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

\+ **ITA 544/2016**

PR. COMMISSIONER OF INCOME
TAX (CENTRAL) – 3 ..... Appellant

Through: Mr. Zoheb Hossain, Senior Standing Counsel for the Revenue.

versus

DHARAMPAL SATYAPAL LTD. ..... Respondent

Through: Mr. Satyen Sethi & Mr. Arta Trana Panda, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **21.08.2017**

1. This is an appeal by the Revenue against an order dated 8th January, 2016 passed by the ITAT in ITA Nos.5611/Del/2013 & 5581/Del/2013 for AY 2004-05. On 30th January 2017 while admitting this appeal, the following question was framed for consideration:

> "Whether in the circumstances of the case, the cancellation of the reassessment made pursuant to notice under Sections 147/148 of the Income Tax Act, 1961 in respect of the assessee for AY 2004-05 by the ITAT was warranted?"

2. The short point that arises for consideration is whether the ITAT was justified in deleting the additions made as a result of the reopening of the assessment under Section 147 of the Income Tax Act, 1961 ('Act').

3. The ITAT has in the impugned order *inter alia* noticed that there was no fresh tangible material which could justify the reopening of the assessment for the AY in question. It was noticed that the original assessment proceedings already dealt with in great detail the issue concerning deduction under Section 80IC of the Act. It was further noticed that in the reasons for reopening the assessment, a reference was made to the search conducted on the Assessee on 21st January, 2011, and that in the assessment for the Assessee's sister concern Dharampal Premchand Limited on the basis of the said search under Section 153A of the Act it was held by the ITAT that the material seized did not constitute incriminating material even qua the sister entity concerned.

4. Indeed today by a separate order in the appeals filed by the Revenue against the order of the ITAT in the cases of the sister concern, this Court has concurred with the decision of the ITAT in holding that the material seized in the course of search did not constitute incriminating material even for FY 2010-11, i.e., the year of search. In that view of the matter the very fundamental basis for reopening is rendered non-existent.

5. In view of the above finding, this Court does not consider it necessary to consider the further question whether there was a justification for reopening the assessment qua the Assessee for the AY in question.

6. The question of law framed by the order dated 30th January, 2017 is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue.

7. The appeal is accordingly dismissed.

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 21, 2017
b'nesh