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

+ ITA 545/2018 & CM APPL. 18962/2018

PR COMMISSIONER OF INCOME TAX-1, AGRA Appellant

versus

SMT AMITA GARG

..... Respondent

+ ITA 546/2018 & CM APPL. 18963/2018

PR. COMMISSIONER OF INCOME TAX, DELHI- 12 Appellant

versus

SHRI DEVI DASS GARG

.... Respondent

+ ITA 547/2018 & CM APPL. 18964/2018

PR. COMMISSIONER OF INCOME TAX, DELHI- 12 Appellant

versus

SMT. AMITA GARG

..... Respondent

+ ITA 549/2018 & CM APPL. 18965/2018

PR. COMMISSIONER OF INCOME TAX -1 Appellant

versus

SMT AMITA GARG

.... Respondent

+ ITA 550/2018 & CM APPL. 18966/2018

PR. COMMISSIONER OF INCOME TAX, AGRA Appellant

versus

SHRI DEVI DASS GARG

..... Respondent

+ ITA 551/2018 & CM APPL. 18972/2018

PR. COMMISSIONER OF INCOME TAX, AGRA Appellant

versus

SHRI DEVI DASS GARG

.... Respondent

+ ITA 552/2018 & CM APPL. 18974/2018

PR. COMMISSIONER OF INCOME TAX-1, AGRA Appellant

versus

SHRI DEVI DASS GARG

.... Respondent

Present : Mr.Ashok Manchandan and Mr. Raghvendra Singh,
Advocates for Revenue.
None for respondent.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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08.05.2018

These appeals of the Revenue challenge the findings of the ITAT. The ITAT reversed the addition made by the Assessing Officer (AO) in the course of the scrutiny of the assessment primarily on the ground that no fresh relating material was discovered during the search and seizure proceedings under Section 132 of the Act to

justify the addition under Section 154A. A similar set of appeals (ITA 984/2017 and other connected cases) on identical question were dismissed on 12.03.2018. The Court had noticed the ITAT's common order which inter alia reads 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”

The Court is of the opinion that the application of *Commissioner of Income Tax Vs. Kabul Chawla* 380 ITR 573 in the circumstance was justified. In these circumstances, no question of law arises.

These appeals are dismissed.

Pending applications too are disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 08, 2018

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