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

**ITA 910/2015**

COMMISSIONER OF INCOME TAX-(CENTRAL)-I ..... Appellant  
Through: Mr. Kamal Sawhney, Senior standing  
counsel with Mr. Raghvendra Singh, Junior  
standing counsel, Mr. Sharad Agarwal and Mr.  
Shikhar Garg, Advocates.

versus

JAKSON ENGINEERS LTD. .... Respondent  
Through Mr. Pranjal Srivasatav, Advocate

With

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**ITA 911/2015**

COMMISSIONER OF INCOME TAX-(CENTRAL)-I ..... Appellant  
Through: Mr. Kamal Sawhney, Senior standing  
counsel with Mr. Raghvendra Singh, Junior  
standing counsel, Mr. Sharad Agarwal and Mr.  
Shikhar Garg, Advocates.

versus

JAKSON ENGINEERS LTD. .... Respondent  
Through Mr. Pranjal Srivasatav, Advocate

With

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**ITA 912/2015**

COMMISSIONER OF INCOME TAX-(CENTRAL)-I ..... Appellant  
Through: Mr. Kamal Sawhney, Senior standing  
counsel with Mr. Raghvendra Singh, Junior  
standing counsel, Mr. Sharad Agarwal and Mr.  
Shikhar Garg, Advocates.

versus



JAKSON ENGINEERS LTD. .... Respondent  
Through Mr. Pranjal Srivasatav, Advocate

And

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**ITA 913/2015**

COMMISSIONER OF INCOME TAX-(CENTRAL)-I ..... Appellant  
Through: Mr. Kamal Sawhney, Senior standing  
counsel with Mr. Raghvendra Singh, Junior  
standing counsel, Mr. Sharad Agarwal and Mr.  
Shikhar Garg, Advocates.

versus

JAKSON ENGINEERS LTD. .... Respondent  
Through Mr. Pranjal Srivasatav, Advocate

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE VIBHU BAKHRU**

**ORDER**

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**07.12.2015**

**CM APPL No. 29056/015 (for exemptions) in ITA 910/2015**

**CM APPL No. 29058/015 (for exemptions) in ITA 911/2015**

**CM APPL No. 29060/015 (for exemptions) in ITA 912/2015**

**CM APPL No. 29062/015 (for exemptions) in ITA 913/2015**

1. Exemptions allowed subject to all just exceptions.
2. The applications are disposed of.

**CM APPLs 29057/2015 (for delay in re-filing appeal) in ITA 910/2015**

**CM APPLs 29059/2015 (for delay in re-filing appeal) in ITA 911/2015**

**CM APPLs 29061/2015 (for delay in re-filing appeal) in ITA 912/2015**

**CM APPLs 29063/2015 (for delay in re-filing appeal) in ITA 913/2015**

3. For the reasons stated therein, the delay in re-filing the appeal is condoned.



4. The applications are disposed of.

**ITA Nos. 910/2015, 911/2015, 912/2015 & 913/2015**

5. Notice. Through Mr. Pranjali Srivastava, Advocate accepts notice for the Respondent.

6. These four appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') are directed against the impugned order dated 11<sup>th</sup> April 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in the ITA Nos. 660/Del/2014, 661/Del/2014, 350/Del/2013 and 352/Del/2013 for the Assessment Years ('AYs') 2006-07, 2007-08, 2007-08 and 2006-07 respectively.

7. The facts in brief are that search and seizure operations were conducted on 10<sup>th</sup> February 2010 in the premises of the Jakson group of companies headed by Mr. S.K. Gupta. The Jakson group was manufacturing and trading in panels, canopies and part of diesel generator sets. According to the Department, during the course of search, the undisclosed income of Rs. 19.94 crores was found which was been surrendered by Mr. S.K. Gupta. In response to the notice issued under Section 153A of Act, the Respondent Assessee filed a return declaring an income of Rs. 9,89,76,180. Thereafter, notices under Sections 143 (2) and 142 (1) along with detailed questionnaire were issued. An addition of Rs. 35,63,593 was made by the Assessing Officer ('AO') under provisions of Section 14A read with Rule 8D.

8. On appeal, the Commissioner of Income Tax (Appeals) ['CIT (A)'] negatived the contention sought to be urged by the Assessee that the notice under Section 153A of the Act was invalid. However, the CIT (A) granted



a partial relief as regards the disallowance under Section 14A of the Act and restricted the disallowance to 1.06% of the gross income.

9. The Assessee then appealed to the ITAT which has, in the impugned order dated 11<sup>th</sup> April 2014, followed the decision of this Court in ***CIT v. Anil Bhatia 352 ITR 493 (Del)*** and held thus:

“13. We thus decide the issue of validity of initiation of proceeding under Section 153A of the Act and the assessment framed there under in furtherance to the said notice in favour of the Assessee. In result, we hold that the notice issued under Section 153A in absence of incriminating material was invalid and accordingly, the assessment framed in furtherance thereto is held null and void and is quashed. The related grounds No. 1 to 5 are thus allowed in favour of the Assessee.”

10. Mr. Kamal Sawhney, learned Senior standing counsel for the Revenue submits that the above conclusion of the ITAT is contrary to the decision of this Court in ***Commissioner of Income Tax v. Kabul Chawla (2015) 234 Taxman 300.***

11. Indeed, this Court in ***Kabul Chawla (supra)*** after taking note of the decision of this Court in ***Madugula Venu v. Director of Income Tax [2013] 29 Taxmann.Com 200 (Del)***, summarized the position of law in relation to notices under Section 153A and one of the points in that summary read 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

12. However, as far as the present appeals are concerned, although the ITAT may have erred in holding that the issuance of notice under Section 153A (1) (a) of the Act was invalid, it is not in dispute that *qua* the Respondent Assessee no incriminating material was found during the search so as to justify the addition made in the assessment order passed pursuant to the issuance of such notice. As held in several decisions including *Kabul Chawla (supra)*, no assessment can be framed in terms of the Section 153A of the Act in the absence of the any incriminating material found during the search. Consequently, the net result is that the assessment order will in any event have to remain quashed.

13. In that view of the matter, except to the extent clarified in para 11 above concerning the validity of the notice issued under Section 153 A of the Act, no substantial question of law arises as far as the quashing of the assessment itself.

14. The appeals are dismissed with the above observations.

**S.MURALIDHAR, J**

**VIBHU BAKHRU, J**

**DECEMBER 7, 2015/Rk**