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

% Date of Decision : 01.12.2025

\+ ITA 691/2025

PR. COMMISSIONER OF INCOME TAX, DELHI-1

.....Appellant

Through: Mr. Vipul Agrawal, SSC with Ms. Sakashi Shairwal, JSC, Mr. Akshat Singh, JSC, Ms. Harshita Kotru, Mr. G. Ranjan, Advs

versus

M/S MIRAGE HOMES LTD.

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MINI PUSHKARNA

V. KAMESWAR RAO , J. (ORAL)

CM APPL. 75442/2025, CM APPL. 75443/2025

1. For the reasons stated in the applications, the delay of 73 days in filing and 708 days in re-filing the present appeal stands condoned.

2. The applications stand disposed of.

CM APPL. 75444/2025

3. Exemption allowed, subject to all just exceptions.

4. The application stands disposed of.

ITA 691/2025

5. This appeal has been filed with the following prayers:-

> *"(a) To frame the substantial Question of Law mentioned in Para 2 of the appeal;*
> *(b) To frame any other substantial Questions of Law which may arise from the impugned orders dated 16.05.2023;*
> *(c) To set aside the impugned order dated 16.05.2023 of the Ld. ITAT passed in ITA No. 2622/Del/2016."*

6. This petition has been filed by the appellant/Revenue under Section 260A of the Income Tax Act, 1961 ("Act") challenging the order dated 16.01.2023 passed by the Income Tax Appellate Tribunal ("ITAT") in ITA 2622/Del/2016 relating to Assessment Year ("AY") 2004-05.

7. Mr. Vipul Agrawal, learned Senior Standing Counsel for the appellant fairly states that the appeal being ITA 2624/Del/2016 was filed in this Court being ITA 686/2025 and the same relates to AY 2007-08 and has been dismissed by this Court by stating in paragraph 7 onwards as under:-

> *"7. We find that the appeal, which was filed before the Tribunal by the appellant/Revenue relates to the Assessment Year 2007-08. The grounds, which have been raised in the said appeal for the said year, are the following :*
> *"1. That the Ld. CIT(A) has erred in law and on facts in holding that since no incriminating document was found during the course of search for this year, assessment u/s 153A of the Act could not have been completed?*
> *2. That the Ld. CIT(A) has erred in law and on facts in holding that the AO could not have proceeded to frame assessment u/s 153A in absence of incriminating material without appreciating the fact the provisions of the section 153A of the I.T. Act provides for assessment and*

reassessment of total income of assessee does not confine assessment or reassessment to incriminating documents only.

3. That the Ld. CIT(A) has erred in law and on facts in wrongly appreciating the provision of section 153A of the I.T. Act which clearly provides for assessment and reassessment of total income and does not restrict the scrutiny assessment only to the documents found and seized during search.

4. That the Ld. CIT(A) has erred in law and on facts in admitting the additional evidence filed before him without confronting the same to the AO?

5. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.6,26,000/- made by the AO on account of unexplained cash credit.

6. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.56,00,000/- made by the AO on account of rent for non-genuine business purpose.

7. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.5,10,420/- made by the AO on account of foreign travel expenses.

8. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,60,00,000/- made by the AO on account of unexplained liabilities.

9. That the Ld. CIT(A) has erred in law and on facts in reducing the addition of Rs.10,00,000/- made by the AO on account of sales of Malwa upto Rs.5,00,000/-.

10. That the Ld. CIT(A) has erred in law and on facts in deleting the addition or Rs.2,75,00,000/- made by the AO on account of addition made on

u/s 69B."

8. The Tribunal while dismissing the appeal filed by the appellant/Revenue has in paragraph 7 onwards stated as under:

"7. Ld. Counsel of the assessee submitted that it was settled by Hon'ble Delhi High Court in the case of Kabul Chawla (2015) 61 taxmann.com 412 (Delhi) that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. He submitted that this issue has now been concluded by the Hon'ble Apex Court in the case of Pr. CIT vs. Abhisar Buildwell P. Ltd. & ors. in Civil Appeal No.6580 of 2021 vide order dated 24.04.2023.

8. We note that in this case, a reading of the assessment order shows that the additions were not based upon any incriminating material or assets found during search. Ld. CIT (A) has also given such finding. It is also not the case that these are abated assessment years. In such situation, the decision of Hon'ble jurisdictional High Court in the case of Kabul Chawla (supra) squarely applies. The same was duly affirmed by Hon'ble Supreme Court in the case of Pr. CIT vs. Abhisar Buildwell P. Ltd. (supra) and Hon'ble Supreme Court has held as under :-

"13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect

of the completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments / reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments / unabated assessments. Meaning thereby, in respect of completed / unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed / unabated assessments can be re-opened by the AO in exercise of powers under

Sections 147/148 of the Act, subject to fulfillment of the conditions as envisaged / mentioned under sections 147/148 of the Act and those powers are saved."

9. From the above, it is now settled that in the case of unabated assessment years, the addition has to be based upon incriminating material and since ld. CIT (A) has given a categorical finding that additions in these years are not based upon incriminating material found during the search and this fact has not been rebutted by the ld. DR for the Revenue and in the grounds of appeal by the Revenue, we hold that assessments in both the years are not valid inasmuch as they are not based upon any incriminating material found during search.

10. Since we have held that assessment are invalid on account of jurisdiction itself the adjudication on merits of the additions is only academic interest, hence we are not engaging into the case.

11. Our above order applies mutatis mutandis to both the assessment years.

12. In the result, these appeals filed by the Revenue are dismissed.

9. On perusal of the order more specifically paragraph 9, it is noted, the Tribunal had observed that the CIT (Appeals) has given a categorical findings that during the years under consideration including the Assessment Year 2007-08, no incriminating material was found during the search, which could have resulted in the reassessment.

10. Based on the said conclusion drawn by the CIT (Appeal), the Tribunal for parity of reasons has dismissed the appeal filed by the appellant/Revenue. The same is a pure question of fact. Two authorities

having taken a particular view that there was no incriminating material found during the search, which could have resulted in the reassessment, we are of the view that the Tribunal is justified in relying upon the judgment of the Supreme Court in the case of Principle CIT v Abhisar Buildwell Pvt. Ltd. Civil Appeal No. 6580/2021 decided on 24.04.2023 to dismiss the appeal.

11. As no substantial question of law arise, the appeal is liable to be dismissed. We order accordingly."

8. As noted in the judgment dated 28.11.2025 in ITA 686/2025 that the two authorities being CIT (Appeals) and the Tribunal have concurrently held that there was no incriminating material found during the search, which could have resulted in the re-assessment, we are of the view that the present appeal should also follow the same fate. Moreover, the Tribunal is also justified in relying upon the judgment of the Supreme Court in ***Principal Commissioner of Income Tax, Central-3 v. Abhisar Buildwell Private Limited, (2024) 2 SCC 433***. As no substantial question of law arises in this appeal, the appeal is, accordingly, dismissed.

V. KAMESWAR RAO, J

MINI PUSHKARNA, J

DECEMBER 01, 2025/sr