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

+ ITA 436/2022 & CM APPLs. 47462-63/2022

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr. Sanjay Kumar, Senior Standing
Counsel for Revenue.

versus

M/S JAY AMBEY AROMATICS

..... Respondent

Through: None.

71

+ ITA 437/2022 & CM APPL. 47464-65/2022

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr. Sanjay Kumar, Senior Standing
Counsel for Revenue.

versus

M/S JAY AMBEY AROMATICS

..... Respondent

Through: None.

72

+ ITA 438/2022 & CM APPL. 47466/2022

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr. Sanjay Kumar, Senior Standing
Counsel for Revenue.

versus

M/S JAY AMBEY AROMATICS

..... Respondent

Through: None.

74

+ ITA 440/2022 & CM APPL. 47477/2022

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr. Sanjay Kumar, Senior Standing
Counsel for Revenue.

versus

M/S JAY AMBEY AROMATICS

..... Respondent

Through: None.

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Date of Decision: 09th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeals have been filed challenging the common Order dated 15th July, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5070/Del./2017 for the Assessment Year ('AY') 2010-11, ITA No.5033/Del./2017 for AY 2011-12, ITA No.5069/Del./2017 for AY 2008-09, ITA No.5031/Del./2017 for AY 2009-10.

2. Learned Counsel for the Appellant states that the ITAT has erred in holding that additions which were not based on incriminating material found during the search could not be made in assessments under section 153A of the Income Tax Act, 1961 (the 'Act') and, consequently, deleted additions without going into merits of the same.

3. He states that the ITAT has erred in relying upon the judgement of this Court in the case of *CIT vs Kabul Chawla 380 ITR 573 (Del)* ignoring

ITA 436/2022 & connected matters

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the fact that Revenue's SLP bearing Diary No.37848/2015, on similar issue is pending before the Supreme Court.

4. Upon perusal of the paper book, this Court finds that both the Commissioner of Income Tax (Appeals) ['CIT(A)'] and the ITAT have given concurrent findings of fact that no incriminating evidence/material had been found during the search. The ITAT also recorded that the present cases of the Respondent are of concluded assessments which cannot be disturbed in the absence of incriminating material. The relevant extract of the impugned order is reproduced herein below:

“ 11. It is categorically held by the learned CIT - A that for assessment year 2008-09 till assessment year 2011-12, no incriminating material was found during the course of, search pertaining to these years , we also do not find any material referred in the assessment order, the learned CIT DR also could not show us any incriminating material for all these years, therefore as these are the concluded assessment years, which could have been disturbed only if there is any incriminating material found during the course of search, we also find that the issue is squarely covered by the decision of the honourable Delhi High Court in case of CIT V Kabul Chawla [2015] 61 taxmann.com 412 (Delhi)/[2015] 234 Taxman 300 (Delhi)/[2016], 380 ITR 573 (Delhi)/[2015] 281 CTR 45 (Delhi). Therefore we uphold the order of the learned CIT - A deleting all the additions for all these years i.e. assessment year 2008-09 to assessment year 2011 - 12 and appeal of the revenue for all these year are dismissed.”

5. This Court finds that the conclusion reached in **Kabul Chawla (supra)** has been summarized in **PCIT vs. Meeta Gutgutia, (2017) 82 taxmann.com 287 Del.** The relevant portion of the Judgment passed in **PCIT vs. Meeta Gutgutia (supra)** is reproduced hereinbelow:-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:



- i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
- iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
- iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*
- v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*
- vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*
- vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

6. Even, this Court in ***Principal Commissioner of Income Tax vs. Bhadani Financiers Pvt. Ltd., [2021] SCC OnLine Del 4430*** has held that where the assessment of the Respondents has attained finality prior to the



date of search and no incriminating documents or materials had been found and seized at the time of search, no addition could be made under Section 153A of the Act as the cases of the Respondents were of non-abated assessment.

7. Though the issue involved in *Kabul Chawla (supra)* has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date.

8. Consequently, in view of the judgments passed by the Supreme Court in *Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359* and *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1*, the present appeals are covered by the judgment passed by this Court in *Bhadani Financiers Pvt. Ltd. (supra)* and *Kabul Chawla (supra)*.

9. Accordingly, no substantial question of law arises in the present appeals and the same are dismissed.

10. However, it is clarified that the orders passed in the present appeals shall abide by the final decision of the Supreme Court in the aforesaid SLP.



MANMOHAN, J

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MANMEET PRITAM SINGH ARORA, J

NOVEMBER 09, 2022

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