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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 178/2021 & CM APPL. 46108/2021

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) –
3 Appellant

Through: Ms. Vibhooti Malhotra, Advocate.

versus

M/S SUNCITY PROJECT PVT. LTD. Respondent

Through: Mr. Ved Jain, Advocate with
Miss Richa Mishra, Advocate.

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Date of Decision: 20th December, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

MANMOHAN, J (Oral):

1. Present appeal has been filed challenging the order dated 17th February, 2020 passed by ITAT in ITA No.2737/DEL/2016 for the Assessment Year 2010-11.
2. Learned counsel for the Appellant states that ITAT has grossly erred in relying on the decision passed by this Court in *Principal Commissioner of Income Tax (Central -2) v. Vinita Chaurasia, ITA 1104/2015* without appreciating the distinction in the facts of the said case and the Respondent's case. She states that this Court in *Vinita Chaurasia* (supra) had deleted the additions on account of Revenue's failure to satisfy the jurisdictional benchmark of "belong to" under Section 153C of the Act. However, she



states that the Tribunal has failed to appreciate that in the present case, the assessment was framed under Section 143(3) of the Act and, therefore, the findings of this Court rendered in context of Section 153C of the Act were inapplicable.

3. Learned Counsel for the Appellant also states that the Tribunal has failed to appreciate that seized material indicated that certain portion of the transaction was conducted out of book as the total consideration recorded is at Rs.32,85,37,354/-. In support of her contention, she relies upon the computer generated document seized from the residence of Mr.Lalit Modi, a real estate broker. She further states that the amount payable by cheque recorded in the seized material bears complete resemblance to the cheque amount actually received by the Respondent and the particulars of the cheque numbers also match. She emphasises that the shop in question had, in fact, been leased to Pantaloon Retail for opening a Big Bazaar.

4. Having heard learned counsel for the appellant, this Court finds that the very same document seized from the residence of Mr.Lalit Modi, had been considered by the learned predecessor Division Bench in the case of ***Principal Commissioner of Income Tax (Central -2) v. Vinita Chaurasia*** (supra). After considering the same, the learned predecessor Division Bench had concluded that the Assessing Officer appears to have proceeded purely on conjecture as regards what the document states without noticing the internal contradiction and inconsistencies. The relevant portion of the Division Bench's Judgment in ITA No. 1004/2015 is reproduced hereinbelow:-

“26. Turning to the document itself, Mr. Shivpuri urged that the further presumption in Section 292C(l)(ii) would stand attracted



viz., that the contents of the document should be presumed to be true. His submission was that the said presumptions have not been rebutted by the Assessee and, therefore, whatever was said in the document should be taken to be sufficient proof of concealment of the income by the Assessee.

27. The Court is unable to accept the above submission of Mr. Shivpuri. The Court in this regard notices that the detailed interrogation of Mr. Modi revealed the source of the document and the fact that Mr. Modi was not the author of the document. Mr. Modi had suggested that it was some other broker who had given him the said document as a 'proposal'. There appears to have been no attempt made by the AO to enquire into the matter further to find out if at all there was any such other broker who had prepared the document. Further, there is no attempt also made to ascertain whether the prevalent market value of the space purchased by the Assessee could at all fetch the value indicated in the document which Rs.32,85,37,354. This was too fundamental an issue to be left un-investigated. The AO appears to have proceeded purely on conjecture as regards what the document has stated without noticing the internal contradictions and inconsistencies. For instance, the document talks of rent payable for a period from 2006 onwards where in fact even according to the Revenue the Assessee purchased the property on 13th May, 2009. The shifting of the burden on the Assessee without making these basic enquiries to unearth the truth of the document could not have been accepted and was rightly commented upon by the ITAT. The entire basis for making the additions to the assessable income of the Assessee was a single document i.e., Annexure A-1. The attempt at making additions on the basis of Annexure A-1, without any further investigation on the above lines, is bound to be rendered unsustainable in law.

28. Therefore, even as regards the merits of the additions made by the AO, the Court finds no error having been committed by the ITAT in deleting them.”

5. Since the learned predecessor Division Bench has, on merits, found

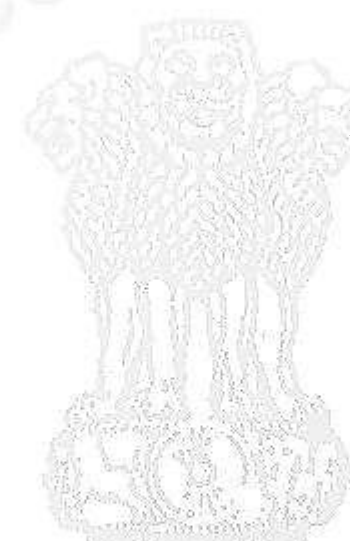


that there was no error committed by the Tribunal in deleting the addition made by the Assessing Officer on the basis of the same seized material/ document, this Court is of the view that in the present facts of the case, no substantial question of law arises for consideration. However, the question of law is left open to be decided in an appropriate case. Accordingly, the appeal along with pending application is dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

DECEMBER 20, 2021
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