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

% *Date of Decision: 08.10.2024*

+ **ITA 798/2019 and CM APPL.42135/2024**

THE PR. COMMISSIONER OF INCOME TAX -3Appellant
Through: Mr Ruchir Bhatia, SSC with Mr
Anant Mann, Advocate.

Versus

DHARAM RAJ CONSTRUCTION & INFRASTRUCTURE
PRIVATE LIMITEDRespondent
Through: Mr Gaurav Jain and Mr Shubham
Gupta, Advocates.

AND

+ **ITA 801/2019 and CM APPL.42134/2024**

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Through: Mr Ruchir Bhatia, SSC with Mr
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CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (Oral)

1. The Revenue has filed the present appeals under Section 260A of the



Income Tax Act, 1961 (hereafter *the Act*) assailing the order dated 25.05.2018 (hereafter *the impugned order*) passed by the Income Tax Appellate Tribunal (hereafter *the Tribunal*) in ITA Nos. 4966/Del/2013 and 4967/Del/2013 captioned *Dharam Raj Construction and Infrastructure Private Limited v. DCIT* in respect of assessment year 2007-08 and 2008-09 respectively.

2. It is relevant to note that the impugned order is a common order passed in a batch of appeals. However, the present appeals are confined to the Revenue's appeals in ITA Nos.4966/Del/2013 and 4967/Del/2013. This Court had, by an order dated 09.04.2024, framed the following question for consideration:

“5. In that view of the matter, we are of the opinion that ITA 801/2019 and ITA 798/2019 would merit being admitted on the following questions of law:-

A. Whether on the facts and circumstances of the case and in law, the ITAT was justified in holding that the Land Aggregation Agreement entered into between the Ramprastha Group of companies (searched person) and the respondent-assessee and which was discovered during the course of search did not “*belong to*” the respondent-assessee, especially in light of the 2015 amendments made by the Legislature?

B. Whether ITAT was legally justified in holding that the seized document – i.e., the Land Aggregation Agreement could only “*belong to*” one party – Ramprastha Group of companies and not the “*other person*” – respondent assessee, as provided under Section 153C of the Act?”

3. Undisputedly, the said questions are covered by the decision of the Supreme Court in *Income-tax Officer v. Vikram Sujitkumar Bhatia: (2023)*



453 ITR 417 (SC). The Supreme Court had, in its decision, noted that this Court had in the case of ***Pepsico India Holdings (P.) Ltd. v. ACIT and Anr. (2014) SCC OnLine Del 4155*** taken a restrictive view of the words “belong to” as used in Section 153C of the Act. Thus, even though incriminating material pertaining to the third parties was found during a search conducted under Section 132 of the Act; the Revenue could not proceed against such other persons if the document did not belong to the said person. In view of the above, the Parliament had substituted the words “belongs or belongs to” with the words “pertains or pertains to” by the Finance Act, 2015.

4. In the present case, the Tribunal has proceeded on the restrictive interpretation of the words “belongs to” as interpreted by this Court in ***Pepsico India Holdings (P.) Ltd. v. ACIT and Anr. (supra)***. The said decision in this regard does not hold good, in view of the legislative amendment to Section 153C of the Act brought by the Finance Act, 2015. Further, in the case of ***Income-tax Officer v. Vikram Sujitkumar Bhatia (supra)***, the Supreme Court has also authoritatively held that the same would be applicable to the searches conducted prior to the enactment of the Finance Act, 2015. Paragraph 11 of the said judgment is relevant and is set out below:

“11. In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court is held to be unsustainable and the question, *i.e.*, “Whether the amendment brought to Section 153C of the Income-tax Act, 1961 vide Finance Act, 2015 would be applicable to searches conducted under section 132 of the Act, 1961 before 1-6-2015, *i.e.*, the date of amendment?”, is answered in favour of the Revenue and against the assessee and is answered accordingly. Therefore, it is observed and held that the amendment brought to Section 153C of the Act, 1961



vide Finance Act, 2015 shall be applicable to searches conducted under section 132 of the Act, 1961 before 1-6-2015, i.e., the date of the amendment. The impugned common judgment and order passed by the High Court, therefore, deserves to be quashed and set aside and is accordingly quashed and set aside. However, as before the High Court respective assessment orders were challenged mainly on the aforesaid issue, which is now answered in favour of the Revenue as above, we reserve the liberty in favour of the respective assesses to challenge the assessment orders before CIT (A) on any other grounds which may be available and it is observed that if said appeals are preferred within four weeks from today, the same be considered in accordance with law and on their own merits, on any other grounds.

Present appeals are accordingly allowed in terms of the above. However, in the facts and circumstances of the case, there shall be no order as to costs.”

5. The learned counsel appearing for the assessee also does not dispute that the questions now stand fully covered by the said decision in favour of the Revenue. He submits that the other questions that were not decided by the Tribunal in view of its decision that the material found during the search did not belong to the assessee. And, the same require to be considered. The learned counsel for the Revenue also submits that in view of the above, it is necessary that the matter be remanded to the Tribunal to decide the remaining grounds as raised in the given appeals.

6. In view of the above, the impugned order is set aside and the appeals (ITA Nos.4966/Del/2013 and 4967/Del/2013) are restored before the Tribunal for consideration of the remaining grounds raised by the assessee.



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7. The present appeal is disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 08, 2024
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Click here to check corrigendum, if any