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

\+ **ITA 87/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) - 2
..... Appellant

Through: Mr. Sanjay Kumar, Advocate.

versus

RAJEEV BEHL ..... Respondent

Through: Mr. N.P. Sahni, Advocate.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 22.09.2017

1. This is an appeal under Section 260A of the Income Tax Act, 1961 ('the Act') filed by the Revenue against the order dated 29th June, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1930/Del/2015 for the Assessment Year ('AY') 2010-11.

2. While admitting this appeal on 6th February, 2017, the following question of law was framed for consideration:

> *"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the additions made under Section 153C 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. It may be mentioned that for the AYs 2007-08 to 2012-13 (except AY 2010-11), this Court by its order dated 6th February, 2017 dismissed the

Revenue's appeals in ITA Nos. 84/2017, 85/2017 and 86/2017 which rose from the same impugned order of the ITAT.

4. It is pointed out by the learned counsel for the Respondent -Assessee that the only reason why this appeal was separated from that batch of appeals involving the same Assessee was that the date of handing over the seized documents to the Assessing Officer (AO) of the Assessee, the date of issuance of the satisfaction note, the date of the filing of the return, the date of centralising of the assessments and the date of the final order of assessment were not clear when the matter was earlier heard along with the aforementioned batch of appeals. He states that as far as the Assessee's assessment for this year (AY 2010-11) is concerned, the time period within which the assessment had to be completed expired on 31st December, 2012. On the date of the recording of the satisfaction note, which was 8th August 2013, the assessment already stood abated. The search took place on 28th July 2011 and the documents were handed over to the AO of the Assessee only on 6th November 2012.

5. In light of the above facts, it is seen that as far as AY 2010-11, in terms of Section 153 C, the assessement had to be completed by 31st December 2012. Even the satisfaction note was prepared only on 8th August 2013. Learned counsel for the Revenue submitted that although the amendment to Section 153 C bringing on par the period for which the assessments could be reopened in the case of both the searched person and the 'other person', was effective from 1st April 2017 it should be viewed as clarificatory and therefore applicable even to the case on hand.

6. The Court is unable to agree with the said submission. It is plain that the amendment to section 153 C of the Act is prospective. In the present case the assessment for AY 2010-11 had abated by the time the satisfaction note was prepared by the AO of the Assessee. The said asseement could not be reopened in the absence of tangible material of incriminating nature relevant for that AY being found. This position has been made clear in the decisions of this Court in ***CIT v. RRJ Securities Limited (2016) 380 ITR 612 (Del)*** and ***ARN Infrastructure India Ltd. v. Assistant Commissioner of Income Tax, Central Circle-28 (2017) 394 ITR 569.*** On facts it has been found that there was no tangible material of incriminating nature for the AY in question that could justify the addition made by the AO.

7. Consequently the question framed is answered in the negative i.e. in favour of the Assessee and against the Revenue. The appeal is dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 22, 2017
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