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

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\+ **ITA 116/2016**

PR COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr Ashok K. Manchanda, Senior Standing Counsel with Ms Vibhooti Malhotra, Junior Standing Counsel and Mr Aamir Aziz, Advocate.

versus

M/S DELCO INDIA PVT. LTD ..... Respondent

Through: Mr Pranjal Srivastava, Advocate.

WITH

7.
\+ **ITA 917/2015**

PRINCIPAL COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr Ashok K. Manchanda, Senior Standing Counsel with Ms Vibhooti Malhotra, Junior Standing Counsel and Mr Aamir Aziz, Advocate.

versus

M/S DELCO INDIA PVT. LTD. ..... Respondent

Through: Mr Pranjal Srivastava, Advocate.

AND

21.
\+ **ITA 74/2016**

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr Ashok K. Manchanda, Senior Standing Counsel with Ms Vibhooti Malhotra, Junior Standing Counsel and Mr Aamir Aziz, Advocate.

versus

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M/S DELCO INDIA PVT. LTD. ..... Respondent

Through: Mr Pranjal Srivastava, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

% 10.02.2016

CM No.3683/2016 (for condonation of delay in filing) & CM No.3685/2016 (for condonation of delay in re-filing) in ITA 116/2016
CM No.1251/2016 (for condonation of delay in filing) & CM No.1253/2016 (for condonation of delay in re-filing) in ITA 74/2016

1. For the reasons stated in the applications, the delay in filing and in re-filing the appeals is condoned.

2. The applications stand disposed of.

ITA 116/2016
ITA 917/2015
ITA 74/2016

3. These appeals have been preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') against a common order dated 16th June, 2015 passed by the Income Tax Appellate Tribunal (hereafter 'ITAT') in ITA Nos. 2453/Del/2013, 2925/Del/2013 and 2926/Del/2013. Whereas ITA 2453/Del/2013 was filed by the Revenue against an order dated 22nd February, 2013 passed by the Commissioner of Income Tax Appeals [hereafter 'CIT(A)] in respect of Assessment Year

(AY) 2007-08, ITA 2925/Del/2013 was Assessee's cross appeal against the said order. ITA 2926/Del/2013 was filed by the Assessee impugning a separate order dated 22nd February, 2013 passed by the CIT(A) in respect of the AY 2008-09. Concededly, the material facts for AY 2007-08 and 2008-09 necessary for addressing the disputes are similar and, therefore, the ITAT had proceeded to examine and decide the appeals in the context of the facts as obtaining for AY 2007-08.

4. Briefly stated, the subject controversy arises consequent to a survey conducted under Section 133A of the Act on the Assessee's premises on 26th February, 2009. Apparently, the survey was conducted simultaneously with the search and seizure operations conducted in relation to one Sh. Ram Hari Ram and Orchid Group.

5. It is stated that during the aforesaid survey, loose papers pertaining to the Assessee were found and impounded. The learned counsel for the Revenue has contended that the relevant material found during the survey was a softcopy of an account stored in the computer of the Assessee. However, the Assessment Order indicates that certain loose papers were found and seized during the survey and the same indicated certain transactions with one M/s Smridhi Sponge Limited pertaining to Financial

Years 2006-07 and 2007-08.

6. Based on the aforesaid loose papers, the assessments for AY 2007-08 and AY 2008-09 were reopened and notices under Section 148 of the Act were issued to the Assessee on 8th September, 2010. In response to the aforesaid notice, the Assessee filed a copy of its return for AY 2007-08, which was originally filed by it on 31st October, 2007 and whereby the Assessee had declared an income of Rs.1,46,690/-. The Assessee further requested that same be treated as a return in response to the notice under Section 148.

7. The Assessee was called upon to explain the documents seized. The Assessee responded by stating that it had no transaction with M/s Smridhi Sponge Limited and the documents did not pertain to it. The Assessee also filed an affidavit to that effect. According to the Assessee, the said document pertained to some other person who had perhaps used the Assessee's computer. Nonetheless, in order to discharge its onus, the Assessee conducted a search from the Registrar of Companies as well as the official site of the Income Tax Department and submitted the details of M/s Smridhi Sponge Limited as well as the names of its Directors. The Assessing Officer (hereafter 'AO') issued a notice under Section 133(6) of

the Act at the registered office of M/s Smridhi Sponge Limited calling upon the said concern to furnish a copy of Ledger Account of the transactions entered into with the Assessee. This notice was received back unserved with the remarks 'Left'. The AO deciphered the relevant document concerned to be a statement of account and on the basis made an addition of Rs.2,68,11,454/- as undisclosed income of the Assessee. According to the AO, the said document contained details of payments made outside the books of accounts to M/s Smridhi Sponge Limited for purchases made. The AO thereafter estimated the sales made by adding a gross profit margin of 8% on the alleged undisclosed purchases and concluded that the Assessee had made sales of Rs.2,57,51,355/- outside its books of accounts. On the above basis, the AO made an addition of Rs.2,68,11,454/- under Section 68 of the Act as undisclosed income of the Assessee. Addition on the similar basis was also made in respect of AY 2008-09.

8. The Assessee appealed against the assessment orders passed before the CIT(A). The Assessee also challenged the reopening of the proceedings under Section 148 of the Act. The Assessee contended that it was never informed of the non-service of notice under Section 133(6) of the Act. It was further submitted that on its part, the representative of the Assessee had

visited the office of M/s Smridhi Sponge Limited and sought a confirmation from them as to the transaction of the Assessee. The Assessee had further downloaded information regarding the overdraft facility enjoyed by M/s Smridhi Sponge Limited and also sought to produce the same before CIT(A). The Assessee also downloaded the Balance Sheet of M/s Smridhi Sponge Limited, which disclosed the outstanding balance of Rs.1,22,04,722/- against M/s Galaxy Exports Pvt. Ltd. The Assessee sought to produce various documents before the CIT(A) and for the purposes filed an application under Rule 46A of the Income Tax Rules, 1962. The Assessee also obtained a letter from the Director of M/s Smridhi Sponge Limited conforming that it had no transaction with the Assessee.

9. The CIT(A) rejected the Assessee's challenge to the reopening of the assessment and held that the notice issued under Section 148 of the Act and initiation of re-assessments was valid. Insofar as the confirmation obtained by the Assessee from the Director of M/s Smridhi Sponge Limited is concerned, the CIT(A) disbelieved the same principally for the reason that the same, although dated 11th October, 2012, was not filed alongwith the application under Rule 46A that was filed on 22nd October, 2012. The CIT(A) also observed that the confirmation was not produced on subsequent

dates of hearing but was sought to be produced on a much later date on 13th January, 2013. The CIT(A) further held that the AO was justified in drawing a presumption under Section 292C of the Act in respect of loose documents found during the survey. The CIT(A) concurred with the AO that the Assessee had not discharged its burden to rebut the presumption that the documents found during the survey belonged to the Assessee.

10. However, the CIT(A) did not concur with the AO's computation of undisclosed income. Whilst the CIT(A) upheld the computation of gross profit as computed by the AO (at Rs. 20,60,108/-), the additions made on account of entire sales were scaled down to the notional working capital required for making the quantum of alleged undisclosed sales, which was computed at Rs.99,73,187/-. Thus, CIT(A) reduced the amount of undisclosed income for AY 2007-08 to Rs.1,20,33,295/- being the aggregate sum of gross profit and working capital. Similarly, the CIT(A) reduced the addition made by the AO in respect of the AY 2008-09;. the CIT(A) accepted the addition of Rs.14,33,880/- on account of profit but restricted further addition to Rs.69,41,555/-, thus, computing the total addition under Section 68 at Rs.83,75,435/- for the AY 2008-09.

11. Being aggrieved by the CIT(A)'s order restricting the addition under

Section 68 to Rs.1,20,33,295/- instead of Rs.2,68,11,454/- as computed by the AO, the Revenue preferred an appeal before the ITAT. The ITAT examined the records and found that on the Assessee on being confronted with the seized documents had responded by stating that it had never entered into any transaction with M/s Smridhi Sponge Limited. Further, the Assessee had immediately undertaken a search through internet and had collected the details about M/s Smridhi Sponge Limited which included its office address, company registration number, PAN number and particulars of its Directors and forwarded the same to the AO. In addition, since the document contained a reference to Galaxy, the Assessee had also made enquiries and had provided the details of Galaxy Exports Pvt. Ltd. and its Directors. Further, the Assessee had also provided the bank accounts maintained by Galaxy Exports Pvt. Ltd. with Punjab National Bank, Jamshedpur Branch from which two cheques mentioned in the impounded documents had been encashed.

12. The Assessee requested the AO to undertake the necessary enquiry from banks and other sources, the particulars of which were provided by the Assessee. The ITAT also observed that the Assessee had provided the details of the balance sheet, auditor's report etc. of M/s Smridhi Sponge

Limited and also pointed out that the final accounts of M/s Smridhi Sponge Limited disclosed transactions with Galaxy Exports which was a company dealing in iron ore. Subsequently, the Assessee had also produced a letter from the Director of M/s Smridhi Sponge Limited conforming that the company did not have any transaction with the Assessee.

13. The ITAT observed that despite the information being provided by the Assessee, the AO had not made the efforts to make the necessary enquiries but had rested content with his notice under section 133(6) of the Act being returned unserved. The ITAT held that in the given facts and circumstances, the AO was required to make further enquiries but it appeared that the AO was reluctant to do so. Although the AO had been provided the details of M/s Smridhi Sponge Limited, he had made no efforts to obtain the necessary information from the AO of M/s Smridhi Sponge Limited which was a thriving company.

14. Insofar as the provisions of Section 292C of the Act are concerned, the ITAT held that Section 292C provides that where a document is found in possession of a person during search or survey, a presumption can be drawn that it belongs to such person, however, the said presumption is rebuttable and the Assessee can rebut the same. The ITAT noted that in the given facts,

the Assessee had asserted that it did not have any dealing with M/s Smridhi Sponge Limited and had filed an affidavit to that effect. Further, in order to rebut the presumption, the Assessee had provided all necessary details for the AO to make the necessary enquiries. The Assessee had also produced the final accounts of M/s Smridhi Sponge Limited from official sites which did not indicate that the Assessee had any dealing with M/s Smridhi Sponge Limited. The ITAT also noted that the seized documents indicated its dealings with 'Galaxy' and the Assessee on its part had provided evidence to show that the cheques disclosed in the document had been encashed from the bank account of one Galaxy Exports Pvt. Ltd. Further, the Assessee had also provided details of Galaxy Exports Private Limited. Thus, given the stand of the Assessee, it had done all that it was in its power to do.

15. On the other hand, the AO had not produced any corroborative evidence which would indicate that the Assessee's denial of dealings with M/s Smridhi Sponge Limited was false. Accordingly, the ITAT concluded that no addition could be made on the basis of the documents seized during the survey.

16. The Revenue has projected the following questions of law (for AY 2007-08):-

"i. "Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in not setting aside the deletion of Rs. 1,47,78,159 ordered by the CIT(A) and in further deleting the Gross Profit addition of Rs.20,60,108/- and Rs.99,73,187 on account of Capital requirements which had been sustained by the Ld. CIT(A), out of total addition of Rs.2,68,11,454/-, made by the AOon the basis of the impounded documents.

ii, WHETHER on the facts and in the circumstances of the case, the ITAT was justified in law in not taking proper cognizance of provisions of Section 292C of the Income Tax Act, 1961 in correct perspective, as the evidence was impounded not only from the premises of the assessee, but from the Computer of the assessee?

iii. WHETHER on the facts and in the circumstances of the case, the ITAT was correct in holding that the heavy onus cast upon the assessee by virtue of the provisions of section stood discharged by the assessee by simply denying any connection with the information found on its computer and then by reference to certain internet based general information, despite the facts that the evidence impounded u/s 133A was based on some documents found in the computer system of the assessee?

iv. Whether the order of the Ld. ITAT(A) not restoring the addition of Rs. 1,47,78,159 deleted by the CIT(A) and further deleting the additions amounting to Rs. 1,20,33,295, which had been confirmed by the Ld. CIT(A), on the basis of the impounded documents, is highly erroneous, perverse and is not tenable on facts and in law."

The questions of law proposed in the appeal relating to AY 2008-09 (ITA 917/2015) are similarly worded.

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17. Section 292C of the Act, *inter alia*, provides that where any books of accounts or other documents are found in possession or control of any person in the course of search under Section 132 or survey under Section 133A of the Act, it may be presumed that such books or documents belong to such person. Undisputedly, such presumption is rebuttable. It is not disputed that the Assessee had clearly denied having any dealing with M/s Smridhi Sponge Limited and had also filed an affidavit to that effect. The ITAT found, as a matter of fact, that the Assessee on its part had made the necessary enquiries and also provided final accounts of M/s Smridhi Sponge Limited; confirmation from the Director of M/s Smridhi Sponge Limited; details of the bank accounts; final accounts; Director's Report; PAN Number etc. which sufficiently discharged the burden cast on the Assessee. The ITAT also found that the Assessee had provided the necessary information for the AO to make the requisite enquiries from M/s Smridhi Sponge Limited as well as M/s Galaxy Exports Pvt. Ltd. In our view, no interference with the order of the ITAT is called for under Section 260A of the Act since the findings of the ITAT are essentially factual. Further, we find no infirmity with the findings returned by the ITAT and in any event the same cannot be held to be perverse by any stretch.

18. In the circumstances, no substantial question of law arises and the appeals are, accordingly, dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 10, 2016/RK