O. of such other person. The copy of satisfaction note attached with the letter clearly suggests that the satisfaction note enclosed with the letter was prepared by A.O. of other entities who had assumed jurisdiction by invoking provisions of Section 153C.....

7.1 We observe that on the basis of replies obtained by Assessee under RTI and on the basis of reply of A.O. Central Circle-21, to Ld. D.R. the satisfaction note dated



10.09.2010 is the satisfaction note prepared by A.O. of the other persons. This fact is further fortified from the fact that on the same day of recording satisfaction on 10.09.2010, the A.O. had raised notices, u/s 153C of the Act as placed in paper book Page-1.

8. Therefore, following the above precedents relied upon by Ld. A.R., we hold that satisfaction was to be first recorded by A.O. of searched person, which in the present cases has not been done. The facts and circumstances of the present appeals are similar to the case laws relied upon by Ld. A.R.”

8. The Revenue has not placed any material to dispute the factual finding of the ITAT that the requirement of the law explained by this Court in *Pepsi Foods* regarding the recording of satisfaction by the AO even in respect of the searched person was not fulfilled. Consequently, the fact that it was the same AO both for the searched person and the Assessee makes no difference to the consequence of non-compliance with the legal requirement regarding the recording of satisfaction. The Court also agrees with the ITAT that even if the AO were the same, satisfaction would have to be recorded separately *qua* the searched person and the Assessee.



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9. No substantial question of law arises for determination.

10. The appeals are dismissed.

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a cursive flourish.

S. MURALIDHAR, J

A handwritten signature in black ink, appearing to be 'Rajiv Shakhder' in a cursive script.

RAJIV SHAKDHER, J

JULY 28, 2015/dn