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

% *Date of Decision : 09.05.2025*

\+ **ITA 106/2024**

JINDAL POLY FILMS LTD .....Appellant

Through: Mr Rohit Jain, Mr Aniket D Aggrawal and Mr Abhisek Singhvi, Advocates.

versus

ACIT CENTRAL CIRCLE-30 NEW DELHI .....Respondent

Through: Mr Abhishek Maratha, SSC, Mr Apoorv Agarwal, Mr Parth Samwal, JSCs, Ms Nupur Sharma, Mr Gaurav Singh, Ms Muskaan Goel, Mr Bhanukaran Singh Jodha, Advocates

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

1. The appellant [**Assessee**] has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning an order dated 25.08.2023 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.3990/Del/2016 in respect of Assessment Year [**AY**] 2006-07.

2. The Assessee had preferred the said appeal against the order dated 20.05.2016 passed by the Commissioner of Income Tax (Appeals), Delhi–30 [**CIT(A)**], which in turn was preferred by the Assessee against the

assessment order dated 13.03.2015 passed under Section 153A of the Act.

3. One of the grounds urged by the Assessee before the CIT(A) – which was not raised before the Assessing Officer [**AO**] – regarding the subsidy on account of the sales tax was not entertained by the CIT(A) on the ground that the same was not reflected in the final accounts of Tax Audit Report and the Assessee had not been able to substantiate its claim.

4. Aggrieved by the same, the Assessee had filed an appeal before the learned ITAT, which was partly allowed by the impugned order. A plain reading of the impugned order indicates that the learned ITAT had held that the assessment was pursuant to the search that was conducted on 14.11.2011 and was in respect of unabated assessment and, therefore, the said assessment could be reopened for reassessment only on the basis of the incriminating material found during the search. Since, in the present case, incriminating material had not been found, learned ITAT proceeded on the basis that assessment order was required to be quashed. The learned ITAT has referred to the decision of the Supreme Court in ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd.: (2024) 2 SCC 433***.

5. The facts as obtaining in the present case clearly indicate that the assessment in respect of AY 2006-07 had abated and therefore, learned ITAT had proceeded on an *ex-facie* erroneous premise that the assessment for the AY 2006-07 has not abated and had been reopened.

6. The assessment order as initially framed on 24.12.2009 had been set aside by the appellate order dated 28.06.2013. However, the CIT(A)

initiated proceedings under Section 263 of the Act, which culminated into the order dated 20.03.2012 wherein the assessment order dated 24.12.2009 was set aside on certain issues and the AO was directed to pass fresh assessment order. In the meanwhile, a search was conducted in the premises of the Assessee under Section 132 of the Act. Pursuant to the said search, a notice dated 19.10.2012 was issued under Section 153A of the Act which culminated in an assessment order dated 13.03.2015. Thus, on the date of the search and the issuance of notice under Section 153A of the Act, the assessment proceedings were live and pending before the AO pursuant to the directions issued by the CIT(A) under Section 263 of the Act. By virtue of the notice under Section 153A of the Act, the said assessment proceedings abated.

7. In view of the above, the learned ITAT's conclusion that no assessment could be made other than on the basis of incriminating material in respect of AY 2006-07 is, *prima facie*, erroneous. In cases of assessments which are pending and abated on account of issuance of notice under Section 153A of the Act, the AO has power to complete the assessment in accordance with law. The power of the AO to frame the assessment is not conditional on incriminating material being found during the search proceedings. This is obvious because in case of abated assessment, the initial assessment does not exist and a fresh assessment is required to be made. However, in case of concluded assessments, the proceedings initiated under Section 153A may be called in question on account of absence of any incriminating material found during the search.

8. It is not necessary to examine the aforesaid issue in any further detail

at this stage. Suffice it to say that the learned ITAT has proceeded on an *ex-facie* erroneous premise that the assessment for AY 2006-07 had abated and, therefore, the impugned order is required to be set aside.

9. We note that by an order dated 09.02.2024, this Court had framed the following question for consideration:

> "(i) Whether the ITAT erred in law in failing to admit/allow the (additional) claim of the appellant on the ground that the said year, being an unabated assessment year, no proceedings under Section *153A* of the Income Tax Act, 1961 ["**Act**"] could be undertaken in the absence of any incriminating material during the course of search for the relevant Assessment Year ["**AY**"] 2006-2007?"

10. However, in view of the facts as noted above, the said question does not arise for consideration of this Court as the impugned order is based on erroneous premise that the assessment for AY 2006-07 was not abated as it was a concluded assessment. Since, this assumption is erroneous it is not necessary for this Court to examine any other aspect in this case.

11. In view of the above, we set aside the impugned order and remand the matter to the learned ITAT to consider afresh.

12. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 09, 2025
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Click here to check corrigendum, if any