



\$~27

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

Date of Decision: 15.12.2021

+ **ITA 174/2021 & CM 45209/2021**
PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-3 Appellant
 Through Ms.Vibhooti Malhotra, Adv.

Versus

M/S STC DEVELOPER PVT. LTD. Respondent
 Through Mr.Ved Jain, Ms.Richa, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

CM 45209/2021 (exemption)

Allowed, subject to all just exceptions.

ITA 174/2021

1. Present appeal has been filed challenging the order of the ITAT dated 28th February, 2020 passed in ITA 2738/DEL/2016.
2. Learned Counsel for the Appellant states that the ITAT has not recorded any independent reasoning to deviate from the findings recorded in the assessment order that the Respondent had failed to discharge its onus to prove the genuineness of the sale transaction with regard to the shop in the Cross River Mall.
3. Learned Counsel for the Appellant states that the impugned order is erroneous as it fails to appreciate that the seized material



indicated that certain portion of the transaction was conducted 'out of book' as the total consideration recorded is at Rs.14,62,91,143/-. She further states that the amount payable by cheque recorded in the seized material bears complete resemblance to the cheque amount actually received by the Respondent and the particulars of the cheque numbers also match. She also states that the square footage of the shop between the seized document and the actual shop sold by the respondent also match.

4. Learned counsel for the Appellant further states that the ITAT has grossly erred in relying on the decision of this Court in the case of **Pr. CIT (Central -2) v. Vinita Chaurasia ITA 1104/2015** without appreciating the distinction on facts. She emphasis that this Court in **Vinita Chaurasia (supra)** had deleted the additions on account of Revenue's failure to satisfy the jurisdictional benchmark of 'belong to' under Section 153C of the Act. However, she states that the Tribunal failed to appreciate that in the present case, the assessing officer having jurisdiction over the respondent had duly recorded his satisfaction that the seized material belonged to the respondent.

5. Having heard learned counsel for the appellant, this Court finds that the name of the assessee nowhere appears in the computer generated loose sheets found from the residence of Mr.Lalit Modi, the alleged broker.

6. ITAT in its impugned order has concluded that there was no corroborative evidence or statement to prove that the payment had been received by the assessee other than cheque amount as entered in the sale agreement. The Tribunal had observed that on the bare



perusal of the seized document it cannot be inferred or concluded that seized document belongs to or has any nexus with the assessee.

7. In our opinion, the Tribunal/ITAT has given cogent reasons for arriving at its decision.

8. This Court also finds that in the case of **Vinita Chaurasia** (supra), who had purchased a number of properties from the assessee, this Court had dismissed a similar appeal filed by the Revenue being ITA No.1104/2020. Further, the Division Bench in the said case had not only dismissed the appeal on the ground of jurisdiction but also on merits.

9. A Special Leave Petition filed against the said judgment has also been dismissed by the Supreme Court.

10. Consequently, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

DECEMBER 15, 2021

RN