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

\# **CNR No. DLHC011107602025**

\+ ITA 788/2026

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-3, NEW DELHI .....Appellant

Through: Mr. Shlok Chandra, Sr. Standing Counsel with Ms.Naincy Jain, Jr. Standing Counsel, Mr. Udit Dad, Advocate and Mr. Ujjwal Jain, Advocate

versus

OLIVE OVERSEAS PRIVATE LIMITED .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE AMIT SHARMA

O R D E R

% 01.10.2026

CM APPL. 68454/2026 (Exemption)

Allowed, subject to all just exceptions.

CM APPL. 68452/2026

1. This Application has been filed on behalf of the Appellant seeking condonation of delay of 4 days in filing the present Appeal.

2. For the reasons stated in the Application, the same is allowed. The delay of 4 days in filing the Appeal stands condoned.

3. The Application is disposed of.

CM APPL. 68453/2026

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4. This Application has been filed on behalf of the Appellant seeking condonation of delay of 572 days in re-filing the present Appeal.

5. For the reasons stated in the Application, the same is allowed. The delay of 572 days in re-filing the Appeal stands condoned.

6. The Application is disposed of.

ITA 788/2026

7. The present Appeal has been filed under Section 260A of the Income Tax Act, 1961 challenging the Order dated 08.10.2024, passed by the learned Income Tax Appellate Tribunal in ITA No. 3333/DEL/2023 for Assessment Year 2016-2017 whereby, the learned ITAT has allowed the appeal filed by the Respondent and deleted the additions made in the assessment order passed under Section 153A of the Income Tax Act, 1961.

8. Heard the learned counsel for the Appellant.

9. We find that the issue raised by the Appellant in this case is squarely covered by the judgment of this Court in the batch of petitions including ITA 23/2021, titled as PCIT (Central)-3 v. Anand Kumar Jain (HUF). Paragraphs no. 7, 8 and 9 of said judgment reads as under:-

> *"7. The preliminary question under consideration before us is whether a statement under Section 132(4) constitutes incriminating material for carrying out assessment under S. 153(A) of the Act. A reading of the impugned order reveals that the statement of Mr. Jindal recorded under Section 132(4) forms the foundation of the assessment carried out under Section 153A of the Act. That statement alone cannot justify the additions made by the AO. Even if we accept the argument of the Revenue that the failure to cross-examine the witness did not prejudice the assessee, yet, we discern from the record that apart from the statement of Mr. Jindal, Revenue has failed to produce any corroborative material to justify*

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the additions. On the contrary we also note that during the course of the search, in the statement made by the assessee, he denied having known Mr. Jindal. Since there was insufficient material to support the additions, the ITAT deleted the same. This finding of fact, based on evidence calls for no interference,

> *as we cannot re-appreciate evidence while exercising jurisdiction under section 260A of the Act.*

8. Next, we find that, the assessment has been framed under section 153A, consequent to the search action. The scope and ambit of section 153A is well defined. This court, in CIT v. Kabul Chawla, concerning the scope of assessment under Section 153A, has laid out and summarized the legal position after taking into account the earlier decisions of this court as well as the decisions of other High Courts and Tribunals. In the said case, it was held that the existence of incriminating material found during the course of the search is a sine qua non for making additions pursuant to a search and seizure operation. In the event no incriminating material is found during search, no addition could be made in respect of the assessments that had become final. Revenue's case is hinged on the statement of Mr. Jindal, which according to them is the incriminating material discovered during the search action. This statement certainly has the evidentiary value and relevance as contemplated under the explanation to section 132(4) of the Act. However, this statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure operations, empower the AO to frame the block assessment. This court in Principal Commissioner of Income Tax, Delhi v. Best Infrastructure (India) P. Ltd., has inter-alia held that:

> *"38. Fifthly, statements recorded under Section 132(4) of the Act do not by themselves*

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constitute incriminating material as has been explained by this Court in Harjeev Aggarwal".

9. In Commissioner of Income Tax v. Harjeev Aggarwal, this Court had held as follows:

> *"23. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under Section 132(4) of the Act would by itself be sufficient to assess the income, as disclosed by the Assessee in its statement, under the Provisions of Chapter XIV-B of the Act.*
>
> *24. In our view, a plain reading of Section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to Section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation.*

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25. (…) However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. Now, if the provisions of Section 132(4) of the Act are read in the context of Section 158BB(1) read with Section 158B(b) of the Act, it is at once clear that a statement recorded under Section 132(4) of the Act can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded.

26. In CIT v. Sri Ramdas Motor Transport Ltd., (1999) 238 ITR 177 (AP), a Division Bench of Andhra Pradesh High Court,

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reading the provision of Section 132(4) of the Act in the context of discovering undisclosed income, explained that in cases where no unaccounted documents or incriminating material is found, the powers under Section 132(4) of the Act cannot be invoked. (…)

27. It is also necessary to mention that the aforesaid interpretation of Section 132(4) of the Act must be read with the explanation to Section 132(4) of the Act which expressly provides that the scope of examination under Section 132(4) of the Act is not limited only to the books of accounts or other assets or material found during the search. However, in the context of Section 158BB(1) of the Act which expressly restricts the computation of undisclosed income to the evidence found during search, the statement recorded under Section 132(4) of the Act can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment.

28. If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded under Section 132(4) is accepted, it would result in ignoring an important check on the power of the AO and would expose assessees to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in

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most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee.

29. In Commissioner of Income Tax v. Naresh Kumar Aggarwal: (2014) 3699 ITR 171 (T & AP), a Division Bench of Telangana and Andhra Pradesh High Court held that a statement recorded under Section 132(4) of the Act which is retracted cannot constitute a basis for an order under Section 158BC of the Act. (…)"

10. In view of the above, the Appeal is disposed of.

SUBRAMONIUM PRASAD, J

AMIT SHARMA, J

OCTOBER 01, 2026
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