$~**8**

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

\+ **ITA 74/2020**

PR. COMMISSIONER OF INCOME TAX ..... Appellant
Through: Mr.Zoheb Hossain, Sr. Standing Counsel with Mr.Vipul Agarwal, Jr. Standing Counsel.

versus

M/S SHRI RATHI STEEL (DAKSHIN) LTD ..... Respondent
Through: Mr.Ved Jain & Ms.Richa Mishra, Advs.

% Date of Decision: 20th January, 2022

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

JUDGMENT

MANMOHAN, J (ORAL)

1. The matter has been heard by way of video conferencing.

2. Present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') challenging the order dated 31st May, 2019 passed in ITA No.7973/Del/2018 for the assessment year 2009-10.

3. In the present appeal, the following questions of law arise for consideration:-

A. Whether the ITAT has erred in law in relying on the ratio held in CIT v. Kabul Chawla 380 ITR 573 and in holding that completed assessment could not be interfered without incriminating material in view of the provision of law under Section 153 A of the Income Tax Act, 1961 which does not stipulate any such condition on the Assessing Officer?

B. Whether the ITAT has erred in law in relying on the ratio held in CIT v. Kabul Chawla 380 ITR 573 and deleting the addition of Rs. 4,00,00,000/- made by the AO on account of share capital under Section 68 of the Income Tax Act, 1961?

C. Whether ITAT has erred in dismissing the appeal of the Revenue by relying on the decision of the Hon'ble High Court in CIT v. Kabul Chawla 380 ITR 573 CIT, without properly appreciating the provisions contained in section 153A of the IT Act which does not require to have any incriminating material found during the search and seizure action as an essential requirement for making an addition in the assessment?

D. Whether the ITAT has erred in dismissing the appeal of the Revenue by relying on the decision of the Hon'ble High Court in CIT v. Kabul Chawla 380 ITR 573, without properly appreciating the provisions contained in section 153A which starts with the non-obstante clause which seeks to operate in the supersession of provisions contained in section 139, 147, 148, 149, 151 and 153?

E. Whether the ITAT has erred in dismissing the appeal of the Revenue by relying on the decision of the Hon'ble High Court in CIT v. Kabul Chawla 380 ITR 573, without properly appreciating the provisions contained in section 153A which have been inserted w.e.f. 01.06.2003 after the provisions contained in section 158BC and other allied provisions contained in chapter XIV- B which were made inapplicable after 31.05.2003 as per section 158BI of the IT Act?

F. Whether the Hon'ble ITAT has erred in not appreciating the Hon'ble Allahabad High Court's decision in the case of CIT (Central) Kanpur vs. Rajkumar Arora (2014) 211 Taxman 453 that the assessing officer has power to re-assess returns of assessee not only for undisclosed income which was found during search operation but also with regard to material that was available at the time of original assessment?

G. Whether the ITAT has erred in allowing the appeal of the assessee without examining the merits of the additions made u/S 68 of the I.T.

Act, 1961 on account of receipt of share capital from undisclosed sources?

H. Whether the ITAT has erred in allowing the appeal of the assessee without examining that the assessee has failed to prove the genuineness of transactions as well as creditworthiness of the investing companies as well as the investors to the investing companies?

4. Admittedly, a learned predecessor Division Bench has dealt with interplay of Section 132 read with Section 153A of the Act in the case of ***Commissioner of Income Tax vs. Kabul Chawla (2015) SCC OnLine Del 11555***. The legal position summarised in ***Kabul Chawla*** (supra) is reproduced hereinbelow:-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the

basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

5. This Court in the case of ***Principal Commissioner of Income Tax vs. Bhadani Financiers Pvt. Ltd., 2021 SCC OnLine Del 4430*** has held that where the assessment of the respondents had attained finality prior to the date of search and no incriminating documents or materials had been found and/or seized at the time of search, no addition can be made under Section 153A of the Act.

6. In the present case, the Tribunal, which is the last fact finding authority, has conclusively found that no incriminating materials had been found and/or seized at the time of search.

7. Consequently, the present appeal being bereft of merit is dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

JANUARY 20, 2022/KA