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

+ **ITA 775/2016**

+ **ITA 797/2016**

PR. COMMISSIONER OF INCOME TAX (CENTRAL) -1

..... Appellant

Versus

JAIPURIA INFRASTRUCTURE P. LTD.

..... Respondent

Through: Mr. P. Roychaudhuri, Advocate for
the Appellants.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **30.01.2017**

1. The Revenue urges a common question of law in these appeals, namely, *whether the Income Tax Appellate Tribunal's (ITAT) judgment, holding that the additions were made, in excess of the powers under Section 153A of the Income Tax Act, 1961 (for short 'the Act'), is correct in law?*
2. The brief facts of the case are that for Assessment Years (AY) 2006-07 and 2007-08, the assessee had claimed certain expenditure. In AY 2007-08, the Assessment Officer (AO) had conducted a scrutiny assessment in which the identity of the suppliers and the nature/genuineness of the expenditure were examined. After satisfying himself, the AO framed the assessment. For the previous AY 2006-07, the assessments were completed without scrutiny; the expenditure was similarly claimed in respect of the same kind of suppliers.

3

3. In these circumstances, on 27.03.2012, the assessee's premises were searched and after considering the materials, notice was issued under Section 153A of the Act. The final assessment made certain additions in respect of all these expenditures, which was the subject matter of the scrutiny assessment for AY 2007-08 and the previous year. The AO's additions were confirmed by the Commissioner of Income Tax (Appeals). However, the ITAT directed that they be deleted, holding that there was no incriminating material warranting additions. The relevant extract of the impugned order is as follows:-

*"21. However, in the backdrop of aforesaid undisputed facts discussed in the preceding paras and law laid down by Hon'ble jurisdictional High Court in the case cited as **Kabul Chawla** (supra), we are of the considered view that completed assessment interfered with by the AO u/s 153A and confirmed by the ld. CIT (A) are not sustainable in the eyes of law for the following reasons:-*

- (i) *that in the instant case, undisputedly the AO has not made assessment on the basis of incriminating material unearthed during search and seizure operation conducted u/s 132 rather proceeded u/s 153A of the Act on the basis of some pre-search enquiries to make an addition as has specifically been recorded in para 6 of the assessment order that, "Pre search enquiries revealed that M/s Jaipuria Infrastructure Developers Pvt. Ltd., the flagship company involved in the real estate business of the SK Jaipuria group is indulged in inflating the cost of the project by debiting bogus expenses by raising bills from the non-existing parties or the entry providers."*

- 4
- (ii) *that the ratio of the judgment in case of **Kabul Chawla** (supra) is required to be extracted by perusing the judgment in entirety and not by picking up the favourable sentences and by ignoring the unfavourable one. Highlighted portion of para 37 (iv), (v), (vi) & (vii) of **Kabul Chawla** (supra) is crux of the issue involved which is applicable to the facts and circumstances of the case;*
 - (vi) *that there is not an iota of material with the AO to initiate proceedings u/s 153A what to talk of incriminating seized material;*
 - (vii) *that the ld. CIT (A) affirmed the assessment order by relying upon the decisions relied upon by Hon'ble jurisdictional High Court in the case cited as **Filatex India Ltd. vs. CIT-IV - (2014) 49 Taxmann.com 465 (Delhi)** which has been distinguished in the **Kabul Chawla** (supra) on the ground that in the said case, there was some material unearthed during the search whereas in the instant case there is admittedly no incriminating material unearthed during the search to proceed u/s 153A.*

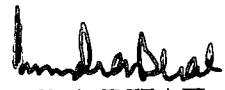
22. *In view of what has been discussed above, we are of the considered view that without entering into the merits of this case, addition made in both the cases u/s 153A read with section 143(3) is not sustainable in the eyes of law, hence deleted. Consequently, both the appeals filed by the assessee are hereby allowed."*

4. This Court has considered the submissions. It is evident that the reason which prevented the ITAT was the ratio in **Commissioner of Income tax (Central) III Vs. Kabul Chawla /2016/ 380 ITR 573 (Delhi)**, where it was categorically ruled that assessments cannot be arbitrarily made without any relevance or nexus with the seized materials and in the absence

5

of seized materials additions based upon existing materials are unjustified. This Court finds no infirmity with the application of the *Kabul Chawla's* case (*supra*), in the circumstances of this case by the ITAT. No question of law arises.

5. The appeals are accordingly dismissed.


S. RAVINDRA BHAT, J.


NAJMI WAZIRI, J.

JANUARY 30, 2017

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