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

+ ITA 984/2017 & CM APPL. 41103-41104/2017

PR.COMMISIONER OF INCOME TAX-1 Appellant

versus

RAKESH KUMAR GARG Respondent

+ ITA 114/2018 & CM APPL. 4010-4012/2018

PR.COMMISIONER OF INCOME TAX -1 Appellant

versus

KUSUM LATA GARG Respondent

+ ITA 94/2018 & CM APPL. 3491-3493/2018

PR.COMMISIONER OF INCOME TAX-1 Appellant

versus

KUSUM LATA GARG Respondent

+ ITA 1029/2017 & CM APPL. 42233-42234/2017

PR.COMMISIONER OF INCOME TAX-1 Appellant

versus

RAKESH KUMAR GARG Respondent

Present: Mr. Ashok K. Manchanda, Sr. Standing Counsel with
Mr. Anand K. Chaudhuri, Adv. for Revenue.
Mr. Sudesh Garg, Adv. for respondent.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
% **12.03.2018**

The following question of law was framed by this Court for all these appeals:

“Did the ITAT fall into error in directing the deletions of the sum of ₹99,00,630/- as sale consideration of M/s. Nageshwar Investment Ltd. and the capital gains declared by the assessee in the circumstances of the case?”

The search assessments were completed in the case of Rajdarbar pursuant to search and seizure proceedings in respect of Rajdarbar Group of Companies, which was undertaken on 31.07.2008. The notices were issued to the present assessee / respondent under Section 153A of the Income Tax Act, 1961 (hereafter referred to as “the Act”). The AO brought to tax certain amounts for the assessment years in respect of the two assesseees involved in these four appeals on the ground that the capital gains reported by them for the sale of shares in M/s Nageshwar Investments, were bogus. This according to the AO was on the basis of the freshly available material i.e. in the form of assessee’s books of accounts, etc. recovered or found in the premises of the said company M/s Nageshwar Investments. The AO – as well as the CIT(A) were further of the opinion that the enquiry conducted

by other statutory authorities such as SEBI and the Kolkata Stock Exchange showed that M/s Nageshwar Investments was subjected to severe share price rigging. The ITAT in this case after noticing the relevant facts directed that the sums brought to tax by the Revenue, had to be deleted. The ITAT's findings in this regard are as follows:

“The second proviso states that the assessment or reassessment relating to the said six assessment years pending on the date of initiation of the search u/s 132 shall abate. It is seen that in assessee's case search action was initiated and assessments u/s 153A were framed for different assessment years making various additions. It is assessee's claim that the addition was not tenable as the regular/original return had been filed wherein the particulars relating to the addition has been disclosed and the same had been added by the AO in the assessment made u/s 143 (3) of the Act. It is also seen that the assessee had preferred an appeal before the Ld. CIT (A) who had deleted these additions and on further appeal by the Department, ITAT Agra Bench had also upheld the CIT (A)'s order in ITA Nos. 142 and 153/Agr/2008. Subsequently, revenue's appeal before the Hon'ble High Court was also dismissed vide order dated 29.03.2011. It is seen from the records that no material has been found during the search to justify the addition. In our considered opinion section 153A does not authorise the making of a de novo assessment in this particular assessment year. While under the first proviso, the AO is empowered to frame assessment for six years, under the second proviso only assessments which are pending on the date of initiation of search abate. The effect is that completed assessments do not abate. The assessments can be said to be pending only if the AO

is statutorily required to do something further. If the section 143(2) notice has been issued, the assessment can be said to be pending. However an assessment which has been contested up to the High Court cannot be said to be pending. The power given by the first proviso to assess income for six assessment years has to be confined to the undisclosed income unearthed during search and cannot include items which were disclosed in the original assessment proceedings. A perusal of the assessment order passed u/s 153A of the Act reveals that the AO has not made any reference whatsoever to any incriminating material found as a result of the search and the addition of Rs. 15,499,270/- has been made entirely on the basis of allegation of accommodation entry which in turn is based on some material said to have been gathered from stock exchange but which does not specifically point out towards the assessee. The Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla in ITA No. 707/2014 dated 28/08/2015 has examined thread bare the provisions of section 153A and has summarized the legal position by holding as under:

xxxx xxxx xxxx xxxx”

This Court also notices that by a separate order made earlier (Principal Commissioner of Income Tax v. Ranjana Garg, ITA 257-258/2017 decided on 01.05.2017), the question of law was sought to be urged by the Revenue in respect of the same common impugned order which is involved in the present case i.e. order dated 19.10.2016. The appeals before this Court related to ITA No.2083 & 2833/Del/2012. This Court was of the opinion that the decision in *Commissioner of Income Tax v. Kabul Chawla*

380 ITR 573 concludes the issue as no incriminating material relating to the assessee was found.

This Court further holds that the analysis of the ITAT in the circumstances, appears to be correct firstly for the reason that the previous assessments had adverted to the genuineness of the transactions vis-a-vis Nageshwar Investments in the course of a scrutiny assessment and that too when the assessee had suffered the additions. Secondly, the Appellate Commissioner and ITAT had granted relief against which the Revenue appealed to the High Court under Section 260A of the Act and that was rejected, in 2011.

In these circumstances, the question of law framed is answered against the Revenue and in favour of the assessee.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 12, 2018

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