$~174 to 177

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

\+ ITA 1024/2018

PR. COMMISSIONER OF INCOME TAX- CENTRAL -2 .....Appellant

Through: Mr Zoheb Hossain, Sr. Standing Counsel with Mr Vipul Agrawal & Mr Parth Semwal, Advs.

versus

RAMESH SHARMA .....Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Mahir Aggarwal & Mr Uma Shankar, Advs.

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\+ ITA 209/2019

PR COMMISSIONER OF INCOME TAX .....Appellant

Through: Mr Zoheb Hossain, Sr. Standing Counsel with Mr Vipul Agrawal & Mr Parth Semwal, Advs.

versus

RAMESH SHARMA .....Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Mahir Aggarwal & Mr Uma Shankar, Advs.

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\+ ITA 210/2019

PR COMMISSIONER OF INCOME TAX .....Appellant

Through: Mr Zoheb Hossain, Sr. Standing Counsel with Mr Vipul Agrawal & Mr Parth Semwal, Advs.

versus

RAMESH SHARMA .....Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Mahir Aggarwal & Mr Uma Shankar, Advs.

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\+ ITA 227/2019

COMMISSIONER OF INCOME TAX .....Appellant

Through: Mr Zoheb Hossain, Sr. Standing Counsel with Mr Vipul Agrawal & Mr Parth Semwal, Advs.

versus

RAMESH SHARMA .....Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Mahir Aggarwal & Mr Uma Shankar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **10.07.2024**

1. These set of appeals assail the orders of the Income Tax Appellate Tribunal [**"Tribunal"**] dated 31 January 2018 [ITA 1024/2018] and 22 June 2018 [ITA 209/2019, ITA 210/2019 and ITA 227/2019] and propose the following questions of law:-

> "A. Whether the impugned order of the ITAT is perverse since while dealing with an appeal qua A Y 2008-2009 wherein no scrutiny assessment had taken place, it has recorded that the present A Y is 2007-08 and the order u/s 143(3) in the said year was passed on 12.11.2008 and hence being a concluded assessment, it could not have been reopened without there being incriminating material?
> B. Whether the Ld. ITAT erred m law and on facts in dismissing the appeal of revenue solely relying on the decision of the Hon'ble High Court in 380 ITR 573 in CIT Vs. Kabul Chawla without properly appreciating the facts and circumstances of the case?
> C. Whether the Ld. ITAT erred in law and facts in upholding the decision of the Ld. CIT(A) without appreciating the facts and circumstances of the case?"

2. We note that while dealing with the validity of the search

assessment, the Tribunal has observed as follows:-

> "7. We have carefully considered the rival contentions and also perused the order of the ld CIT(A) wherein, vide para No. 50 he had rejected the additional ground raised by the assessee holding that there is no requirement of any incriminating material during the course of search for making an assessment. It was further held by him that nature of assessment proceedings cannot be restricted to make assessment only of undisclosed income. Therefore, it is apparent that this issue is decided against the assessee. Admittedly, assessee has not filed any appeal against such finding of the ld CIT(A). However, according to Rule 27 of the Income Tax Appellate Tribunal Rules the assessee can support the order of the ld CIT(A) on the issues decided against him even if same is not agitated in appeal. Rule 27 provides that the assessee though he may not have appeal may support the order against on any of the grounds decided against him. This rule coins the fundamental principle that a person might not have been aggrieved by the order of the court and therefore, might not have filed appeal against such order, however, he is free to defend the order before the appellate forum on all grounds including the ground which may have decided against him by the court whose order is otherwise in his favour. <u>In view of this we agree with the counsel that no addition can be made in the hands of the assessee in absence of incriminating material in a concluded assessment. The present assessment year before us is Assessment Year 2007-08 whereas the search took place on 15.06.2011 and originally the order u/s 143(3) of the Income Tax Act has already been made on 12.11.2008. Therefore, in concluded assessments it is apparent that u/s 153A proceedings if any addition is required to be made has to be on the basis of incriminating material found during the course of search. Before us the ld . D.R. could not show that any of the additions which are contested by the revenue in this appeal are arising out of any incriminating material or post search enquiry conducted by the revenue. We have also perused the contention of the lower authorities on all these additions, however, we also could not find any of the addition agitated before us are based on any incriminating material found during the course of search. The Hon'ble Delhi High Court in 380 ITR 573 in CIT Vs. Kabul Chawla has confirmed the above view vide para No. 37 of the order of the Hon'ble High Court. Therefore, as none of the addition is based on any incriminating material unearthed during the course of search all the grounds of appeal of the revenue are dismissed</u>."

3. As is manifest from the above, the Tribunal had on that occasion followed the principles enunciated in **Commissioner of Income-tax vs. Kabul Chawla** [2015 SCC OnLine Del 11555] and

which has since been affirmed by the Supreme Court in **Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell P. Ltd.** [(2024) 2 SCC 433]

4. We consequently find no ground to interfere with the view as expressed by the Tribunal. No substantial question of law arises. The appeals fail and are consequently dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 10, 2024/*sk*