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

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*Date of Decision: 30.11.2022*

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**ITA 492/2022**

PR. COMMISSIONER OF INCOME TAX -01 ..... Appellant

Through: Mr Zoheb Hossain, Sr. Standing  
Counsel with Mr Vipul Agrawal and  
Mr Parth, Advs.

versus

M/S. C.S. LEASING PVT. LTD.

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

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

**RAJIV SHAKDHER, J. (Oral):**

**CM Appl.51588/2022** [*Application filed on behalf of the appellant seeking  
condonation of delay of 115 days in re-filing the appeal*]

1. This is an application filed on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.
2. According to the appellant/revenue, the delay involved is 115 days.
3. For the reasons given in the application, the delay is condoned.
4. The application is, accordingly, disposed of.

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5. This appeal is directed against the order dated 25.11.2021 passed by the Income Tax Appellate Tribunal [in short "Tribunal"].
6. The broad facts, which are required to be noticed for adjudication of the appeal, are as follows:

6.1 On 28.10.2010, a search was carried out qua M/s Satya Prakash & Brother Group of cases [hereafter referred to as “SPG Group”]. SPG Group was headed, at the relevant point in time, by Mr Satya Prakash Gupta. The search was carried out in exercise of powers vested in the concerned officer under Section 132 of the Income Tax Act, 1961 [in short “Act”].

6.2. Based on the view of the Assessing Officer [in short, “AO”], a notice dated 02.02.2012 under Section 153C of the Act was issued to the respondent/assessee i.e., C.S. Leasing Private Limited [hereafter referred to as “Assessee”].

6.3. Accordingly, via the said notice, the respondent/assessee was directed to file its return within fifteen (15) days of date of the service of notice. Admittedly, the respondent/assessee filed a response to the same on 13.02.2012.

6.4. Thereafter, it appears, various notices were issued by the appellant/revenue under Section 142(1)/143(2) of the Act. The notices were issued between a span spread over 05.09.2012 and 29.01.2013. The respondent/assessee responded to the queries raised, as per the appellant/revenue on 22.02.2013.

6.5. This exercise resulted in an assessment order dated 28.03.2013, being passed under Section 153C, read with Section 143(3) of the Act. The AO thus, made an addition amounting to Rs.15,02,23,130/-.

6.6. Aggrieved by the additions made by the AO, the respondent/assessee preferred an appeal with the Commissioner of Income Tax (Appeals) [in short “CIT(A)”]. CIT(A) via the order dated 27.02.2015 allowed the appeal filed by the respondent/assessee.

6.7. The CIT(A), in reaching his conclusion, *inter alia*, relied upon the

following judgments of coordinate benches of this court:

(i) *Pepsi Foods Private Limited vs. Assistant Commissioner of Income Tax* (2015) 370 ITR 295;

(ii) *Pepsico India Holdings Pvt. Ltd. vs. Assistant Commissioner of Income Tax* (2014) 270 CTR 467.

6.8. Pertinently, the CIT(A) observed that jurisdiction was assumed by the AO only on the ground that the respondent/assessee was closely related/associated with the searched person and not because any seized documents or assets belonged to the respondent/assessee.

6.9. In sum, the CIT(A) was of the view that it was an essential pre-requisite for triggering proceedings under Section 153C of the Act that one or more seized document, books of accounts or asset should belong to the assessee.

6.10. It is against this order of the CIT(A) that an appeal was preferred before the Tribunal by the appellant/revenue, which suffered the same fate. As noticed above, the Tribunal dismissed the appeal preferred by the appellant/revenue.

7. Mr Zoheb Hossain, learned senior standing counsel, who appears on behalf of the appellant/revenue, has vigorously put forth the appellant's/revenue's stand and in support its position, has relied upon the order passed by the AO.

8. Having heard Mr Hossain, we are unable to persuade ourselves to reverse the view taken by the CIT(A), which has been affirmed by the Tribunal.

9. We may also note that the Tribunal has returned a finding of fact that the AO of the searched person i.e., Mr Satya Prakash, did not generate a

satisfaction note. The finding returned in this behalf is extracted hereafter:

*“20. ...In the present case there is no such satisfaction recorded by the learned assessing officer of the searched person. Further, there is no reference of any material pertaining to the assessee in the satisfaction note recorded by the ld AO of the assessee i.e. the third person...”*

10. According to us, this finding is fatal to the case of the appellant/revenue. A plain reading of the provision of Section 153C of the Act, as it stood at the relevant point in time, would demonstrate that the AO of the searched person i.e., Mr Satya Prakash, should have generated a note that the documents, books of account or assets belonging to the “other person” had been found. For the sake of convenience, Section 153C of the Act, as it stood at the relevant point in time, is extracted hereafter:

*“153C Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where **the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A,** then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person”*

[Emphasis is ours]

11. We may also note that Mr Zoheb Hossain has, fairly, put before us the satisfaction note dated 02.02.2012, generated by the AO of the respondent/assessee, which discloses that there is no reference to any material or assets which belonged to the respondent/assessee. For completion of the record, the satisfaction note concerning the respondent/assessee as generated by his AO is also extracted hereafter:

*“A search and seizure operation u/s 132(1) of the I.T. Act was carried out at the various premises of M/s Satya Parkash & Brothers Pvt Ltd Group on 28.10.2010. M/s Satya Parkash & Brothers Pvt Ltd is engaged in the business of executing Govt. Contracts working for PWD, CPWD and MCD & NDMC etc. During the course of Common Wealth Games 2010, the*

*company executed work of street scaping & beautification of roads worth Rs.159.05 cores. During the search operation a large number of documents were seized which clearly indicted that the group including the assessee is earning huge profits which are reduced by introducing bogus expenses. The case of assessee namely M/s C.S. Leasing Pvt. Ltd. is closely related/associated entity to the main assessee i.e. M/s Satya Parkash & Brothers Pvt. Ltd. In view of facts narrated above, I am satisfied that the case of M/s C.S. Leasing Pvt. Ltd. is a fit case for issue of notice u/s 153C of the I.T. Act, 1961. Notice u/s 153C dated 02.02.2012 is issued requiring the assessee to file return of income for the A.Y. 2005-06 to 2010-11.”*

[Emphasis is ours]

12. Thus, having regard to the aforesaid, we are not inclined to interfere with the order of the Tribunal.
13. The appeal, in our view, does not raise any substantial question(s) of law.
14. The appeal is, accordingly, dismissed.

**(RAJIV SHAKDHER)  
JUDGE**

**(TARA VITASTA GANJU)  
JUDGE**

**NOVEMBER 30, 2022/pmc**

[Click here to check corrigendum, if any](#)