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

+ ITA 132/2022

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr. Sanjay Kumar, Advocate.

versus

S.S. CON BUILD PVT. LTD.

..... Respondent

Through: None.

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Date of Decision: 28th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the order dated 8th April, 2021 passed by the Income Tax Appellate Tribunal [ITAT] in ITA No. 1986/Del./2016 for the Assessment Year 2007-08.
2. Learned counsel for the Appellant states that the ITAT has erred in deleting the addition of Rs.33,91,35,982/- made by the Assessing Officer on account of unexplained credit under Section 68 of the Income Tax Act, 1961(hereinafter referred to as 'the Act') on account of the fact that the Assessing Officer could not have proceeded to frame assessment under Section 153A of the Act as no incriminating documents/assets were found during the search without appreciating that the provision of Section 153A of the Act does not stipulate any such condition.



3. Learned counsel for the Appellant further states that the ITAT has erred in placing reliance upon the judgment of this Court in *Commissioner of Income Tax vs. Kabul Chawla, (2016) 380 ITR 573* wherein it was held that in the absence of any incriminating material, the Assessing Officer cannot re-apprise and review the assessments already completed and settled before the date of search under Section 153A of the Act.

4. He states that the Revenue has not accepted the judgment of this Court in *Commissioner of Income Tax vs. Kabul Chawla* (supra) and has preferred Special Leave petitions which are pending adjudication.

5. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date.

6. Consequently, in view of the judgments passed by the Supreme Court in *Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359* and *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1*, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench.

MANMOHAN, J

SUBRAMONIUM PRASAD, J

APRIL 28, 2022
AS