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

\+ **ITA 767/2016**

\+ **ITA 768/2016**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)- 3

..... Appellant

Through: Mr.Mohit Kumar Gupta and Ms. Monika Ghai, Advs.

versus

DMA INVESTMENT PVT. LTD. ..... Respondent

Through: Mr. Zoheb Hossain, Sr.Standing counsel for Revenue.

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

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

% **04.11.2016**

<u>C.M.Appl.No.40897 in ITA No. 767/2016</u>
<u>C.M.Appl.No.40897 in ITA No. 767/2016</u>

For the reasons stated in the applications, the delay of 45 days in filing the appeal is condoned.

The applications are disposed of.

<u>ITA 767/2016</u>
<u>ITA 768/2016</u>

1. The Revenue is in appeal under Section 260A of the Income

Tax Act, 1961 urging that the assessment completed pursuant to the search and seizure proceedings under Section 153(A) was wrongly set aside. It was argued that the Assessing Officer's conclusion of the original Section 143(d) assessment completed in respect of the assessee was premised upon the income being short term capital loss which was incorrect and that the A.O. in the block assessment rightly concluded that the income was derived from business. The search and seizure proceedings were carried out at the assessee's premises on 22.03.2011. Thereafter notice was issued under Section 153(A). Assessee's return was scrutinized for the block period and the A.O. concluded that the amount claimed as short term capital gain was really business income. He, therefore, assessed it as such. The Commissioner of Income Tax (Appeals) partly allowed the appeal on merits and thereafter that decision was confirmed by the Income Tax Appellate Tribunal (ITAT) which relied upon the reasoning of this Court in *Commissioner of Income Tax vs. Kabul Chawla* 380 ITR 573.

2. This Court has considered the materials on record. The A.O. has nowhere indicated if and to what extent any material was seized or found during the search proceedings, empowering him to revisit the concluded scrutiny assessment for the concerned years and arrive at a contrary conclusion. The reading in *Kabul Chawla (supra)* and other decisions based on that judgement are decisive; unless the revenue seizes any fresh material or information or records a statement which leads to some information or material, revisiting a concluded assessment on aspects that were gone into, is impermissible.

3. In these circumstances, we are satisfied that the ITAT correctly applied the existing law; no substantial question of law arises, the appeals are, therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 04, 2016/*mr*