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

% *Decision delivered on: 01.11.2023*

+ **ITA 1167/2017**

PRINCIPAL COMMISSIONER OF INCOME
TAX (CENTRAL) – 2

..... Appellant

versus

M/S VICTORY APARTMENTS PVT. LTD.

..... Respondent

+ **ITA 1170/2017**

PRINCIPAL COMMISSIONER OF INCOME
TAX (CENTRAL) – 2

..... Appellant

versus

M/S VICTORY APARTMENTS PVT. LTD.

..... Respondent

+ **ITA 1191/2017**

PRINCIPAL COMMISSIONER OF INCOME
TAX (CENTRAL)-2

..... Appellant

versus

M/S VICTORY TOWNSHIP PVT. LTD.

..... Respondent

+ **ITA 1194/2017**

PRINCIPAL COMMISSIONER OF INCOME
TAX (CENTRAL) – 2

..... Appellant

versus

M/S VICTORY DWELLINGS PVT. LTD

..... Respondent

+ **ITA 158/2018**

PRINCIPAL COMMISSIONER OF INCOME
TAX (CENTRAL) – 2

..... Appellant

versus



MIS VICTORY TOWNSHIP PVT. LTD.

..... Respondent

+ **ITA 252/2018**

PRINCIPAL COMMISSIONER OF INCOME
TAX (CENTRAL) – 2

..... Appellant

versus

M/S VICTORY DWELLINGS PVT. LTD.

..... Respondent

Present : Mr Sanjeev Menon, Standing Counsel for the appellant.
Mr Ved Kumar Jain, Mr Nischay Kantoor, Ms Soniya Dodeja
and Mr Aminesh Tripathi, Advs. for respondent.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J. (ORAL):

1. The above-captioned appeals concern three (3) assessees. The Assessment Year (AY) in issue in all six appeals is AY 2009-10. The order impugned in the above-captioned appeals preferred by the appellant/revenue is the order dated 24.03.2017 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"]. This order is assailed in the six appeals filed by the appellant/revenue.
2. *Via* the impugned order, the Tribunal has thus disposed of the cross-appeals filed by the appellant/revenue and the respondents/assesseees.
3. The record shows that on 13.08.2018, the above-captioned appeals were admitted and a common question of law was framed which reads as follows:

"Whether the Income Tax Appellate Tribunal was right in allowing the appeal preferred by the respondent/assessee as initiation of proceedings under 153 C of the Income Tax Act, 1961 was bad and contrary to law?"



4. It is common ground that the Tribunal held the proceedings initiated against the assessee under Section 153C of the Income Tax Act, 1961 [in short, “Act”] as bad in law as no incriminating material was found during the search conducted on Mr Pramod Goel, Ms Savita Goel and Mr Ashish Goel [hereafter referred to as “Goels”], the directors of the assessee companies.

5. Although, the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] ruled in favour of the assessee *qua* the aspect concerning the untenability proceedings in law in the absence of incriminating material, on merits, he decided in favour of the appellant/revenue.

5.1 This is how cross-appeals were filed by both sides before the Tribunal.

6. A perusal of the impugned order passed by the Tribunal shows that it did not return any ruling on merits and in that sense left the order of the CIT(A) untouched. However, on the two legal issues which arose before the Tribunal, the decision taken was in favour of the assessee. The legal issues which the Tribunal dealt with were the following:

6.1 First, what would be the impact of the Assessing Officer (AO) of the searched person not recording his satisfaction?

6.2 Second, in the absence of incriminating material, whether the proceedings were valid?

7. The Tribunal with respect to the first issue came to the following conclusion:

“15. xxx

xxx

xxx

On perusal of the aforesaid satisfaction note, it is crystal clear that the said



satisfaction was recorded by the AO in the proceedings relating to the assessee i.e. M/s Victory Dwellings Pvt. Ltd. and not in the case of Sh. Pramod Goel in whose case search and seizure operation u/s 132 of the Act was undertaken on 14.09.2010. Therefore, the jurisdiction assumed by the AO without recording the satisfaction in the case of the searched person was not valid.

xxx

xxx

xxx

17. From the plain reading of the aforesaid Circular No. 24/2015 dated even if the AO of the searched person, and of the other person is one and the same then he is required to record his satisfaction in the case of searched person. **In the present case, it is an admitted fact that the AO of the searched person has not recorded any satisfaction rather the satisfaction is recorded by the AO of the other person i.e. the assessee which is evident from the satisfaction note, copy of which is placed at page no. 21 of the assessee's paper book. Therefore, the assessment framed in the hands of the assessee was not valid. ...**

[Emphasis is ours.]

8. As regards the second issue, the following observations were made, which are also part of paragraph 17:

“xxx

xxx

xxx

Moreover, from the observation of the AO in the satisfaction note also it is crystal clear that no incriminating material was found, the addition was made only on the basis of the copy of balance sheet, profit and loss account and schedule of advances against supplies pertaining to the assessee, those documents were already in the knowledge of the department as the same were furnished alongwith the regular return of income. Therefore, those documents by no stretch of the imagination can be said to be incriminating as those were made out of the regular books of accounts of the assessee, and the return of income was filed on the basis of those documents only.

[Emphasis is ours.]

9. Mr Ved Jain, counsel who appears on behalf of the respondents/assesseees, fairly concedes that insofar as the first aspect is concerned, the Tribunal's decision cannot be sustained in view of the judgment rendered by the Supreme Court in *Super Malls Pvt. Ltd. v. Principal Commissioner of Income Tax 8, New Delhi*, (2020) 4 SCC 581.



However, Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the appellant/revenue, cannot but accept the fact that as far as the decision of the Tribunal on the second issue is concerned, i.e., because no incriminating material was found, the proceedings taken out against the assesseees under Section 153C of the Act were not valid in the eyes of law, was the correct view.

9.1 We may note that the Tribunal in this behalf relied upon the judgment rendered by the coordinate bench of this court in *PCIT v. Kabul Chawla*, [2016] 380 ITR 573 (Delhi). The said judgment has been affirmed by the Supreme Court in *Principal Commissioner of Income Tax vs. Abhisar Buildwell Pvt. Ltd.*, [2023] 454 ITR 212 (SC).

10. Thus, having regard to the aforesaid position, according to us, the question of law as framed in the above-captioned appeals will have to be answered against the appellant/revenue and in favour of the respondents/assesseees having regard to the finding returned by the Tribunal on the second issue.

11. The appeals are disposed of, in the aforesaid terms.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

NOVEMBER 1, 2023

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