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

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**ITA 502/2016**

PRINCIPAL COMMISSIONER OF  
INCOME TAX-CENTRAL-2

.... Appellant

Through: Mr. Dileep Shivpuri, Senior standing  
counsel with Mr. Sanjay Kumar, Junior  
standing and Mr. Vikrant A. Maheshwari,  
counsel.

versus

SUNNY INFRAPROJECTS LTD

..... Respondent

Through: Mr. Salil Aggarwal with Mr. Ravi Pratap  
and Mr. Shailesh Gupta, Advocates.

**WITH**

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**ITA 503/2016**

PRINCIPAL COMMISSIONER OF  
INCOME TAX-CENTRAL-2

... Appellant

Through: Mr. Dileep Shivpuri, Senior standing  
counsel with Mr. Sanjay Kumar, Junior  
standing and Mr. Vikrant A. Maheshwari,  
counsel.

versus

SUNNY INFRAPROJECTS LTD

..... Respondent

Through: Mr. Salil Aggarwal with Mr. Ravi Pratap  
and Mr. Shailesh Gupta, Advocates.

**WITH**



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**ITA 505/2016**

PRINCIPAL COMMISSIONER OF  
INCOME TAX-CENTRAL-2

.... Appellant

Through: Mr. Dileep Shivpuri, Senior standing  
counsel with Mr. Sanjay Kumar, Junior  
standing and Mr. Vikrant A. Maheshwari,  
counsel.

versus

LAIRY DISTRIBUTORS PVT LTD

..... Respondent

Through: Mr. Salil Aggarwal with Mr. Ravi Pratap  
and Mr. Shailesh Gupta, Advocates.

**AND**

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**ITA 506/2016**

PRINCIPAL COMMISSIONER OF  
INCOME TAX-CENTRAL-2

.... Appellant

Through: Mr. Dileep Shivpuri, Senior standing  
counsel with Mr. Sanjay Kumar, Junior  
standing and Mr. Vikrant A. Maheshwari,  
counsel.

versus

BALRAM VINIMAY PVT. LTD

..... Respondent

Through: Mr. Salil Aggarwal with Mr. Ravi Pratap  
and Mr. Shailesh Gupta, Advocates.

**CORAM:****JUSTICE S.MURALIDHAR****JUSTICE CHANDER SHEKHAR****ORDER****24.04.2017**

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**CM APPL 27325/2016 (Exemption) in ITA 502/2016**  
**CM APPL 27347/2016 (Exemption) in ITA 505/2016**  
**CM APPL 27352/2016 (Exemption) in ITA 506/2016**

1. Allowed, subject to all just exceptions.

**ITA Nos. 502/2016, 503/2016, 505/2016 & 506/2016**

2. These are four appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') directed against a common order dated 27<sup>th</sup> January, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 6947/Del/2014 (*Lairy Distributors Pvt. Ltd. v. Deputy CIT*); ITA No. 7060/Del/2014 (*Sunny Infra Projects Ltd. v. CIT(A)-XXVI*); ITA No. 6948/Del/2014 (*Balram Vinimay Pvt. Ltd. v. Deputy CIT*) and ITA No. 7061/Del/2014 (*Sunny Infra Projects Ltd. v. The CIT(A)XXVI*). The Assessment Years ('AYs') involved are 2006-07 as regards Lairy Distributors Pvt. Ltd.; 2007-08 & 2010-11 as regards Sunny Projects Ltd. and 2007-08 as regards Balram Vinimay Pvt. Ltd.

3. The common question of law framed by this Court in all four appeals by the order dated 5<sup>th</sup> October, 2016 is as under:

“Whether on the facts and in the circumstances of the case the learned ITAT erred in law in holding that AO did not have any lawful and valid jurisdiction for initiation of proceedings and issuance of notice under Section 153C of Income Tax Act, 1961?”

4. The Court has heard the submissions of Mr. Dileep Shivpuri, learned Senior standing counsel appearing for the Revenue and Mr. Salil Aggarwal, learned counsel appearing for the Assessees.



5. Although several issues concerning the validity of the initiation of the proceedings under Section 153C of the Act and whether the assessment was without jurisdiction were argued, the Court is of the view that the issue can be answered on a narrower point viz., whether there was, in fact, any incriminating material recovered during the search *qua* the Assesseees which could justify the additions made.

6. The facts in brief are that a search took place on 10<sup>th</sup> January, 2012 in the case of Minda Group. During the course of search and seizure operation, Mr. Santosh Kumar Jain, stated to be an entry operator, was also searched. In his statement, he is purported to have accepted that he was engaged in providing accommodation entries to the group companies of Mr. Ashok Minda. He admitted that he was a Director of several companies of which five were ATN International Limited; Silicon Valley Infotech Limited, Blue Chip India Limited; Amluckie Investment Co. Ltd. and Bahubali Properties Limited. He also admitted that previously his staff members and his friends were Directors of Dhansafal Vyapar Pvt. Ltd., Whiteline Barter Ltd. and Arihant Ltd. and in that way he was related to Minda Group of Companies.

7. As far as the Assesseees in question were concerned, only one of the above named companies, Bahubali Properties Limited, was a shareholder in the Assessee companies. In his assessment order dated 30<sup>th</sup> March, 2014, in the case of Sunny Infra Projects Limited for the AY 2010-11, the Assessing Officer ('AO') noted that to facilitate independent verification of the receipt of the share capital and share premium, notices under Section 133(6) of the Act were issued on 14<sup>th</sup> February, 2014 to the Principal Officer of each of



the investor companies to furnish their response along with bank accounts, minutes of meetings, details of PAN cards, names and addresses of Directors etc. The AO then came to the conclusion that the replies submitted were not satisfactory as to the identity, genuineness and creditworthiness of the investment. The AO observed that it was gathered during the post-search proceedings that Sunny Infra Projects Limited was a paper company run by Mr. Santosh Kumar Jain and that the share capital and share premium “inducted during the year is nothing but unaccounted business income of Ashok Minda Group of Companies which has been routed by entry operator through various bogus companies.” Interestingly, there was nothing in the answers given to the questions posed to Mr. Santosh Kumar Jain, which linked him to any of the Assessees.

8. After the search concluded and during the course of assessment, a letter was received from the DCIT, Central Circle-II, Kolkata on 7<sup>th</sup> March, 2014 stating that the statement of Mr. Santosh Kumar Jain was again recorded on 27<sup>th</sup> February, 2014 in which he retracted from his earlier statement given on 10<sup>th</sup> January, 2012 during the course of search. It is stated by the AO that “Mr. Santosh Kumar Jain has stated that during the search he was under tremendous pressure and under pressure he has admitted he has provided accommodation entry to Minda Group of companies.” The AO rejected the said retraction and proceeded to make the additions to the taxable income of the Assessees.

9. Among the various grounds raised by the Assessee before the CIT (A), one pertained to whether in fact the proceedings initiated under Section



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153C of the Act were valid. The CIT (A) by the order dated 9<sup>th</sup> December, 2014 rejected the said contention of the Assessee. As regards merits of the additions, the CIT (A) concurred with the AO and sustained the additions. Consequently, the appeals were dismissed. The appeals of all the Assessee were consolidated before the ITAT and the impugned common order was passed.

10. As already mentioned, this Court considers it necessary only to address the issue as to whether what was recovered during the search could be considered to be incriminating material *qua* each of the Assessee. In that view of the matter, the Court is not answering the other aspects concerning the validity of the initiation of the proceedings under Section 153C of the Act and, in particular, whether the material which may be relevant to the year of the search could justify the re-opening of the assessment for the assessments of the earlier years as was done in the present case.

11. It is important to note that in case of each of these Assessee, returns were filed for the AYs in question. The returns were picked up for scrutiny and the assessment was finalised under Section 143(3) of the Act for each of the Assessee for each of the AYs in question. Notice under Section 153C of the Act was issued to each of the Assessee nearly two years after the actual search of the Minda Group. The copy of the Satisfaction Note prepared by the AO of the Assessee refers to the 'incriminating' documents/papers which were seized during the search and seizure action in the case of the Minda Group. These documents are copies of the balance sheet abstracts and company's general profile, balance sheet, profit and loss account, auditor's



account, copies of income tax returns and copy of trial balances.

12. Apart from the above, there was no other material referred to that could give rise to the belief about income having escaped assessment. Each of the above documents was already available with the AO when the initial assessments were finalised under Section 143(3) of the Act. The Court enquired from Mr. Shivpuri whether, in fact, there was any new or fresh material which could form the basis for the AO for re-opening the assessments. Mr. Shivpuri submitted that the trial balances were not available earlier. However, he could not deny that it is these very trial balances that led to the preparation of the balance sheet, which were already available with the AO and that there was no new information contained in the trial balance which justified the additions.

13. Consequently, the Court is of the view that the above documents could not constitute incriminating material which could justify the making of the additions in exercise of the powers under Section 153C of the Act. It has been repeatedly stressed by this Court in several judgments including *CIT v. Anil Kumar Bhatia* 352 ITRA 493 (Del.); *CIT v. Kabul Chawla* 380 ITR 573 (Del.); *Dayawanti through Legal Heir Sunita Gupta v. CIT* (2016) 390 ITR 496 (Del.) and *CIT-VII v. RRJ Securities Limited* (2016) 380 ITR 612 that the seized material must have some nexus or relevance to the additions sought to be made and must be relevant for the belief formed regarding income having escaped assessment. While discussing the decision of this Court in *SSP Aviation Ltd. v. Deputy CIT* (2012) 346 ITR 177, this Court in *CIT-VII v. RRJ Securities Limited* (*supra*) noted as under:



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“35. ... Section 153C only enables the AO of a person other than the one searched, to investigate into the documents seized and/or the assets seized and ascertain that the same do not reflect any undisclosed income of the Assessee (i.e a person other than the one searched) for the relevant assessment years. If the seized money, bullion, jewellery or other valuable article or thing seized as handed over to the AO of the Assessee, are duly disclosed and reflected in the returns filed by the Assessee, no further interference would be called for. Similarly, if the books of accounts/documents seized do not reflect any undisclosed income, the assessments already made cannot be interfered with. Merely because valuable articles and/or documents belonging to the Assessee have been seized and handed over to the AO of the Assessee would not necessarily require the AO to reopen the concluded assessments and reassess the income of the Assessee.”

14. As far as the present cases are concerned, the documents and material seized are only the balance sheet, audit reports etc., which did not reflect any income that was not already disclosed when the assessments were finalised initially under Section 143(3) of the Act. This by itself is sufficient to delete the additions sustained by the CIT (A). Consequently, the ITAT was not in error in ordering such deletion.

15. For the aforementioned reasons, the question framed is answered in the negative i.e., against the Revenue and in favour of the Assessee. The appeals are dismissed but in the circumstances, no orders as to costs.

**S.MURALIDHAR, J****CHANDER SHEKHAR, J****APRIL 24, 2017/b'nesh**