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

% **Decision delivered on: 22.12.2023**

+ **ITA 807/2023 & CM APPL. 67091/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant
Through: Mr Sanjay Kumar, Sr. Standing
Counsel.

versus

SANJAY SINGHAL 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):

ITA 807/2023 & CM APPL.67091/2023 [Application filed on behalf of the appellant seeking condonation of delay of 55 days in re-filing the appeal]

1. This appeal concerns Assessment Year (AY) 2015-16.
2. Via the instant appeal, the appellant/revenue, seeks to assail the order dated 17.04.2023 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The moot question which arose for consideration before the Tribunal was: Whether the addition amounting to Rs.11,35,85,032/- made by the Assessing Officer (AO) concerning purported undisclosed profit/loss made



by the respondent/assessee from trading in pulses and menthe on MCX/NCDEX was sustainable?

4. The AO took the view that the aforementioned profit/loss was booked in connivance with an entity named Raj Laxmi Commodities Private Limited [in short, "Raj Laxmi"].

4.1 The AO also concluded that Raj Laxmi had given the User ID-3 to an employee of M/s Sharp Corp. Pvt. Ltd. i.e., one Mr Babulal Jangid.

5. The record shows that the respondent/assessee, i.e., Mr Sanjay Singhal at the relevant time was the Principal Officer and MD of the Sharp Group of Companies.

6. It is in these circumstances that the AO invoked the provisions of Section 69A of the Income Tax Act, 1961 [in short, "Act"] and accordingly made an addition in the hands of the respondent/assessee, on substantive basis, and in the hands of Sharp Group of Companies Ltd., *albeit* on protective basis.

7. We have perused the impugned order and the material on record.

8. There are observations made in the impugned order pertaining to Section 69A of the Act.

9. The Tribunal has concluded that since nothing was found in the search and survey conducted *vis-à-vis* Sharp Group of Companies Ltd. and the respondent/assessee/Sanjay Singhal on 07.04.2017, the said provision was not applicable.

10. Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of appellant/revenue, says that the view taken by the Tribunal concerning the applicability of Section 69A of the Act was erroneous and that material was recovered which shows that the respondent/assessee was



the owner of money, and the subject transaction concerning this aspect had not been recorded in the books of account maintained by the respondent/assessee. However, what cannot be denied by Mr Kumar is that the order of the AO is founded completely on the statement of Mr Naresh Kumar Aggarwal, Director of Raj Laxmi.

11. It is also not in dispute that Mr Naresh Kumar Aggarwal's statement was recorded on 29.12.2015 when survey under Section 133A of the Act was conducted *qua* Raj Laxmi.

12. As indicated above, insofar as the Sharp Group of Companies Ltd. and respondent/assessee were concerned, the search and survey was conducted on 07.04.2017. This aspect has been recorded by the Tribunal in paragraph 33 of the impugned order.

13. Clearly, no incriminating material *vis-à-vis* the respondent/assessee was found in the search conducted on 07.04.2017.

14. Even according to Mr Kumar, the AY in issue would have to be treated as a concluded assessment.

15. Given the position that no incriminating material was found in the AY in issue, the addition made by the AO cannot be sustained. [See *CIT vs. Kabul Chawla*, 380 ITR 573 & *Principal Commissioner of Income Tax vs. Abhisar Buildwell*, 2023 SCC OnLine SC 481.]

16. We are therefore sustaining the impugned order, having regard to only this aspect of the matter.

17. The appeal is accordingly closed in view of what we have recorded above. The conclusion arrived at by the Tribunal is correct and therefore, no other substantial question of law requires to be adjudicated by us.



18. Consequently, the application for condonation of delay in re-filing is rendered infructuous and is accordingly closed.

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

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

DECEMBER 22, 2023/RV