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

% **Date of Decision : 2nd May, 2018**

\+ **ITA 524/2018**

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-3
..... Appellant

Through:

versus

GAURAV ARORA ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

S. RAVINDRA BHAT, J (ORAL)

In this appeal under Section 260A of the Income Tax Act, 1961 (hereafter referred to as the "Act"), the Commissioner of Income Tax (hereafter referred to as the "Revenue") has impugned the order of the Income Tax Appellate Tribunal (ITAT). The Tribunal affirmed the order of the Appellate Commissioner (CIT) who had upset the decision of the Assessing Officer (hereafter referred as AO). The question of law which the Revenue seeks to urge before the Court is that the AO was justified in bringing to tax a sum of ₹17,19,14,701/- on account of Section 2(22)(e) of the Act.

The brief facts are that the respondent/assessee had filed a return of income on 15.03.2010 declaring income to the extent of ₹1,07,26,905/-. The case was selected for scrutiny; notice under Section 143(2) of the Act was issued on 01.09.2010 and subsequently, assessment was completed on scrutiny basis on

13.12.2001 with a return of income of ₹1,07,26,905/-. It is undisputed that on 30.03.2012, a search and seizure action took place under Section 132 of the Act. Subsequently, notice was issued on 05.08.2013. The assessee responded by filing return of income for the concerned Assessment Year declaring the originally returned income (₹1,07,26,905/-). This assessment was completed, however, on 31.03.2015, the assessee had a total income of ₹19,06,41,600. The AO added ₹17,19,14,701/- under Section 2(22)(e) of the Act.

The assessee appealed to the CIT(A) which took note of the decision of this Court in *Commissioner of Income Tax v. Kabul Chawla* (2015) 380 ITR 573 and after noticing that no fresh material was found during the course of the search, thus directed the deletion of the amount of ₹17,19,14,701/- brought to tax under Section 153A. The Revenue appealed to the ITAT, which by the impugned order affirmed his determination. The ITAT reasoning is as follows:

> *"3. Ld. CIT(A) considering explanation of the assessee found that since original assessment u/s 143(3) was completed on 13.12.2011 prior to the search therefore, assessment was completed and no assessment was pending on the date of search. It was also found the addition made by the AO is not based on any incriminating documents/seized material found during the search and seizure action u/ s 132 of the Act on 30.03.2012. Ld. CIT(A), therefore, found that since no assessment was pending at the time of initiation of action u/s 132 on 30.03.2012 and also addition u/s 2(22)(e) of the IT Act is not based on any incriminating documents, therefore; issue is covered against the revenue by judgment of Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla (supra), the appeal of the assessee was accordingly allowed.*
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> *4. After considering the rival contention, we are of the view the issue is covered in favour of the assessee by judgment of Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla (supra) in which it was held:*
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> > *"IT: Completed assessments can be interfered with by Assessing Officer while making assessment under section 153A only on the basis of some incriminating material*

unearthed during the course of search which was not produced or not already disclosed or made known in course of original assessment."

After hearing counsel for the parties and considering the grounds urged in support of the Revenue's appeal, this Court is of the opinion that there is no infirmity with the decision of the ITAT. In *Kabul Chawla* (supra), the Court had clearly indicated that the AO cannot arbitrarily complete the block assessment under Section 153A "without any relevance or nexus with the seized material". The Court also held that an assessment in such circumstances has to be made under the provision only on the basis of seized material. Furthermore, it was held that in the absence of any incriminating material, the completed assessment can be reiterated and abetted assessment or re-assessment can be made. In the present case, the Revenue does not urge that it discovered any new material justifying the addition under Section 2(22)(e). Rather, there was no material to connect the additions made under that head. Clearly, there was no incriminating material or facts or circumstances justifying the addition of ₹17,19,14,701/-.

We, therefore, are of the opinion that there is not infirmity with the order or approach of the ITAT. No question of law arises. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

MAY 02, 2018/akv