



\$~11

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

%

Date of Decision: 11.09.2023

+ **ITA 62/2021**

ACIT, CENTRAL CIRCLE-30, NEW DELHI Appellant

Through: Mr Shailendera Singh, Sr Standing
Counsel with Ms Dacchita Shahi,
Standing Counsel.

versus

M/S. SALUJA CONSTRUCTION CO. LTD. Respondent

Through: Mr Bhupinderjeet Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

CM Appl.8570/2021 [*Application moved on behalf of the
appellant/revenue seeking condonation of delay of 113 days in filing the
appeal*]

1. This is an application filed on behalf of the appellant/revenue, seeking condonation of delay in filing the appeal.
2. According to the appellant/revenue, there is a delay of 113 days.
3. Mr Bhupinderjeet Singh, who appears on behalf of the respondent/assessee does not oppose the prayer made in the application.
4. The delay is, accordingly, condoned.
5. The application is disposed of in the aforesaid terms.

ITA 62/2021

6. This appeal concerns Assessment Year (AY) 2008-09.



7. Via the instant appeal, the appellant/revenue seeks to assail the order dated 20.04.2020, passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

8. The record shows that the Assessing Officer (AO) added to the taxable income of the respondent/assessee Rs.3,50,00,000/- albeit, under Section 68 of the Income Tax Act, 1961 [in short, “Act”], as according to him said amount represented undisclosed income.

8.1 The addition was made pursuant to a search and seizure operation, which took place at the respondent/assessee’s premises on 12.01.2012 and 11.09.2013.

9. The record also shows that notices under Section 153A of the Act were issued on 08.07.2013 and 25.11.2014.

10. The record further discloses that on 23.03.2016, the assessment *qua* aforementioned AY under Section 153A was completed vis-à-vis the respondent/assessee.

11. The assessed income of the respondent/assessee, after making an addition of Rs.3,50,00,000/- under Section 68 of the Act, was pegged at Rs.7,89,74,840/-.

12. Prior to the aforementioned assessment, the scrutiny assessment, was completed on 23.12.2010. The assessment order, as indicated above, was framed under Section 143(3) of the Act.

13. Given this position, the Tribunal concluded that since no incriminating material was found, the reassessment proceedings under Section 153A of the Act could not have been triggered without the discovery of such material *qua* the respondent/assessee. This aspect is captured, *inter*



alia, in paragraphs 9 and 10 of the Tribunal's order. For the sake of convenience, the same are extracted hereafter:

"9. From the above, it can be concluded that, once a search takes place u/s 132 of the Act, the assessee is obliged to file returns for the six assessment years immediately proceeding the previous year relevant to the assessment year in which the search took place. Insofar as the completed assessment as on the date of the search are concerned, the same are to be repeated as increased by additions, only if, based on incriminating material found during the course of search. In other words, if no incriminating material is found during the course of search, then, the amount of total income determined under the earlier completed assessments is to be adopted in fresh assessments u/s 153A without making any further addition.

10. Juxtaposing these principles to the facts of the instant case, we find that the case of the assessee doesn't fall under the category of abated assessment. It falls under the category of completed assessments. In the completed assessment, it is an admitted position that if no incriminating material was found during the search, no addition is called for. In the instant case too, no incriminating material was found with regard to the addition made by the Assessing Officer."

[Emphasis is ours]

14. In our opinion, the Tribunal has taken the correct view. Sans the incriminating material, no addition could have been made by the AO with regard to the AY in issue, as it was a case of completed assessment.

14.1. This issue stands covered by the judgment rendered by the coordinate bench of this court in ***CIT vs. Kabul Chawla***, (2016) 380 ITR 573. This judgment has received the imprimatur of the Supreme Court in ***Principal Commissioner of Income Tax vs. Abhisar Buildwell***, (2023) SCC Online



SC 481.

15. Given the aforesaid, no substantial question of law arises for consideration.

16. The appeal is, accordingly, dismissed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 11, 2023/pmc