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

\+ **ITA 498/2016, CM APPL.27312/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX (CENTRAL)- I
..... Appellant

versus

SURESH NANDA ..... Respondent

**ITA 501/2016, CM APPL.27314/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX (CENTRAL)-I
..... Appellant

versus

SURESH NANDA ..... Respondent

Appearance: Mr. Dileep Shivpuri, Sr. Standing Counsel with Mr. Sanjay Kumar, Jr. Standing Counsel, for Revenue in both matters.

None for the assessee in both matters.

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

**O R D E R**

% **30.08.2016**

The second question urged was in respect of sum of ₹58,00,000/- - capital gain on account of sale of a flat at Colaba, Mumbai. The Assessing Officer (AO) had held that the amount was not utilized within the statutory period of three years and consequently had to suffer taxation. The AO's order was affirmed by the CIT (A) but set aside by the Income Tax Appellate Tribunal (ITAT) which *inter alia* followed the ruling of this Court in *CIT v. Kabul Chawla*, (2016) 380 ITR 573 (Delhi). The ITAT held that the addition in question did not relate to or had no connection with the materials found in the search and seizure. It observed as under: -

> *"37.*
>
> *XXX XXX XXX*
>
> *iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*
>
> *v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

In the present case, the Revenue does not dispute that the facts pertaining to the sale of the Colaba flat and the claim for its utilisation were disclosed in the original return and had, therefore, attained finality. Consequently, the Revenue could not have disturbed it under the pretext of new material when there was none on this issue.

For the above reasons, we are of the opinion that no question of law arises. The appeals are consequently dismissed.

**S. RAVINDRA BHAT, J**

**DEEPA SHARMA, J**

**AUGUST 30, 2016**
**/*vikas*/**