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* IN THE HIGH COURT OF DELHI AT NEW DELHI

6-20.

\+ **ITA 27/2015**

CIT ..... Appellant

Through: Ms.LakshmiGurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

J. H. FINVEST PVT. LTD ..... Respondent

Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 28/2015**

CIT ..... Appellant

Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

J. H. FINVEST PVT. LTD ..... Respondent

Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 29/2015**

CIT ..... Appellant

Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

J. H. FINVEST PVT. LTD. ..... Respondent

Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 30/2015**

CIT ..... Appellant

Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

J. H. FINVEST PVT. LTD ..... Respondent

Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 31/2015**

CIT ..... Appellant

Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

J. H. FINVEST PVT. LTD ..... Respondent

Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 32/2015**

CIT ..... Appellant

Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

TEXEFX MARBLE INDUSTRIES ..... Respondent
Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 33/2015**

CIT ..... Appellant
Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

J. H. FINVEST PVT. LTD ..... Respondent

Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 34/2015**

CIT ..... Appellant
Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

TEXEFX MARBLE INDUSTRIES ..... Respondent
Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 35/2015**

CIT ..... Appellant
Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

SVIL MINES LTD ..... Respondent

Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 36/2015**

CIT ..... Appellant

Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

SVIL MINES LTD ..... Respondent

Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 37/2015**

CIT ..... Appellant

Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

SVIL MINES LTD ..... Respondent

Through: Mr. Shashwat Bajpai, Advocate.

WITH

\+ **ITA 38/2015**

CIT ..... Appellant

Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

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versus

TEXEFX MARBLE INDUSTRIES ..... Respondent
Through: Mr. Shashwat Bajpai, Advocate.

WITH

+ **ITA 39/2015**

CIT ..... Appellant
Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

J. H. FINVEST PVT. LTD ..... Respondent
Through: Mr. Shashwat Bajpai, Advocate.

WITH

+ **ITA 47/2015**

CIT ..... Appellant
Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh Kumar, Advocates.

versus

SVIL MINES LTD ..... Respondent
Through: Mr. Shashwat Bajpai, Advocate.

AND

+ **ITA 48/2015**

CIT ..... Appellant
Through: Ms. Lakshmi Gurung, Mr.P.Roy Chaudhary, Mr. Ishant Goswami, Mr. Rajesh

Kumar, Advocates.

versus

SVIL MINES LTD ..... Respondent
Through: Mr. Shashwat Bajpai, Advocate.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **30.11.2015**

1. These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 are directed against the common order dated 30th May 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in the appeals filed by the Revenue and the cross-objections filed by the Assessees for the Assessment Years (AYs) 2001-02 to 2007-08.

2. In these batch of appeals, the Assessees involved are J.H. Finvest Pvt. Ltd., Texefx Marble Industries (formerly known as J.H. Business & Products Pvt. Ltd.) and SVIL Mines Ltd.

3. The background to the present appeals is that on the basis of authorizations dated 20th March 2007 under Section 132 (1) of the Act, a search was commenced on 21st March 2007 in the office premises of the above Assessees as well as the other Assessees, including Rim Zim Valley Products Pvt. Ltd, Aakriti International, apart from the residences of Mr.Sanjay Jain and Mr. Rajeev Jain, Directors of J.H. Finvest Pvt. Ltd. The search apparently continued on 22nd and 23rd March 2007 as well. It appears that during the said search, the jewellery items of Mrs. Neena Jain, wife of

Mr.Sanjay Jain were seized on 21st March 2007 and some part of the jewellery was released to her after preparing a valuation report dated 21st March 2007. The learned counsel for the Assessees has placed before the Court a compilation of documents containing, *inter alia*, the *panchnamas* drawn up in the course of the search. He states that these documents were part of the record of the case before the ITAT.

4. A perusal of the said documents shows that as far as the *panchnama* prepared on 23rd March 2007 was concerned, it was in respect of the authorizations issued for search of the above Assessees. It notes in para 8 that "The search commenced on 23/3/07 at 2.15 pm. The proceedings were closed on 23/3/07 at 5.55 pm as finally concluded". It must be noted that para 8 is a pre-printed clause with blanks for the date and time. There is an option to choose one of the expressions: "as finally concluded/as temporarily concluded". In this particular para 8 the words "as temporarily concluded" have been omitted and there is a tick mark on the words "as finally concluded".

5. On the same day, a restraint order was passed under Section 132(3) of the Act, in respect of the jewellery items of Mrs. Neena Jain and Mrs. Shail Kumar Jain kept in some wooden cupboards in their residential premises. There were also restraint orders, communicated to the Managers of some of the banks, in respect of lockers and bank accounts of the said persons. Restraint orders were also issued in respect of certain small safes in which there were materials/documents and for which keys were not available. The search purportedly continued thereafter on 15th May 2007 when another

panchnama was drawn up. In para (A) of the said *panchnama* it is mentioned that the warrants of authorization were issued in the case of the above Assessees apart from Mr. Sanjay Jain and Mr. Rajeev Jain, Rim Zim Valley Products Ltd. In para 2, it was stated that the search "was in continuance of the proceedings on 22/3/07.......". Para 8 then states that "The search commenced on 15/5/07 at ....../pm . The proceedings were closed on 15/5/07 at 6.45 pm as finally concluded". It is not in dispute that the assessment orders pursuant to the said searches were passed on 24/31st December 2009.

6. The first question that arises for consideration was whether in terms of Section 153B, the assessments were completed within the time stipulated therein. The case of the Assessees, which has been accepted by the ITAT in the impugned order, was that the assessment ought to have been completed by 31st December 2008, but was completed on 31st December 2009, i.e., beyond the period of twenty one months from the end of the financial year in which the last authorisation for the search under Section 132(3) was issued. This is in terms of Clause (i) of the second proviso to Section 153B (1) of the Act. It is pointed out that the names of the Assessees were included in the *panchnama* drawn up on 15th May 2007 although no fresh search authorisations qua any of them were issued. The case of the Revenue has been that the search did not conclude on 23rd March 2007 but on 15th May 2007. This was on account of the restraint orders claimed to have been validly passed on 23rd March 2007 in peculiar circumstances where either the person searched was not present or the witnesses were not present or the keys of some of the cupboards were not available.

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7. The ITAT has in the impugned order, after discussing the earlier decisions of the ITAT and the High Courts, noted that mere passing of a restraint order would not extend the time limit available for completion of the assessment pursuant to the search. It has been noted that Section 132(3) of the Act for passing a restraint order can be only resorted to if there is any practical difficulty in seizing the item which is liable to be seized. If all actions of the search were completed and nothing was left to be done by the search party, then the action of the authorized officer under Section 132(3) would be illegal and consequently any *panchnama* prepared on the extended date of search, after lifting the restraint, would be of no consequence, for the purposes of computation of limitation under Section 153B of the Act. In particular, the ITAT referred to the decision of this Court in ***V.L.S. Finance Ltd. Vs. CIT 289 ITR 286 (Del).***

8. The ITAT correctly concluded that where there are various authorisations issued and various *panchnama* prepared, it would be the last *panchnama* prepared in respect of the last authorisation which would be relevant for computing the limitation period.

9. In the present case, as noted by the ITAT, there is only one authorisation which was issued on 20th March 2007. Although, the ITAT in para 10.5 of the impugned order noted that "in the authorization letter dated 20/3/2007, names and address of the assesses in question have not been mentioned but in Panchnama dated 15/5/2007 drawn in pursuance to the executive of the said authorization letter dated 20/03/2007 names of all these assessees have been mentioned", the original authorisation letters issued on 20th March

2007 are not before the Court. The Court, therefore, proceeds on the basis that such authorisation had indeed been issued in the names of each of the Assessees. The *panchnama* drawn up on 23rd March 2007 shows that the search that commenced on that date i.e., 23rd March 2007 stood finally concluded on that date itself. It appears that no further authorisation had been issued for the search of the Assessees who are the Respondents in these appeals. Consequently, the Revenue cannot take advantage of the restraint orders passed in respect of other persons in order to seek extension of the time period for completion of the assessment proceedings in terms of Section 153B *qua* the Respondent Assessees herein.

10. Even assuming that the restraint orders were validly passed, once the search stood concluded on 23rd March 2007 in respect of these Assessees, in the absence of a fresh authorisation for another search, the time period for conclusion of the assessment in terms of clause (i) of the second proviso to Section 153 B (1) of the Act does not get extended only because their names were included in the *panchnama* drawn up on 15th May 2007. It is possible that their names were included in the said *panchnama* drawn up on 15th May 2007 in order to avoid the consequence of expiry of the period of limitation which, as far as these Assessees are concerned, commenced on 23rd March 2007, when the search "finally concluded".

11. Consequently, the impugned order of the ITAT, holding that the assessments in question were barred by limitation, and therefore liable to be quashed, does not call for any interference.

12. The second ground on which the ITAT has invalidated the assessments

is that there was no incriminating material found in the course of the search against any of the Respondents/Assessees in these appeals. In this context, reference only need be made to a recent decision of this Court in ***CIT v. Kabul Chawla (2015) 234 Taxman 300***, which holds that in the absence of any incriminating material found in the course of search the framing of assessment under Section 153A or 153 C of the Act, as the case may be, would not be valid.

13. It may be mentioned here that in the case of J.H.Finvest Pvt. Ltd., the Revenue has not even urged a question regarding the absence of any incriminating material having been found against the said Assessee invalidating the assessment.

14. No substantial question of law arises from the impugned order of the ITAT in these cases. The appeals are accordingly dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

NOVEMBER 30, 2015
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