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

\+ ITA 506/2003

COMMISSIONER OF INCOME TAX, DELHI ..... Appellant
Through: Mr. Puneet Rai, Jr. Standing Counsel.

versus

VINOD KUMAR JAIN ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

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

% **30.09.2016**

The question of law framed in this case is: -

"Whether the Ld. Income Tax Appellate Tribunal, was correct in law in deleting the additions of Rs.38,50,772/- and Rs.12,83,642/- on account of undisclosed income by taking gross profit at the rate of 1.37 per cent arising out of Rs.23,18,57,630/- made to the fictitious parties by the assessee?

One Mr. Sunil Aggarwal's premises was searched under Section 158BD. In the course of the assessment of that individual and concerns connected with him, the Assessing Officer relating to the present assessee received the information and papers said to be connected with the present assessee. On that basis, the assessee was asked to file returns which he did for the block period. The Assessing Officer followed the reasoning adopted in the searched person's case (i.e. Mr. Sunil Aggarwal's case). The assessee in those proceedings had declared gross profit rate of 1.37% on the total sales. The gross profit rate was, however, shown at very depressed figures. On the same grounds, the assessments were finalised for the block period in respect of the assessee. The assessee's contentions were accepted by the ITAT - primarily the ground which found favour with the Tribunal was that no incriminating material was found during the course of search and consequently in respect of finalized assessments additions could not be made.

After considering the relevant materials, the ITAT held as follows: -

> *"5. After hearing rival submissions and perusing the relevant material on record, we find that assessee deserve to succeed in this ground. Undisputedly the assessee is maintaining regular books of accounts and all the purchases and sales were vouched and recorded. Neither any incriminating documents were found during the course of search, which suggests that the purchases and sales shown by assessee have not recorded fully and truly. Similar additions were made in the case of Shri Sunil Aggarwal, one of the group cases and the appeal of Shri Sunil Aggarwal has been decided by the Tribunal in IT (SS) Appeal No.57 (Del)/97, reported in 83 ITD 1 (TM). The issue was discussed in this case in detail and it was held that these types of additions are out of scope of Chapter XIV-B. Therefore, in view of all these facts and circumstances and in view of the decision of the Tribunal in the case of Shri Sunil Aggarwal (supra), we hold that the AO exceeded his jurisdiction by disturbing the trading results while completing the assessment u/s 158BD. Therefore, the impugned additions made by the Assessing Officer are deleted."*

This Court is of the opinion that any doubts as to the approach of the ITAT in this case stands settled in view of the recent decision of this Court in *CIT v. Kabul Chawla* (2016) 380 ITR 573 (Delhi). In other words, if no incriminating materials are found in the course of search and seizure proceedings, settled and finalised assessments cannot be reopened and a change of opinion cannot be the basis of fresh assessments.

The question of law framed is answered against the revenue and in favour of the assessee.

The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 30, 2016
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