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

+ ITA 810/2016 & CM Nos. 43256-43257/2016

PR. CIT CENTRAL -1, DELHI Appellant
Through: Mr. P. Roychaudhuri and Ms. Vibhooti
Malhotra, Advs.

versus

SHRI MAHESH KUMAR GUPTA Respondent
Through

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **22.11.2016**

1. The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) and urges that the impugned order, inasmuch as it upset and set aside the addition made by the Commissioner of Income Tax (CIT) in exercise of the powers under Section 263 of the Income Tax Act, 1963 (in short the Act) bringing to tax certain amounts as “deemed dividend” under Section 2(22)(e) of the Act, was erroneous.

2. The brief facts of the case are that further to search and seizure proceedings the assessee filed its returns under Section 153A of the Act. The assessment was completed by the Assessing Officer (AO). The jurisdictional CIT was of the opinion that the assessment order was both prejudicial and erroneous to the interest of the Revenue and directed its revision inasmuch as an addition under Section 2(22)(e) of

the Act was mandated. The assessee successfully appealed to the ITAT.

3. The ITAT concluded based upon the materials available that the search and seizure operations did not yield any fresh material warranting addition under Section 153A of the Act, and therefore, could not clothe the CIT with the authority to add an amount on the basis of a fresh appraisal of the existing materials that formed part of the original assessment. It is urged by the Revenue that CIT acted within his jurisdiction in concluding that the AO erroneously did not bring to tax the amount that had to be included under Section 2(22)(e) facially itself, therefore, the CIT's order was justified, consequently, the ITAT should not have interfered with that determination.

4. There is no dispute that the search and seizure proceedings in this case did not result in anything, therefore, material either in the form of books of account or other documents related to the issue of deemed dividend under Section 2(22) of the Act. The amounts paid were in fact originally declared in the assessment returns of the assessee. The CIT, therefore, had opportunity to exercise his powers as it were on the basis of returns as filed originally and validly under Section 263 of the Act.

5. In the circumstances in the absence of any material disclosing that the issue of deemed dividend had been wilfully derived or had been deemed or otherwise withheld from the assessment an addition under Section 153A was warranted – based on the proposition taught by this Court in judgment dated 28.08.2015 in ITA 707/2014 titled: ***CIT vs Kabul Chawla***. Therefore, we concur with the ITAT's

opinion in this regard. The search and seizure proceedings in such cases are undoubtedly meant to bring to tax amount that are to be determined on the basis of materials seized in the course of such searches; permitting anything over and above that would virtually amount to letting the Revenue have a third or fourth opinion as it were. Searches – to quote the view of *Attorney-General (NSW) vs Quin (1990) HCA 21* in another context are “not the key which unlocks the treasury” of the Revenue’s jurisdiction in regard to matters that had attracted attention in the regular course of assessment.

6. For the above reasons, we are of the opinion that no questions of law arise. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 22, 2016^{/kk}