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

\+ **ITA 449/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX 8..... Appellant

versus

M/S SUPER MALLS PVT. LTD. ..... Respondent

\+ **ITA 450/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX 8..... Appellant

versus

M/S SUPER MALLS PVT. LTD. ..... Respondent

\+ **ITA 451/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX 8..... Appellant

versus

M/S SUPER MALLS PVT. LTD. ..... Respondent

\+ **ITA 453/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX- 8..... Appellant

versus

M/S SUPER MALLS PVT. LTD. .... Respondent

Through : Sh. Arvind Kumar and Ms. Devina Sharma, Advocates, for applicants.

Sh. Sanjay Kumar and Sh. Dileep Shivpuri, Sr. Standing Counsel, for the Revenue.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **13.01.2017**

REV. PET.13/2017, C.M. APPL.1496/2017 in ITA 449/2016
REV. PET.15/2017, C.M. APPL.1498/2017 in ITA 450/2016
REV. PET.14/2017, C.M. APPL.1497/2017 in ITA 451/2016
REV. PET.16/2017, C.M. APPL.1499/2017 in ITA 453/2016

The review petition is premised on the counsel’s submission that the concession (in para 6 of the judgment of this Court dated 22.11.2016) has been erroneously recorded. Learned counsel submitted that during the hearing, the Court had adverted to its previous order made in *Pr.CIT v. Satkar Fincap Ltd.* [ITA Nos. 82-87/2016, decided on 16.11.2016]. In that case too, the Court had discussed similar facts where the Assessing Officer (AO) of the searched party and the AO of the notice under Section 153C were the same and had indicated that in such circumstances what ought to be the approach. It is submitted that having regard to that order [in *Satkar Fincap (supra)*] which was brought to the attention of the Court, at that time the learned counsel did not dispute the observations of the Court in that case. At the same time, it is stated that in the facts of this case, the concession was never given.

This Court has carefully considered the submissions of the parties. Firstly, the order was made in Court. At the same time, it is quite possible that the manner of recording the submission – i.e., as a "concession" was never intended as a concession in the facts of this case. Therefore, the Court would proceed to consider the issue independently.

The Income Tax Appellate Tribunal (ITAT) in this case concluded that the AO of the searched party did not record a separate note indicating – as was required in Section 153C - that the materials seized "belonged" to another party, which had to be issued with notice. The Court notices that like in *Satkar Fincap (supra)*, the Satisfaction Note recorded on 22.02.2013 first refers to the documents seized from the searched party and thereafter states:

> *".............During the statement of Sh. Ved Parkash Bharti at the time of search, he has also stated that these documents pertain to him and M/s. Super Mall (P) Ltd., Karnal is which he is Director. In view of the above and as per the provisions of sub-section 91 of Section 153C of the Act, I am satisfied that the document seized from the residence of Sh. Ved Prakash Bharti belongs to a person, i.e. Super Mall (P) Ltd., other than the person referred in section 153A. Accordingly, it is directed to issue such person (M/s. Super Mall (P) Ltd.) notice and assess and reassess income in accordance with the provision of Section 153A of the Act."*

It is, therefore, clear that the reference to Section 153 and the fact that the documents seized belonged to M/s. Super Malls Pvt. Ltd. itself amounted to "satisfaction" for the purposes of triggering a notice. Therefore, the Court was justified in its ultimate conclusion. The first sentence shall not be read as concession but a statement that the AO was the same in both the cases. Therefore, the reference to concession shall stand deleted.

The review petition is partly allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 13, 2017
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