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

+ **ITA 7/2022 & CM APPL.1972/2022**

PRINCIPAL COMMISSIONER OF  
INCOME TAX (CENTRAL) – 3

..... Appellant

Through: Ms.Vibhooti Malhotra, Advocate.

versus

ISHWAR CHAND MITTAL

..... Respondent

Through: None.

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Date of Decision: 12<sup>th</sup> January, 2022.

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

### **J U D G M E N T**

#### **MANMOHAN, J. (Oral)**

1. The appeal has been heard by way of video conferencing.
2. Present appeal has been filed challenging the order passed by the Income Tax Appellate Tribunal [ITAT] dated 25<sup>th</sup> August, 2020 rejecting the appellant's appeal being ITA 8706/Del/2019 for the Assessment Year 2011-12.
3. The relevant facts of the present case are that the respondent/assessee filed the original return of income on 27<sup>th</sup> July, 2011. A search was conducted at the premises of the respondent/assessee on 22<sup>nd</sup> March, 2012 and the assessment was framed under Section 153A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') vide order dated 28<sup>th</sup> February, 2014.



4. On 31<sup>st</sup> March, 2016, a notice of reassessment under Section 148 of the Act was issued and served upon the respondent/assessee. The reason for re-opening the assessment was that the Investigation Directorate of Kolkata had informed the Assessing Officer that the respondent/assessee had traded in penny stocks and used the said transactions to allegedly book bogus claims of Long Term Capital Gain.

5. However, the admitted position is that the Long Term Capital Gain had not only been disclosed in the return of income by the respondent/assessee, but the same was also claimed to be exempt.

6. No adverse inference was made to the returned income of the respondent/assessee even when the Assessing Officer was fully aware of the Long Term Capital Gain claimed as exempt from tax.

7. Consequently, this Court is of the view that in the garb of reassessment proceedings, the appellant cannot seek to verify the same details on the strength of material which was already available on record. This Court is also in agreement with the finding of the Tribunal that the assumption of jurisdiction by issuing notice under Section 148 of the Act is bad in law. Accordingly, the present appeal and application are dismissed.

**MANMOHAN, J**

**NAVIN CHAWLA, J**

**JANUARY 12, 2022**

**TS**