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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 938/2016, CM APPL.47139-47140/2016

THE PR.COMMISSIONER OF INCOME TAX-CENTRAL-3

..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel.

versus

BABA GLOBAL LTD.

..... Respondent

Through: Mr. Ved Jain with Mr. Pranjali Srivastava, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

23.12.2016

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The revenue urges that the Income Tax Appellate Tribunal's (ITAT) decision, setting aside the assessments made by the Transfer Pricing Officer (TPO)/Assessing Officer (AO) after the search and seizure proceedings, culminating in a proceeding under Section 153A of the Income Tax Act, 1961 [hereafter "the Act"] was unwarranted.

The facts are that during the relevant period, i.e. AY 2008-09, scrutiny proceedings were concluded and assessments were framed by the concerned AO. Later, on 21.01.2011, search and seizure proceedings took place in the assessee's premises. Concededly, no new materials much less incriminating material were unearthed. Nevertheless, based upon the existing material, the AO referred the matter to the TPO under Section 92C on the basis of an opinion that

one of the transactions, i.e., advance to the Associated Enterprise on interest-free basis ought to have attracted an addition. The TPO, after conducting appropriate analysis, indicated his findings which resulted in an approved assessment order on the basis of findings in Arms' Length Price (ALP) determination. The Disputes Resolution Panel (DRP) - upon the assessee's appeal reduced the rate of interest. The ITAT upon the assessee's further appeal quashed the assessment principally on the ground that in the absence of seizure of any incriminating material, the rule enunciated in *CIT v. Kabul Chawla* 2016 (380) ITR 573 (Del) was applicable invalidating the proceedings under Section 153A.

This Court has considered the record. It is quite evident that the scrutiny assessments concluded earlier were based upon queries. The assessee had disclosed all the materials which came to be reviewed subsequently in Section 153A proceedings. Thus, having regard to the decision in *Kabul Chawla (supra)*, the ITAT, in this Court's opinion, did not fall into error in quashing the proceedings. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 23, 2016

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