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

+ **ITA 76/2018 & CM APPL. 2783/2018**

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-1
..... Appellant

versus

M/S SHRIM INVESTMENT SOLUTIONS PVT. LTD.
..... Respondent

+ **ITA 77/2018**

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)- 1
..... Appellant

versus

M/S SHRIM INVESTMENT SOLUTIONS PVT. LTD.
..... Respondent

Present: Mr. Rahul Chaudhary, Sr. Standing Counsel for the
appellant.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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23.01.2018

The question of law urged by the Revenue in these appeals relate to the assessment completed under Section 153C of the Income Tax Act, 1961 ('the Act'). In these appeals, the Income Tax Appellate Tribunal's (ITAT) impugned directions resulted in setting aside a sum of ₹74,04,860/- brought to tax on account of unexplained credits.

The facts are that a search was conducted in the premises of Bhushan Steel – its group of companies on 3.3.2010 under Section 132 of the Act. Various documents pertaining to the Kedia

Consultants Pvt. Ltd. were found and seized. The searched party Bhushan group was issued with notice under Section 153A of the Act. On account of the seizure of documents pertaining to the assessee, the materials were transmitted to its Assessing Officer (AO), who, thereafter, proceeded to issue a notice under Section 153C, calling upon the assessee to file returns, which he did for the six years in question i.e. Assessment Years 2004-05 to 2009-10. After considering the assessee's statements, the credits claimed by it in its regular returns, were disallowed and the sum of ₹74,04,860/- was added and brought to tax in the final assessment order under Section 68. In so concluding, the AO relied upon other materials such as the statement and documents furnished by one Mr. S.K. Gupta.

The assessee's appeal to the CIT(A) was unsuccessful; the Appellate Commissioner considered all the authorities relied upon and was of the opinion that the assessment as well as the amount brought to tax was in order. However, as far as the merits of the addition upon independent appraisal of the circumstances, the CIT(A) was of the opinion that the additions were unjustified and proceeded to set aside them. The cross-appeals were filed by the assessee and the Revenue. The Revenue is aggrieved with respect to the setting aside of the addition on the merits; the assessee was aggrieved by the notice and reasons recorded under Section 153C contending that the materials seized during the search operation under Section 132, did not justify addition for the year 2010-11, which was done by the AO.

The ITAT upheld the assessee's contentions. The relevant para is reproduced, as under :

“5.1 A perusal of the aforesaid satisfaction note recorded by the Assessing Officer reveals that the satisfaction note pertains to assessment year 2004-05 to assessment year 2009-10. It is undisputed that the documents referred to by the Assessing Officer pertain to assessment year 2010-11 and not to assessment year 2004-05 -to 2009- 10. It is also undisputed that the impugned transactions are duly recorded in the regular books of accounts pertaining to assessment year 2010-11. We agree with the contentions of the Id. AR that although Section 153C does not require the Assessing Officer to be conclusively satisfied with the documents belonging to other person must conclusively reflect or disclose any undisclosed income, there must be some prima facie rationale behind initiating the proceedings u/s 153C of the Act and that the satisfaction should be logical, rational and objective. The Assessing Officer has initiated assessment proceedings u/s 153C of the Act for assessment year 2004-05 to assessment year 2009- 10 without pointing out or referring to any seized material/document belonging to those years. Thus, there is nothing on record which could have persuaded the Assessing Officer to issue notice u/s 153C. It is undisputed that no document/books of account/records pertaining to assessment year 2004-05 to assessment year 2009-10 for which the Assessing Officer has recorded satisfaction u/s 153C have been found or seized and, therefore, there was no logic behind the action of the Assessing Officer for initiating proceedings U/S 153C. Our view is fortified by the ratio of the judgment of the Hon'ble High Court of Delhi in CIT vs RRJ Securities Ltd. (supra).....”

It is quite evident that the ITAT and prior thereto CIT(A), considered the facts and found that the additions made pertained to a year, which did not involve or concern the transaction. This transaction of credits of the so called unexplained credits took place in a later year i.e. 2010-11. In these circumstances, the Appellate Authorities also noted that these transactions were reported in the books of account and took into consideration; consequently, it could not have been treated as an income for the past year 2004-15 to 2009-10. These are findings of facts; the Court discerns no question of law. Accordingly, the appeals are dismissed alongwith the pending application.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 23, 2018

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