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

+ **ITA 322/2023**

+ **ITA 323/2023**

+ **ITA 327/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel.

versus

NAGAR DAIRY PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

ORDER

% **01.06.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL.30728/2023 in ITA 322/2023

CM APPL.30730/2023 in ITA 323/2023

CM APPL.30739/2023 in ITA 327/2023

1. Allowed, subject to just exceptions.

CM APPL.30727/2023 in ITA 322/2023

CM APPL.30729/2023 in ITA 323/2023

CM APPL.30738/2023 in ITA 327/2023 [*Applications filed on behalf of
the appellant seeking condonation of delay of 14 days in filing the
appeals*]

2. These applications seek condonation of delay in filing the above-
captioned appeals.

3. The period of delay as per the appellant/revenue is, 14 days, in each of
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the appeals.

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3. Having regard to the period of delay and the reasons given in the applications, the delay is condoned.

4. The applications are disposed of, in the aforesaid terms.

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5. These appeals concern Assessment Years (AYs) 2008-09 [ITA 322/2023], 2007-08 [ITA 323/2023] and 2007-08 [ITA 327/2023].

6. These appeals assail the order of the Income Tax Appellate Tribunal [in short, "Tribunal"] dated 23.11.2022.

7. A perusal of the following paragraphs of the Tribunal reveals that a finding of fact has been returned to the effect that no incriminating material was found insofar as the aforementioned AYs are concerned:

*"20. As per the seized paper 34 of Annexure A-2 and page 37 of Annexure A-3 which are containing vouchers showing payment in cash for purchase of milk for AY 2010-11 & 2011-12 pertaining to the assessee. **Admittedly the alleged documents were seized during the search are not pertaining to the assessment year 2007-08 to 2009-10 and the same is belongs to Assessment years 2010-11 & 2011-12. But the Ld. A.O. has made additions even the years under consideration i.e. 2007-08 to 2009-10. The initiation of the proceedings u/s 153C of the Act by the Assessing Officer should be related to assessment year sought to be reopened.** As discussed above the additions made for the Assessment Year 2007-08 to 2009-10 is not related to the document found during the search.*

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*23. **In the present case, the alleged documents were seized during the search are not pertaining to the assessment year 2007-08 to 2009-10 and the same is belongs to Assessment years 2010-11 & 2011-12, therefore, the addition made by the A.O. for the years under consideration i.e. 2007-08 to 2009-10 cannot be sustained by applying the ratio laid down in the case of ACIT' Vs. Anush Finlease &***

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Construction (P.) Ltd. [2019] 104 taxmann.com 295(Delhi-Trib.), PCIT Vs. Index Securities (P.) Ltd. [2017] 86 taxmann.com 84, CIT Vs. Kabul Chawla (380 ITR 573). Thus, it is clear that the satisfaction though recorded was not based on the material relevant to the year in question and also the additions made were not based on the incriminating material found and seized during the course of search u/s 132.

[Emphasis is ours]

7. As, correctly, observed by the Tribunal, the issue is covered by the judgment of the coordinate bench of this court in *CIT v. Kabul Chawla*, 380 ITR 573.
8. The decision in *Kabul Chawla*'s case has been affirmed by the Supreme Court in *Principal Commissioner of Income Tax v. Abhisar Buildwell*, 2023 SCC OnLine SC 481.
9. Given the position that no incriminating material was found for the AYs in issue, we find no reason to interfere with the impugned judgment.
10. Therefore, according to us, no substantial question of law arises for our consideration.
11. The appeals are accordingly closed.
12. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

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