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

+ ITA 638/2019

PRINCIPAL COMMISSIONER OF
INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr Zoheb Hossain, Sr. St. Counsel
with Mr Vipul Agrawal, Jr. St.
Counsel, Mr Parth Semual, Jr. St.
counsel for Income Tax Department.

versus

VINITA CHAURASIA

..... Respondent

Through: Mr. Arta Trana Panda, Advocate.

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Date of decision: 22nd November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (Oral):

ITA 638/2019

1. Present appeal has been filed by Revenue challenging the order dated 05th October, 2018 passed by Income Tax Appellate Tribunal ('ITAT') in ITA No. 5957/DEL/2015 and C.O. NO. 38/DEL/2016 for the Assessment Year ('AY') 2007-08.

2. Learned counsel for the Revenue states that ITAT erred in deleting the addition of Rs.34,06,11,102/- without analysing and considering the

contents and the words of the seized document, identified in the appeal as page no. 5 of Annexure A-1 ('Seized Document'). He states that as per the said Seized Document the Vasant Square Mall was acquired by the Assessee for Rs.32,85,37,354/- before 1st October 2006, which was undisclosed in the Income Tax Return ('ITR') of the Assessee. He states that the ITAT erred in deleting the addition of Rs.1.20 Crores on account of receipt of rent, without considering that the amount of rent pertaining to period from 1st October 2006 to 31st March 2007, was undisclosed in the ITR. He states that as per the Seized Document, the Vasant Square Mall was in the possession of the Assessee before 01st October 2006 and the rent started with effect from 01st October 2006.

3. He states that ITAT erred in relying upon the decision of this court in the case of Assessee for AY 2010-11. He states that the Assessment order in the year under consideration was framed under Section 147 read with 143(3) of the Act and ITAT erred in holding that the proceedings were not maintainable. He further, states that ITAT failed to consider that a perusal of the Seized Document, reveals that the Assessee had invested a sum of Rs.32,85,37,354/- with M/s Suncity Project Pvt. Ltd. before 01st October 2006.

4. We have perused the paper book and considered the submissions of the learned counsel for the Revenue. The Assessment order was passed by the Assessing Officer ('AO') under Section 147 read with 143(3) of the Act. The original return was filed on 31st July 2007 under Section 139(1) of the Income Tax Act, 1961 ('the Act') declaring the total income of Rs.4,70,97,930/-. There was search and seizure operation on 29th April, 2008 and in consequence thereof, the reassessment had been completed under

Section 153A read with Section 143(3) of the Act at the returned income of Rs.4,70,97,930/- vide order dated 29th December, 2010.

5. The case of the Assessee was subjected to further scrutiny in view of the distinct search conducted in the case of one Mr. Lalit Modi on 19th June, 2009 and consequently, proceedings under Section 153C of the Act were initiated against the Assessee and assessment was framed vide order dated 29th December, 2011 at the total income of Rs.4,70,97,930/-.

6. Subsequently, on the basis of the Seized Document found during the search of Mr. Lalit Modi, the AO issued a Section 148 notice dated 28th March, 2014 on the basis of the satisfaction recorded. The ITAT has returned a finding that AO based on the seized Annexure A-1 (page no. 5) alone, without any further investigations, made additions and passed the impugned assessment order.

7. The ITAT has held that the additions made by the AO are factually incorrect, illegal and arbitrary. The finding of the ITAT reads as under:

7.....Further, assessment order made by the Assessing Officer is factually incorrect and additions were made on illegal and arbitrary basis. The Assessing Officer has not brought on record any details or evidences which could corroborate investment of a sum of Rs. 32,85,37,354/- before 01-10-2006 with M/s. Suncity Project Pvt. Ltd. The entire dispute is with reference to Annexure- A-I page 5 which is in the context of purchase of property vide sale deed dtd. 13/05/2009 and Assessing Officer himself has considered this annexure in A.Y. 2010-11 and made addition to the extent of Rs. 19,02,68,289/-. This document has no relevance to any undisclosed income relating to year under reference. There is thus no case of any income escaping assessment or any tangible material which has relevance to A.Y. 2007-08. Submission of revenue before the Tribunal is merely general observation on issue of reopening u/s. 147 and does not make reference to any details or evidence of any undisclosed income relating to A.Y. 2007-08. All these submission of the Ld. AR could not be contradicted by the Revenue at the time of the hearing. Once the

very same addition has been deleted in A.Y. 2010-11 by the Tribunal & confirmed by the Hon'ble Delhi High Court, there is no case for any action u/s. 147 in the A.Y. 2007-08.

8. The ITAT has further returned a finding of fact that the entire basis of the AO for making the additions to the assessable income of the Assessee is a single document i.e. page no. 5 of Annexure A-1[Seized Document]. The ITAT observed that no fresh material has been taken into account by the AO for reopening the assessment under Section 147 of the Act. The relevant finding of the ITAT reads as under:

“.....

In the present case, though there was search in case of assessee on 29/04/2008 pursuant to which Assessing Officer initiated action u/s. 153A of the Act, in the absence of any incriminating material, returned income was accepted vide assessment order u/s. 153A dtd. 29/12/2010. But because of the search in case of Mr. Modi and Annexure -I found therein, the addition was made in the present case. 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. In the present case, no reason was assigned by the Assessing Officer or any fresh material was taken into account by the Assessing Officer for reopening the assessment u/s 147 of the Act. The said action of the Revenue was challenged before the Hon'ble High Court and the Hon'ble High Court has given a finding of dismissing the appeal of the Revenue therein. The finding of the Hon'ble High Court is applicable in the present case and therefore, the action u/s 147 of the Act itself is not maintainable and is quashed. Thus, appeal of the Revenue is dismissed and cross objection of the Assessee is allowed.”

9. We have also perused the judgment of this Court in ITA 1004/2015 and ITA 1005/2015 in the assessee's own case in the reassessment proceedings undertaken under Section 153C of the Act pursuance to the

search on Mr. Lalit Modi. We find that the Seized Document, described as page no. 5 of Annexure A-1, was specifically deliberated upon by the learned predecessor Division Bench and this Court has returned a categorical finding on merits to hold that the said document does not afford any ground or justification to the AO for making additions on the said basis.

The relevant paragraph of judgement reads as follows:

“.....

26. Turning to the document itself, Mr. Shivpuri urged that the further presumption in Section 292C(1)(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 is Rs.32,85,37,354. This was too fundamental an issue to be left un-investigated. The AO appears to have proceeded purely on conjectures 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.”

(Emphasis Supplied)

10. In view of the factual finding returned by ITAT in the assessment proceedings to the effect that no fresh material was taken into account by the AO for making additions in the present proceedings and the sole basis for making the additions was the Seized Document, we find that the issues raised in the present appeal are covered in favour of the assessee and against the Revenue by the judgment of this Court dated 18th May 2017. The additions were deleted by the Court after detailed examination of the merits. The Special leave petition filed against the said judgment also stands dismissed. We therefore find that no substantial question of law arises from the impugned order of the ITAT. The appeals is dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 22, 2022/hp