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

31, 3, 4 &amp; 5

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**ITA No. 637/2017**

PR. COMMISSIONER OF INCOME TAX(CENTRAL-02) ..... Appellant  
Through: Mr. Rahul Chaudhary, Senior Standing  
Counsel with Mr. Sanjay Kumar, Junior Standing  
Counsel

versus

MERA BABA REALITY ASSOCIATES PVT. LTD ..... Respondent  
Through: Mr. P. C. Yadav, Advocate

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**ITA No. 507/2017**

PR. COMMISSIONER OF INCOME TAX (CENTRAL-02) ..... Appellant  
Through: Mr. Rahul Chaudhary, Senior Standing  
Counsel with Mr. Sanjay Kumar, Junior Standing  
Counsel

versus

MERA BABA REALITY ASSOCIATES PVT. LTD. .... Respondent  
Through: Mr. P. C. Yadav, Advocate

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**ITA No. 508/2017**

PR. COMMISSIONER OF INCOME TAX (CENTRAL -02) ..... Appellant  
Through: Mr. Rahul Chaudhary, Senior Standing  
Counsel with Mr. Sanjay Kumar, Junior Standing  
Counsel

versus

MERA BABA REALITY ASSOCIATES PVT. LTD. .... Respondent  
Through: Mr. P.C. Yadav, Advocate

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**ITA No. 509/2017**

PR. COMMISSIONER OF INCOME TAX (CENTRAL -02) ..... Appellant



Through: Mr. Rahul Chaudhary, Senior Standing  
Counsel with Mr. Sanjay Kumar, Junior Standing  
Counsel

versus

MERA BABA REALITY ASSOCIATES PVT. LTD. .... Respondent  
Through: Mr. P. C. Yadav, Advocate

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE PRATHIBA M. SINGH**

**ORDER**  
% **21.08.2017**

**C.M. No. 29289/2017 (exemption) in ITA No. 637/2017**

**C.M. No. 24212/2017 (exemption) in ITA No. 508/2017**

**C.M. No. 24215/2017 (exemption) in ITA No. 509/2017**

1. Allowed, subject to all just exceptions.

**C.M. No. 29290/2017 (delay) in ITA No. 637/2017**

2. The delay of 41 days in re-filing the appeal is condoned. The application is disposed of.

**ITA Nos. 637/2017, 507/2017, 508/2017 & 509/2017**

3. The revenue is in appeal against the common order dated 18<sup>th</sup> November 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 3452 to 3455/Del/2006 for the Assessment Years ('AY') 2008-09 to 2011-12.

4. The above appeals were preferred by the Assessee against the order dated 31<sup>st</sup> March 2015 passed by the Principal Commissioner of Income Tax ['PCIT'] under Section 263 of the Income Tax Act, 1961 ('Act') revising the



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assessment order dated 28<sup>th</sup> March 2013 passed by the Assessing Officer ('AO') under Section 153A read with Section 143(3) of the Act for each of the aforementioned AYs.

5. A search and seizure operation under Section 132 of the Act was conducted by the Investigation Wing of the Department in the premises of the Assessee on 14<sup>th</sup> September 2010. It is an admitted position that no incriminating material qua the Assessee was found during the course of this search and seizure. On 16<sup>th</sup> September 2011, another search and survey operation was undertaken at the various residential and business premises of K. S. Dhingra & G. S. Dhingra Group.

6. The case of the Revenue is that, in said search, certain documents were found which related to transactions undertaken by the Assessee. These were in the nature of loans advanced by certain companies by way of a common agreement during the AY to the Assessee. The case of the Revenue was that the Assessee had paid interest higher than the rate as recorded in its accounts. It was also not able to explain the amount repaid to its sundry creditors.

7. A notice under Section 153A of the Act was issued to the Assessee on 22<sup>nd</sup> October 2012. Pursuant thereto, the Assessee stated by way of its letter dated 19<sup>th</sup> November 2012 that the original return filed by it under Section 139 of the Act should be treated as the return filed in response to the above notice.

8. During the course of the assessment proceedings, Show Cause Notices



(‘SCN’) were issued by the AO to the Assessee to which replies were furnished by the Assessee. The Assessee furnished details of sundry creditors, copies of invoices, details of unsecured loans outstanding in the financial year but not confirmed, copies of ledger accounts of unsecured loans, copies of agreements etc. The Assessee also replied to a further SCN by its letters dated 14<sup>th</sup> March 2013 and 20<sup>th</sup> March 2013. Summons under Section 131(1) of the Act were issued by the AO to the Director of the Assessee and his statement was also recorded. An assessment order dated 28<sup>th</sup> March 2013 was passed assessing the income as returned by the Assessee.

9. It appears that on 5<sup>th</sup> June 2013, i.e. within 3 months from the date of the assessment order, the AO made a proposal to the CIT for exercise of jurisdiction under Section 263 of the Act regarding the order “erroneously passed” by the AO. In this letter, *inter alia*, the AO stated that the information regarding the second search in the premises of K.S. Dhingra & G.S. Dhingra Group was forwarded to his office by the Investigation Wing in the month of March 2013. An SCN dated 8<sup>th</sup> March 2013 was issued to the Assessee. Further investigation and enquiries in the matter could not be carried out due to late receipt of information and shortage of time. The reply furnished by the Assessee was not found satisfactory, as they had denied to have paid any interest other than as recorded in their books of account, whereas the seized documents showed interest payment @ 40% p.a.

10. It is, therefore, clear that the AO had second thoughts on the aspect of payment of interest by the Assessee. He then states that, “*The addition of the*



*differential amount of interest paid could not be made due to oversight/heavy workload. I deeply regret for the error. The copies of DDIT(Inv.) letter, show cause notice issued, and reply filed by the Assessee are also enclosed for your kind perusal."*

11. This triggered the exercise of jurisdiction under Section 263 of the Act by the PCIT. The PCIT did not independently form an opinion about the order of the AO being erroneous. On this basis, nearly two years thereafter, on 2<sup>nd</sup> February 2015, the PCIT issued an SCN to the Assessee virtually setting out the proposal of the AO and adding, *"Thus the assessment order passed in your case is erroneous and prejudicial to the interest of the Revenue for the reasons stated as above."*

12. In the impugned order, the ITAT, after examining the entire record and the applicable law on the subject, has come to the conclusion that on both the issues, i.e. payment of interest over and above the amount which was recorded in the books of accounts and the sundry creditors, the Assessee had furnished sufficient details with which the AO was satisfied. This was not a case of lack of enquiry on the part of the AO but, at most, a case of inadequate inquiry, as appeared from the letter dated 5<sup>th</sup> June 2013 addressed to the PCIT. It was held by the ITAT that the jurisdiction under Section 263 of the Act could not be allowed *"merely on the basis that enquiry conducted by the AO was inadequate."*

13. Mr. Rahul Chaudhary, learned Senior Standing Counsel for the Revenue, relied on the decision of Calcutta High Court in *CIT v Maithan International [2015] 375 ITR 123* where, *inter alia*, the High Court



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observed that, where the enquiry led to the AO assuming incorrect facts, the exercise of revisionary jurisdiction under Section 263 of the Act by the CIT would be justified.

14. What is interesting in the present case is that this exercise under Section 263 of the Act was undertaken after a full-fledged exercise has already been undertaken by the AO under Section 153A of the Act. Incidentally, it may be mentioned that, from the facts that have emerged, if so-called incriminating material was found during the course of the search in the case of K.S. Dhingra & G.S. Dhingra Group, the assessment proceeding ought to have been initiated against the Assessee under Section 153C of the Act. The Assessee of course did not question this because the assessment order ultimately was not adverse to the Assessee. The AO had a full-fledged opportunity to undertake a detailed enquiry, and having not done so on account of paucity of time, there cannot be any inference that the inadequate inquiry led to the AO to arrive at incorrect facts.

15. Reliance is also placed by Mr. Rahul Chaudhary on the decision of the Supreme Court in *CIT v Amitabh Bachhan [2016] 384 ITR 200 (SC)*. There the Supreme Court found, on facts, that the Assessee after having claimed an exemption during the course of the assessment proceedings; withdrew such claims despite which no enquiry was undertaken by the AO into this aspect. This, according to the Supreme Court, ought not to have resulted in the proceedings simply being dropped by the AO.

16. The facts in the present case, however, are different. As noticed by the ITAT, following the notices issued in the course of the assessment



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proceedings by the AO, on more than one occasion the Assessee furnished the complete details sought. Where the Assessee has in fact furnished the details that are available with him along with explanation to the queries raised by the AO, to permit the exercise of the revisionary jurisdiction only on the ground that the AO did not have sufficient time to verify the details furnished would be unfair to the Assessee. The PCIT must be satisfied, after application of his mind, that the order of the AO was erroneous with respect to the material made available to him. No such application of mind by the PCIT is evident from the impugned order which was under challenge before the ITAT.

17. In the considered view of the Court, no substantial question of law arises from the impugned order of the ITAT. The appeals are accordingly dismissed but, in the circumstances, no orders as to costs.

A handwritten signature in black ink, appearing to be 'S. Muralidhar'.

**S. MURALIDHAR, J.**

A handwritten signature in black ink, appearing to be 'Prathiba M. Singh'.

**PRATHIBA M. SINGH, J.****AUGUST 21, 2017***rd*