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

% *Decision delivered on: 25.09.2023*

\+ **ITA 552/2023 & CM No.49728/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2. Appellant
Through: Mr Sanjay Kumar, Sr Standing Counsel with Ms Easha and Ms Hemlata Rawat, Advs.

versus

HEAVEN SUPPLIERS PVT. LTD ....Respondent
Through: None.

\+ **ITA 553/2023 & CM Nos.49729-30/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2. Appellant
Through: Mr Sanjay Kumar, Sr Standing Counsel with Ms Easha and Ms Hemlata Rawat, Advs.

versus

HEAVEN SUPPLIERS PVT. LTD ....Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.49729/2023 in ITA 553/2023

1. Allowed, subject to just exceptions.

CM No.49728/2023 in ITA 552/2023
CM No.49730/2023 in ITA 553/2023 ***[Applications filed on behalf of the appellant seeking condonation of delay of 120 days in re-filing the appeal]***

2. These are the applications moved on behalf of the appellant/revenue,

seeking condonation of delay in re-filing the appeal.

2.1 According to the appellant/revenue, in each of the above-captioned appeals, there is a delay of 120 days.

3. Given the nature of delay and the reasons stated in the applications, the delay in re-filing the appeals is condoned.

4. The applications are disposed of, in the aforesaid terms.

ITA Nos.552/2023 & 553/2023

5. These appeals concern Assessment Year (AY) 2011-12 [ITA No.552/2023] and AY 2012-13 [ITA No.553/2023].

6. *Via* the above-captioned appeals, the appellant/revenue seeks to assail a common order dated 02.12.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

7. As a matter of fact, a perusal of the impugned order would show that it also dealt with AY 2013-14, besides the AYs referred to hereinabove. The Tribunal, thus, dealt with three appeals, which were preferred against the order dated 13.11.2017 passed by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].

8. The record shows that a search was conducted *qua* a group known as the J.P. Minda Group under Section 132 of the Income Tax Act, 1961 [in short, "Act"]. The search was carried out on 20.09.2013.

9. The appellant/revenue's allegation was that during the search, certain documents were found which concerned the respondent/assessee. Accordingly, notice under Section 153C of the Act was issued to the respondent/assessee on 29.01.2016.

10. The record also shows that the respondent/assessee filed its return pursuant to the said notice, *albeit*, under protest.

11. A perusal of the impugned order dated 31.03.2016 framed under Section 143(3) read with Section 153C of the Act shows that the Assessing Officer had made additions under Section 68 of the Act.

12. The addition made insofar as AY 2011-12 was concerned was Rs.1,05,00,000/-, *albeit*, on protective basis.

12.1 Besides this, an addition amounting to Rs.33,77,29,500/- was made on substantive basis *qua* AY 2011-12.

13. As regards AY 2012-13, Rs.6,60,00,000/- was added on protective basis.

14. The Tribunal notes after it examined the record that the CIT(A) had returned a finding that the subject transactions, which involved investment in the companies which formed the J.P. Minda Group, were genuine.

14.1 The Tribunal also noted that the CIT(A) had concluded that neither had any collateral payments been made in lieu of investments, nor had any cash been deposited in the accounts of the respondent/assessee, for the purposes of making investment in the companies falling under the sway of the J.P. Minda Group.

15. It is based on these observations that the CIT(A) had deleted the additions referred to hereinabove, made both on protective and substantive basis for the AYs in issue, i.e., AY 2011-12 and AY 2012-13.

16. The Tribunal affirmed the findings of fact returned by the CIT(A), by observing that the appellant/revenue could not bring any material on record to controvert the findings recorded by the CIT(A).

17. Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant/revenue, has placed before us the order dated 26.09.2022 rendered by the coordinate bench of this court in a bunch of

appeals, including ITA No.360/2022, titled ***Pr. Commissioner of Income Tax (Central) – 2 v. Jay Fe Cylinder Ltd.***

18. A perusal of the aforesaid order shows that the court had concluded that no incriminating material was found *qua* the investment companies vis-à-vis which search was conducted by the appellant/revenue.

19. We may note that there is a reference to Jay Fe Cylinder Ltd. in the order dated 13.11.2017 passed by the CIT(A), which was a subject matter of appeal preferred before the Tribunal. This is evident upon a perusal of the extract of the CIT(A)'s order contained in paragraph 3 of the impugned order passed by the Tribunal.

20. Having regard to the finding of fact returned by CIT(A) and the Tribunal, as also the fact that the coordinate bench in the aforementioned matter has dismissed the appeal of the appellant/revenue, according to us, no substantial question of law arises for our consideration.

21. The above-captioned appeals are, accordingly, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 25, 2023

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