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

1 to 5

\+ **ITA 375/2017**
ITA 376/2017
ITA 377/2017
ITA 378/2017
ITA 379/2017

THE PR. COMMISSIONER OF INCOME TAX
CENTRAL-3 ..... Appellant

versus

SHEETAL INTERNATIONAL PVT. LTD. ..... Respondent

Through: Mr. Ruchir Bhatia, Senior standing counsel with Mr. Gaurav Khetrapal, Advocate for the Appellant.
Mr. Sameer Rohatgi, Advocate for the Respondent.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

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

% **10.07.2017**

<u>CM APPL No. 17223/2017 (for exemption) In ITA 375/2017</u>
<u>CM APPL No. 17224/2017 (for exemption) In ITA 376/2017</u>
<u>CM APPL No. 17225/2017 (for exemption) In ITA 377/2017</u>
<u>CM APPL No. 17226/2017 (for exemption) In ITA 378/2017</u>

1. Exemption allowed subject to all just exceptions.

<u>ITA Nos. 375/2017, 376/2017, 377/2017, 378/2017 & 379/2017</u>

2. These appeals by the Revenue under Section 260-A of the Income Tax

Act, 1961 (''Act') are directed against the common order dated 28th October, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 569, 570, 651, 652 and 929/Del/2013 for the Assessment Years ('AYs') 2004-05, 2006-07, 2007-08, 2008-09 and 2007-08 respectively.

3. **Admit.** The following question is framed for consideration:

> Whether the ITAT was right in law in holding that the proceedings under Section 153-C of the Income Tax Act, 1961 were not validly initiated?

4. With the consent of learned counsel for the parties, the appeals are taken up for final hearing.

5. From the impugned order dated 28th October 2016, it is seen that the short ground on which it was held by the ITAT that the proceeding was not validly initiated under Section 153C of the Act since there was no satisfaction note recorded by the Assessing Officer ('AO') of the searched person

6. In the present case, the AO of the searched person and the other person (the Assessee) was the same. In similar circumstances, the Court has recently in the decision dated 25th May, 2017 in WP (C) No. 525 of 2015 (***Ganpati Fincap Services Pvt Ltd. v. Commissioner of Income Tax***) held, *inter alia*, as under:

> "(iv) Where the AO of the searched person and the other person is the same, such a satisfaction note *qua* the other person has to be recorded by the AO of the searched person prior to the initiation of the proceedings against the other person. This is a *sine die non* for

> triggering the proceedings against the other person under Section 153C of the Act.
> (v) There do not have to be two separate satisfaction notes prepared by the AO of the searched person even where he is also the AO of the other person. In such event, the AO need make only one satisfaction note. That satisfaction note is *qua* the other person. Further, it is sufficient that such satisfaction note is placed in the file of the other person by the AO in his capacity as the AO of such other person."

7. In that view of the matter, the impugned order of the ITAT which proceeds to invalidate the proceedings under Section 153C of the Act only for the reason that the AO of the searched who was also that of the Assessee, did not record a separate satisfaction note cannot be sustained in law.

8. The question framed is, accordingly, answered in the negative i.e., in favour of the Revenue and against the Assessee. The impugned order of the ITAT is hereby set aside.

9. Learned counsel for the Assessee, however, urges that this is a case where there were no incriminating materials available to proceed against the Assessee under Section 153C of the Act.

10. The above issue has not been examined on merits by the ITAT. In the circumstances, the Court considers it appropriate to direct that, for the above purpose, the aforementioned appeals shall stand restored to the file of the ITAT and the ITAT will hear them on merits.

11. The appeals aforementioned will now be listed before the ITAT on 4th September, 2017. The ITAT is requested to endeavour to dispose them of on merits within a period of six months thereafter.

12. The appeals are disposed of in the above terms.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 10, 2017
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