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

+ **ITA 658/2019**

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)- 2

..... Appellant

Through: Mr. Deepak Anand, Junior Standing
Counsel for Mr. Zoheb Hossain,
Senior Standing Counsel, both for
Revenue

versus

M/S MEROFORM INDIA PVT. LTD.

..... Respondent

Through: Mr. Sameer Rohatgi, Mr. Akshit
Pradhan and Ms. P. Shree Banerjee,
Advocates

+ **ITA 659/2019**

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)- 2

..... Appellant

Through: Mr. Deepak Anand, Junior Standing
Counsel for Mr. Zoheb Hossain,
Senior Standing Counsel, both for
Revenue

versus

M/S MEROFORM INDIA PVT. LTD.

..... Respondent

Through: Mr. Sameer Rohatgi, Mr. Akshit
Pradhan and Ms. P. Shree Banerjee,
Advocates

+ **ITA 660/2019**

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)- 2

..... Appellant

Through: Mr. Deepak Anand, Junior Standing
Counsel for Mr. Zoheb Hossain,
Senior Standing Counsel, both for
Revenue



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versus

MEROFORM INDIA PVT.LTD. Respondent

Through: Mr. Sameer Rohatgi, Mr. Akshit Pradhan and Ms. P. Shree Banerjee, Advocates

+

ITA 661/2019

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)- 2

.... Appellant

Through: Mr. Deepak Anand, Junior Standing Counsel for Mr. Zoheb Hossain, Senior Standing Counsel, both for Revenue

versus

MEROFORM INDIA PVT. LTD. Respondent

Through: Mr. Sameer Rohatgi, Mr. Akshit Pradhan and Ms. P. Shree Banerjee, Advocates

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ITA 663/2019

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)- 2

.... Appellant

Through: Mr. Deepak Anand, Junior Standing Counsel for Mr. Zoheb Hossain, Senior Standing Counsel, both for Revenue

versus

M/S MEROFORM INDIA PVT. LTD. Respondent

Through: Mr. Sameer Rohatgi, Mr. Akshit Pradhan and Ms. P. Shree Banerjee, Advocates

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ITA 664/2019

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)- 2

.... Appellant

Through: Mr. Deepak Anand, Junior Standing



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Counsel for Mr. Zoheb Hossain,
Senior Standing Counsel, both for
Revenue

versus

M/S MEROFORM INDIA PVT. LTD.

..... Respondent

Through: Mr. Sameer Rohatgi, Mr. Akshit
Pradhan and Ms. P. Shree Banerjee,
Advocates

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
22.07.2019

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CM APPLs. 32137/2019, 32138/2019, 32139/2019, 32140/2019,
32142/2019 and 32143/2019 (delay in re-filing the appeals)

1. For the reasons explained in the applications, the delay in re-filing the appeals is condoned. The applications are allowed.

ITA 658/2019, 659/2019, 660/2019, 661/2019, 663/2019, 664/2019

2. These appeals by the Revenue are against common impugned order dated 31st July, 2018 passed in ITR Nos. 4630, 4631, 4632, 4633, 4634, 4635/Del/2014 for Assessment Years (AYs) 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12.

3. The common question of law that has been urged by the Revenue in all these appeals concerns the correctness of the impugned order of the Income Tax Appellate Tribunal ('ITAT') upholding the order of Commissioner of Income Tax (Appeals) ['CIT (A)'] that there was no incriminating material



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recovered against the Assessee during the course of the search warranting re-opening of assessments and making the additions under Section 153A of the Income Tax Act, 1961 ('the Act').

4. The ITAT has noticed that search and seizure was conducted in the business premises of the Assessee on 19th October, 2010 and notices under Section 153A of the Act were issued on 27th September, 2012. In each of the above Assessment Years for which notices were issued, as far as AYs 2006-07 to 2008-09 were concerned, returns had been filed on the due date and even assessment had been completed under Section 143 (3) of the Act much before the date of the search. The learned CIT(A) agreed with the Assessee that the judgment of this Court in *CIT v. Kabul Chawla (2016) 380 ITR 573* would apply, particularly since the Revenue was not able to dispute that no incriminating material was found qua the additions made for the AYs in question.

5. In the impugned order, the ITAT followed the judgment of this Court in *CIT v. Kabul Chawla (Supra)* and for the AYs 2006-2007 to 2008-2009, it held that the additions were beyond the scope of assessment under Section 153A of the Act.

6. The ITAT then proceeded to discuss the additions for the remaining AYs i.e. 2009-2010, 2010-2011 and 2011-2012. As regards two of the AYs i.e. 2010-2011 and 2011-2012, it found that the expenses shown by the Assessee in its books of accounts were incurred during the normal course of business.



(5)

Consequently, these additions were rightly held to have been deleted by the CIT (A).

7. Learned Counsel for the Revenue has drawn the attention of the Court to a statement recorded during a course of a survey made under Section 133A of the Act in the case of one M/s Nitin Enterprises by one of its partners. The statement adverted to the said Nitin Enterprises being engaged in the practice of issuing bogus bills to various parties. The statement was to the effect that the Assessee had issued cheques against bogus bills for which cash had been later paid to the Assessee.

8. The ITAT has in the impugned order taken note of the fact that before the AO, the Assessee produced various documents which showed that there was litigation between the Assessee and M/s Nitin Enterprises which ended in a settlement. These documents were before the AO who took no adverse view thereof. The ITAT noted that the statement had been recorded behind the Assessee's back and the person making the statement was not subjected to cross-examination. In the circumstances, the ITAT concurred with the detailed findings rendered by the CIT(A) on this issue.

9. A similar view was taken by the ITAT in respect of purchases made from one M/s Kiran Furnitures. The ITAT has in the impugned order examined the documents and evidence afresh and has given detailed reasons in support of its concurrence with view expressed by the CIT (A). The additions made by the AO for AY 2011-2012, which have been deleted by the CIT (A),

...in detail by the ITAT in the impugned order and



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findings concurring with the views expressed by the CIT(A) have been rendered.

10. In view of the concurrent findings of both the CIT(A) and ITAT on facts, the Court finds that in the present cases, no substantial question of law arises from the impugned common order of the ITAT.

11. These appeals are accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 22, 2019

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