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

+ ITA 67/2020 and C.M. Nos. 4576-77/2020

PR. COMMISSIONER OF INCOME TAX -5 Appellant

Through: Ms. Adeeba Mujahid, Advocate.

versus

M/S. L.T. FOODS PVT. LTD. (PREVIOUSLY KNOWN AS
M/S L.T. OVERSEAS LTD.) Respondent

Through: Mr. Rohit Jain, Mr. Aniket D.
Agrawal and Ms. Kannopriya Gupta,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

04.02.2020

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The Revenue appeals against the order dated 03.07.2019 passed by the Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhi in ITA No.4162/Del/2013 and ITA No.4044/Del/2013. The first was an appeal preferred by the assessee and the second was an appeal preferred by the Revenue in relation to the Assessment Year 2005-06. The Tribunal allowed the appeal of the assessee and disallowed the appeal of the Revenue on the premise that the Revenue had not been able to establish that any of the additions made during the course of the assessment proceedings were premised on any incriminating material found during the search of the Dawat Group of Companies – to which the assessee belongs. The Tribunal

has held in paragraph 40 of the impugned order as follows:

“40. We have carefully considered the rival contention and perused the orders of the lower authorities. It is apparent that on the date of initiation of search on 10/2/2009 the assessment proceedings u/s 143 (3) of the income tax act was completed on 18/12/2007. Therefore on the date of search no assessment proceedings were pending for the impugned assessment year. Therefore if any addition is required to be made by the learned assessing officer should have been made on the basis of the seized material found during the course of search. We have perused the various additions/disallowances made by the learned assessing officer and found that there is no discretion of any seized material found during the course of search based on which these disallowances/additions have been made. The learned departmental representative also could not show us any seized material based on which the said additions have been made. Therefore, respectfully following the decision of the honourable Delhi High Court in CIT vs Kabul Chawla (supra) the above additions deserve to be deleted. Accordingly we direct the learned assessing officer to delete the disallowance of payment in contravention of provisions of section 40A (3) of the income tax act, disallowance of expenses on account of non-deduction and short deduction of tax at source and addition on account of personal expenditure. In the result, we reverse the order of the learned CIT - A income from the above disallowances and allow the appeal of the assessee to these extent. ”

The Assessing Officer, while passing the assessment order, has not clearly stated as to what is the incriminating material on the basis of which the additions were sought to be made. The co-relation between the so-called incriminating material – which has not even been disclosed, and the additions made, should have been established by the Assessing Officer, which had not been done.

In these circumstances, in our view, no substantial question of law

arises for our consideration.

Dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 04, 2020

B.S. Rohella