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

+ **ITA 406/2019**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)- I

..... Appellant

Through: Ms.Lakshmi Gurung, Senior Standing
Counsel with Mr. Tushar Gupta and
Mr. Siddharth Gupta, Advocates.

versus

M/S SMC POWER GENERATION LTD. Respondent

Through: Mr.Salil Aggarwal and Mr.Madhur
Aggarwal and Mr.Uma Shankar,
Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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23.07.2019

C.M.No.18441/2019 (Delay)

1. For the reasons explained in the application, the delay of 63 days in re-filing the appeal is condoned and the application is allowed.

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2. The Revenue has filed this appeal against the order dated 13th August, 2018 of the Income Tax Appellate Tribunal (ITAT) in ITA No. 4798/Del/2015 (filed by the Revenue) & CO No. 457/Del/2015 (filed by the Assessee) for the Assessment Year (AY) 2006-07.

3. The question sought to be raised by the Revenue is whether the ITAT was justified in quashing the assessment order framed under Section 153A of the

Income Tax Act, 1961 (Act) on the ground that there is no incriminating material found qua the addition made on account of share application money in the course of the search?

4. The facts in brief are that a search and seizure operation under Section 132 of the Act was initiated in the case of the SMC Group on 4th August, 2011. Thereafter a notice dated 11th January, 2013 under Section 153A of the Act was issued to the Assessee to file return of income for the relevant year. The allegation was that the Assessee had not established the genuineness, identity and creditworthiness of the three entities from whom it had received share premium in the sum of Rs.3.00 crore, Rs.35 lakhs and Rs.2.65 crores during the AY in consideration. In the assessment order dated 31st March, 2014 under Section 143 (3) read with Section 153A of the Act, the AO made an addition of Rs.3.00 crores to the income of the Assessee disbelieving the contentions of the Assessee.

5. The appeal by the Assessee was allowed by the Commissioner of Income Tax (Appeals) [CIT (A)] by an order dated 21st May, 2015. The CIT (A) once again examined the documents produced by the Assessee and came to the conclusion that in the assessment framed earlier under Section 143(3) of the Act, the Revenue had accepted the amount received by the Assessee as share capital. It was held that there was no evidence to take a different view in the matter.

6. Aggrieved by the above order, the Revenue filed an appeal before the ITAT and the Assessee filed its cross objections. The cross-objections were

on the basis of the decision of this Court in ***CIT v. Kabul Chawla* 2015(380) ITR) 573** wherein it was held that if no incriminating material was found at the time of search the addition would be unjustified.

7. At the outset it is required to be noticed that the Revenue's appeal against the decision of this Court in ***Kabul Chawla* (supra)** has been dismissed by the Supreme Court on account of the low tax effect. However, learned counsel for the Revenue states that there are other appeals of the Revenue pending in the Supreme Court questioning the correctness of the said decision. Nevertheless the fact remains that there is no stay of the operation of the decision of this Court in ***Kabul Chawla* (supra)** and it continues to hold the field.

8. Learned counsel for the Revenue submitted that the observations of the ITAT in the impugned order that there was no incriminating material "in respect of the share capital" and therefore the addition was unjustified, was not warranted. According to her this was beyond the judgment of this Court in ***Kabul Chawla* (supra)**.

9. The fact remains that the Revenue itself is not disputing that in respect of the share capital no incriminating documents were found in the search proceedings. The Court's attention has been drawn to the decision of the Supreme Court in ***CIT v. Singhad Technical Education Society* (2017) 397 ITR 344 (SC)** where in the context of Section 153C of the Act it was held that the incriminating material which was seized had to pertain to the AY in question. It is further held that documents seized had to establish a co-

relation documents wise with the assessment years for which the addition was sought to be made.

10. The requirement that the incriminating material to have the co-relation to the particular addition sought to be made is a logic that will hold good not only for Section 153 C of the Act but in relation to Section 153A of the Act as well. Consequently, this Court does not find any error having been committed by the ITAT in accepting the plea of the Assessee that there is no incriminating document which was seized in the course of search relating to the addition sought to be made on account of the share capital. Therefore, the jurisdictional requirement of Section 153 A of the Act was not satisfied.

11. No substantial question of law arises. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 23, 2019

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