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

\+ **ITA 217/2022 & CM APPL.32150/2022**

PCIT -7, NEW DELHI ..... Appellant

Through: Mr.Ajit Sharma, Sr.Standing Counsel.

versus

M/S. SHALIMAR TOWN PLANNERS PVT. LTD. ..... Respondent

Through: None.

% Date of Decision: 22nd July, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, J (Oral):

1. Present appeal has been filed challenging the Order dated 30th June, 2020 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.6307/Del/2017 for the assessment year 2008-09.

2. Learned counsel for the appellant submits that it is clear that Assessment Year 2008-09, in the present case, is not a part of the six assessment years preceding the year of search and as such for the Assessment Year 2008-09, regular scrutiny assessment under Section 143(3) was carried out. He states that ITAT has erred in not appreciating the fact that Revenue had filed a Special Leave Petition before the Supreme Court on the same issue i.e. whether in a case involving Section 153C, date of

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receiving documents is to be taken as date of search or not in the case of ***Raj Buildworth Pvt. Ltd.*** (Diary No. 21284/2019). The Supreme Court in the said case vide Order dated 14th October, 2019 dismissed the appeal filed by the Revenue on account of delay leaving all the questions of law open.

3. This Court is of the view that the proposed question of law, namely, whether in a case where Section 153C is applicable, date of receiving documents is to be taken as date of search or not has been answered by a Coordinate Division Bench of this Court in ***Commissioner of Income-tax- 7 Vs. RRJ Securities Ltd., [2016] 380 ITR 612***. The relevant portion of the said judgment is reproduced hereinbelow:

> "24. *As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched,*

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assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year."

4. Keeping in view the aforesaid, this Court is of the view that the proposed question of law is no longer *res integra*. Accordingly, the present appeal and application are dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

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