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

\+ ITA 175/2017, C.M. APPL.7802-7803/2017

PR. COMMISSIONER OF INCOME TAX (CENTRAL) - 3

..... Appellant

Through: Sh. Zoheb Hossain, Sr. Standing Counsel.

Versus

ORCHID INFRASTRUCTURE DEVELOPERS PVT. LTD.

..... Respondent

Through: None.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**O R D E R**

% **27.02.2017**

The Revenue's appeal is directed against an order of the Income Tax Appellate Tribunal (ITAT) which allowed the assessee's appeal and set aside the additions made by the Assessing Officer (AO) for AY 2007-08.

The brief facts are that the assessee was subjected to search proceedings on 26.02.2009 and received a notice under Section 153A, to which it replied. For the concerned AY 2007-08, the AO added back ₹3,42,79,320/- on account of valuation of closing stock. The AO observed that the valuation was of the aggregate, without excluding the area that fell to the share of the collaborator. The CIT(A) endorsed the opinion of the AO and rejected the assessee's appeal. The ITAT noticed the facts and ruling of this Court in *CIT v. Kabul Chawla* 380

ITR 573 and thereafter found as follows:

> *"7. In this case, return of income for the year under consideration was filed on 06.11.2007 has attained finality on passing the assessment order u/s 143(3) on 30.12.2008. As it is observed from the records placed before us that there has been no reference to any incriminating document in respect of the addition made by the Assessing Officer. The Assessing Officer has completed the assessment and made addition without there being any seized material/documents.*
>
> *8. The Ld. DR could not controvert the submissions made by the Ld. AR that there was no incriminating material that was found or seized during the search and seizure proceedings. Hence, the additions made in the assessment order by the Assessing officer in admittedly not based on any material found or seized during the course of search.*
>
> *9. We are, therefore, of the opinion that the case of the assessee is squarely covered by the decision of CIT v. Kabul Chawla (supra). For the reasons set out above, we uphold the legal issue raised by the assessee in the cross objection and hold the impugned assessment as null and void."*

In light of the findings of the ITAT which are consistent with the ratio in *Kabul Chawla (supra)*, no question of law arises. The appeal is accordingly dismissed.

**S. RAVINDRA BHAT, J**

**NAJMI WAZIRI, J**

**FEBRUARY 27, 2017/ajk**