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

% **Date of Decision:02.08.2023**

+ **ITA 419/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr Sanjay Kumar, Senior Standing
Counsel with Ms Easha Kadian and
Ms Hemlata Rawat, Advocates.

Versus

NAGAR DAIRY PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J. (ORAL):

CM No.39036/2023

1. Allowed, subject to just exceptions.

**CM No. 39035/2023 [Application filed on behalf of the appellant/revenue
seeking condonation of delay of 14 days in filing the appeal]**

2. This is an application moved on behalf of the appellant/revenue,
seeking condonation of delay in filing the appeal.

2.1 According to the appellant/revenue, there is a delay of 14 days in
filing the appeal.

3. Having regard to the period of delay, we are inclined to allow the



prayer made in the application.

3.1 It is ordered accordingly.

4. The application is disposed of, in the aforesaid terms.

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5. This appeal concerns Assessment Year (AY) 2009-10.

6. *Via* this appeal, the appellant/revenue seeks to assail the order dated 23.11.2022 passed by the Income Tax Appellate Tribunal [in short, “Tribunal).

7. Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of appellant/revenue, says that issue raised in this appeal stands covered by the judgment dated 01.06.2023, passed in appeals preferred by the appellant/revenue, arising from the aforementioned impugned order passed by the Tribunal.

8. These appeals are ITA No. 322/2023, ITA No. 323/2023 & ITA No. 327/2023.

9. We notice that it is not in dispute that the assessment in the above-captioned AY also stood completed.

10. The Tribunal has returned the finding of fact that no incriminating material was found, insofar as the AY in issue, i.e., AY 2009-10, was concerned, apart from AY 007-08 and 2008-09.

11. This is evident from the following extract embedded in the impugned order:

*“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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xxxx

xxxx

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 & 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]

12. 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).

13. 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.

14. Given the position that no incriminating material was found *qua* the AYs in issue, we find no reason to interfere with the impugned judgment.

15. Therefore, according to us, no substantial question of law arises for our consideration.

16. The appeal is accordingly closed.



17. Parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

AUGUST 2, 2023/RV

Click here to check corrigendum, if any