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

\+ ITA 44/2021 & CM No.6158/2021

PR. COMMISSIONER OFLNCOME TAX (CENTRAL)- 3
..... Appellant
Through Mr.Ajit Sharma, Sr.SC with Mr.Anant Ram Mishra, Adv.

versus

M/S JAYPEE FINANCIAL SERVICES LTD ..... Respondent
Through Mr.Ved Jain and Ms.Richa Mishra, Advs.

% Date of Decision: 20th July, 2021

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

MANMOHAN, J. (Oral)

1. The hearing has been conducted through video conferencing.

2. The present appeal under Section 260A is directed against the order dated 05th September, 2019 passed by Income Tax Appellate Tribunal, in ITA No. 4264/Del/2016 for the Assessment Year 2009-10 whereby the appeal of the Revenue has been dismissed.

3. Briefly stated, the assesse is a company engaged in trading of equity shares, securities and commodities through recognized exchanges. It filed its return of income on 29.09.2009 declaring total income of Rs. 90,70,540/-. The return was processed on 01.11.2010.

Subsequently, on 30.03.2012, a search and seizure operation under Section 132 was initiated in the case of the assesse, as part of Jaypee Group. During search, data of the computers found at the premises was cloned and seized along with certain documents. Thereafter, on 05.08.2013, a notice under Section 153A of the Act was issued. Pursuant thereto, the assessee filed its return of income reiterating the return of income filed by them. During the course of post search proceedings, the assessing officer found evidence of Client Code Modifications done by M/s Jaypee Capital Services Ltd. and Futurz Next Services Ltd, companies registered with NSE, MCX, and NCDEX and United Stock Exchange. A Special Auditor was appointed u/s 142(2A) and directed to file a report on the aspect of Client Code Modifications done by the afore-noted companies as well the assessee company. On the basis of the Auditor Report and the response of the assessee, the AO concluded that in the case of member (broker) group companies of the assessee, the Client Code Modification is by and large not for genuine reasons and is rather for extraneous considerations. The net effect of profit and loss shifting in the code of assessee-company has been suppressed in its books of accounts. Accordingly an amount of Rs. 22,16,30,832/- was added to the income on account of Client Code Modification. Further, a sum of Rs. 60,000/- was also disallowed under section 40A(3) of the Act and added to the income of the assessee for expenditure incurred in cash by the assessee beyond the limit prescribed under the Income Tax Act. The total income was assessed as Rs.23,07,61,370/-.

4. In appeal preferred by the assessee, the CIT(A), following the dicta of this court laid down in ***CIT Vs. Kabul Chawla, 2015 SCC OnLine Del 11554***, held that no assessment/reassessment proceedings were pending on 30.03.2012 when search action took place and hence no assessment was abated. The addition made by the AO is not based on any incriminating document/seized material found during the course of search and seizure action u/s 132 of the Act and accordingly the same were deleted. In further appeal preferred by the Revenue before the ITAT, the findings of the CIT(A) were confirmed.

5. Before us, Mr. Ajit Sharma, learned senior standing counsel for the Revenue, further submits that findings of the ITAT are perverse in as much as the incriminating material was infact found during the course of search and therefore additions were justified. In support of his submissions, he refers to para 2 of the assessment order which records that "during the course of search incriminating documents and evidences have been found and seized. The data in the computer was also cloned and seized along with physical documents". Mr. Sharma further submits that at the stage of passing of the assessment order, the decision of ***CIT Vs. Kabul Chawla*** (supra) was not available and therefore, assessing officer did not consider it necessary to give a complete description of the incriminating material by recording the details of the panchnama.

6. We have perused the record. Both the CIT(A) as well as the ITAT have held in the instant case that the addition is not based on any incriminating material found during the course of search and the

assessment was not pending on the date of search. The observations of the assessing officer relied upon by Mr. Sharma do not give us any insight or clue about the 'incriminating material' which is claimed to be in existence. In the proceedings before the CIT(A) as well as the ITAT, the Revenue has not made any attempt so as to disclose the incriminating material. Even in the present appeal, the revenue is unable to explain or give us any indication about the same.

7. The findings of facts returned by CIT(A) and ITAT are not be interfered with lightly. The view taken by the tax authorities based on the decision of ***CIT Vs. Kabul Chawla*** (supra) cannot be held to be perverse. The questions of law proposed by the Revenue are squarely covered by the aforesaid judgment.

8. In view of the above, no question of law, much less a substantial question of law, arises for our consideration. Accordingly, the present appeal, along with pending application, is dismissed.

9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

JULY 20, 2021