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

+ ITA 289/2022

PRINCIPAL COMMISSIONER OF INCOME
TAX CENTRAL 3 DELHI

..... Appellant

Through: Mr. Abhishek Maratha, Sr. Standing
Counsel for Revenue.

versus

ALCHEMIST CAPITAL LTD

..... Respondent

Through: None.

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Date of Decision: 30th August, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (ORAL):

1. Present Income Tax Appeal has been filed challenging the order dated 16th July, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.7773/Del./2017 for Assessment Year 2009-10. The relevant portion of the impugned order is reproduced hereinbelow:

"6. We have gone through the records in the light of submissions made by Id. DR. There is no dispute of the fact that the search & seizure operation in this case took place on 20.06.2014, by which date the time period to issue notice u/s. 143(2) for assessment year 2009-10 stood expired. There is also no dispute that no incriminating material was found during the search and seizure operation to base any addition qua this assessment year.



7. In CIT vs. Kabul Chawla (supra), Hon'ble Delhi High Court held that the assessment cannot be made arbitrarily without any relevance or nexus with the seized material and the assessment in such cases has to be made only on the basis of incriminating material found during the search and completed assessments cannot be interfered with arbitrarily. In such circumstances, the finding of the ld. CIT(A) cannot be interfered with."

2. Learned counsel for the Appellant states that the ITAT has erred in holding that no addition can be made under Section 153A of the Income Tax Act, 1961 ('the Act'), if it is not based on seized material/documents found during the course of search and seizure operations under Section 132 of the Act.

3. He states that the Supreme Court of India has admitted SLP vide Diary No.37848/2015 in the case of Apar Industries Ltd. decided by Bombay High Court in ITA No.1669/2013 dated 08th May, 2015, which is a lead case tagged with more than 115 cases on the issue of restriction of addition only to incriminating material found during search.

4. This Court finds that the conclusion reached in ***Commissioner of Income Tax vs. Kabul Chawla, (2016) 380 ITR 573*** was summarized in ***PCIT vs. Meeta Gutgutia, (2017) 82 taxmann.com 287 Del.*** The relevant portion of the Judgment passed in ***PCIT vs. Meeta Gutgutia*** (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. Even, this Court in ***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 seized at the time of search, no addition could be made under Section 153A of the Act as the cases of the respondents were of non-abated assessment.

6. Further, both the CIT(A) and the ITAT have given concurrent findings of fact that no incriminating evidence had been brought on record by the Assessing Officer and the time for issuing notice under Section 143(2) had elapsed at the time the search proceedings had been undertaken.

7. Keeping in view the aforesaid mandate of law as well as the facts, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the present appeal is dismissed.

सत्यमेव जयते

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 30, 2022
msh/KA