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

\+ **ITA 60/2017**

PR. COMMISSIONER OF INCOME TAX CENTRAL-2, NEW DELHI ..... Appellant

Through: Mr. Asheesh Jain, Sr. Standing Cousel with Mr. Vikrant A. Maheshwari, Advocate.

versus

SUBHASH KHATTAR ..... Respondent

Through: Mr. Salil Aggarwal with Mr. Madhur Aggarwal, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 25.07.2017

1. This is an appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') against the order dated 30th June, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 902/Del/2015 for the Assessment Year ('AY') 2006-07.

2. While admitting the appeal on 7th February, 2017, this Court framed the following question of law:

> *"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the additions made under Section 153A read with Section* 143(3) *of the Income Tax Act, 1961 in the circumstances of the case, were not justified and supportable in law? "*

3. The facts leading to the filing of the present appeal are that a search took

place on 17th August, 2011 in the corporate office of AEZ Group at 301-303, Bakshi House, Nehru Place, New Delhi during which a hard disc was found and seized from which, a print out of a file named "D.P. Correction Sheet.xls" was taken. This sheet contained details of Sales Status of lndirapuram Habitant Centre and at serial No. 32 of the said sheet, the name of the Assessee appeared. According to the Revenue, the Assessee had invested a sum of Rs. 20 crores. Therefore, on 10th February, 2012, a search operation was undertaken under Section 132 of the Act in the case of the Assessee. There is no dispute that this search did not result in the discovery of any incriminating material *qua* the Assessee.

4. The case of the Revenue is that on 21st February, 2012 a letter was written to the AO by the Authorized Representative of the Assessee *inter alia* stating that:

> "To the best of our assessee knowledge and records, the assessee have not made any cash payment in the project of M/s Aerens Group.
>
> However to avoid any litigation/duress and to buy peace of mind the assessee state that the payment to M/s Aerens group payment have been made as reflected in the books of accounts Paper shown."

5. Thereafter, on 29th October, 2013, a notice was issued to the Assessee under Section 153A of the Act. In compliance thereof, the Assessee filed the return of income which he had originally filed and which had already been scrutinized by the AO under Section 143 (3) of the Act for the AY in question i.e. AY 2006-07. By the assessment order dated 27th March, 2014, the AO came to the conclusion that the Assessee had failed to explain the

nature and the source of the investment made in cash and, consequently, added the sum of Rs.3.21 Crores to the Return Income.

6. The Assessee went in appeal before the Commissioner of Income Tax (Appeals) who dismissed it by an order dated 27th November, 2014. A further appeal was filed by the Assessee before the ITAT. The ITAT, *inter alia*, found substance in the contention of the Assessee that the assessment under Section 153(A) of the Act, in the absence of any incriminating material found during the search on the premises of the Assessee was not sustainable in law. Reliance was placed on the decision of this Court in ***Commissioner of Income Tax v. Kabul Chawla, [2016] 380 ITR 573.***

7. A question was posed to the learned counsel for the Revenue whether in the present case anything incriminating has been found when the premises of the Assessee was searched. The answer was in the negative. The entire case against the Assessee was based on what was found during the search of the premises of the AEZ Group. It is thus apparent on the face of it, that the notice to the Assessee under Section 153A of the Act was misconceived since the so-called incriminating material was not found during the search of the Assessee's premises. The Revenue could have proceeded against the Assessee on the basis of the documents discovered under any other provision of law, but certainly, not under Section 153A. This goes to the root of the matter.

8. Consequently, the impugned order of the ITAT calls for no interference of this Court. The question framed by this Court on 7th February, 2017 is

answered in negative, that is, in favour of the Assessee and against the Revenue.

9. The appeal is accordingly dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 25, 2017
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