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

\+ **ITA 487/2017**

PR. COMMISSIONER OF INCOME TAX-V ..... Appellant
Through : Mr. Rahul Chaudhary, Senior Standing Counsel and Ms.Lakshmi Gurang, Advocate for Revenue.

versus

VIKAS GUTGUTIA ..... Respondent
Through : Mr. Piyush Kaushik, Advocate.

With

\+ **ITA 488/2017**

CHIEF COMMISSIONER OF INCOME TAX (OSD) CENTRAL -2 NEW DELHI ..... Appellant
Through : Mr. Rahul Chaudhary, Senior Standing Counsel and Ms.Lakshmi Gurang, Advocate for Revenue.

versus

VIKAS GUTGUTIA ..... Respondent
Through : Mr. Piyush Kaushik, Advocate.

With

\+ **ITA 489/2017**

CHIEF COMMISSIONER OF INCOME TAX (OSD) CENTRAL-2 NEW DELHI ..... Appellant

Through : Mr. Rahul Chaudhary, Senior Standing Counsel and Ms.Lakshmi Gurang, Advocate for Revenue.

versus

VIKAS GUTGUTIA ..... Respondent

Through : Mr. Piyush Kaushik, Advocate.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **10.07.2017**

CM Nos. 23601, 23603 & 23605 /2017 (delay in filing) and CM Nos. 23602, 23604 & 23606 /2017 (delay re-filing)

1. For the reasons stated, the delay in re-filing and filing the appeal is condoned. The applications are allowed.

ITA Nos. 487/2017, 488/2017 & 489/2017

2. These appeals by the Revenue under Section 260 A of the Income Tax Act 961 ('Act') are directed against the order common dated 25th October, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.858, 859 and 860/Del/2014 for the assessment years 2002-03, 2003-04 and 2004-05.

3. The two questions sought to be urged by the Revenue read as under:

> (i) Whether on the facts and in the circumstances of the case, the ITAT is justified in holding that intimation sent under Section 143(1) of for A.Y.s 2002-03 to 2004-05 fall in the category of completed assessments when there was no assessment made under Section 143 (3)?
>
> (ii) Whether on the facts and in the circumstances of the

> case, the ITAT was justified in deleting the additions made in the assessment orders for A.Y.s 2002-03 to 2004-05 on the ground that additions not based on incriminating material found during course of search cannot be sustained?

4. As far as question (ii) is concerned, it is not in dispute that arising out of the same search proceedings, additions sought to be made in the hands of Ms. Meeta Gutgutia, wife of the Assessee have been deleted by the CIT (A) and the ITAT and the said orders were affirmed by this Court by dismissing the Revenue's appeal by the decision in ***Pr. Commissioner of Income Tax, Central-2 New Delhi v. Meeta Gutgutia Prop. M/s. Ferns 'N' Petals, (2017) 395 ITR 526 (Del)***. Therefore, the Court is not inclined to frame question (ii) as urged by the Revenue.

5. As far as question (i) is concerned, it sought to be contended by Ms. Laxmi Gurung, the learned Standing Counsel for the Revenue that in all these three AYs, the returns were filed by the Assessee were not picked up for scrutiny and only an intimation was sent under Section 143 (1) of the Act. She contends that there was no completed assessment for the said three AYs. She submitted that the said assessments should be treated as 'pending' assessments in respect of which proceedings under Section 147 of the Act could have been validly initiated.

6. In the first place, question (i) was not raised by the Revenue in its appeals before the ITAT. Secondly, the fact remains that the Revenue chose the route of Section 153 A of the act to proceed against the Assessee. Having chosen that route, there had to be some incriminating material *qua* the Assessee to justify the initiation of proceedings thereunder. There was none in the present case. In the circumstances, the question of examining whether the Revenue could instead have validly

proceeded under Section 147 of the Act is academic and need not be examined. The Court declines to frame question (i) either.

7. The appeals are dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 10, 2017
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