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

+ **ITA 999/2019**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3

..... Appellant

Through: Mr.Ajit Sharma, CGSC.

versus

ARCHANA SALUJA

..... Respondent

Through: None

WITH

+ **ITA 1011/2019**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3

..... Appellant

Through: Mr.Ajit Sharma, CGSC.

versus

ANKUSH SALUJA

..... Respondent

Through: None

AND

+ **ITA 1016/2019**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3

..... Appellant

Through: Mr.Ajit Sharma, CGSC.

versus

SALUJA CONSTRUCTION CO. LTD.

..... Respondent

Through: None



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Date of Decision: 10th February, 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 appeals have been heard by way of video conferencing.
2. The Income Tax Appellate Tribunal ('ITAT') had dismissed the appeals filed by the revenue holding that no addition can be made under Section 153A of the Income Tax Act, 1961 ('the Act'), as the assessments of the respondents had attained finality prior to the date of search and no incriminating document or material had been found and/or seized at the time of search under Section 132 of the Act.
3. When the present appeals were listed for hearing on 17th December, 2019, learned counsel for the appellant/revenue had referred to the Remand Report submitted by the Assessing Officer vide its letter dated 14th December, 2015 in which it was stated as under:-

“In this connection, it is submitted that during the search dated 12.01.2012, on the basis of seized documents (page 101 Annexure A-22), the assessee group made disclosure of additional income on account of undisclosed loans/ advances. Since the issue involved in documents seized during the search was loans/ advances, therefore, during assessment proceedings under Section 153A in pursuance of search dated 12.01.2012, the assessee was asked to prove the loans/ advances. The assessee failed to prove these credits during assessment proceedings and accordingly additions were made under Section 68 of I.T. Act. Therefore, the plea taken by the assessee that nothing adverse was found during search does not hold good. Further in majority of cases such loans have not been squared up or repaid. Hence plea of assessee is not acceptable.”



4. The learned predecessor Division Bench vide order dated 17th December, 2019 had directed learned counsel for the appellant/revenue to place on record the original seized documents (Page 101, Annexure A-22) as referred to in the Remand Report on or before the next date of hearing. However, despite lapse of more than two years, the said document has not been placed on record.

5. Today, learned counsel for the appellant states that he has received the said document from a colleague who is handling a similar appeal filed against the respondents.

6. This Court is of the view that the ITAT is the final fact-finding Authority. If it has erroneously come to a conclusion that no incriminating material had been found during the course of search under Section 132 of the Act, the appellant should have filed an application under Section 254 of the Act before the ITAT.

7. At this stage, learned counsel for the appellant wishes to withdraw the present appeals with liberty to file an application under Section 254 of the Act before the ITAT. With the aforesaid liberty, the present appeals stand disposed of. However, this Court clarifies that the rights and contentions of all the parties are left open.

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 10, 2022
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