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

\+ ITA 36/2021

PR. COMMISSIONER OF INCOME TAX—1 .....Appellant

Through: Mr. Siddhartha Sinha, SSC along with Ms. Dacchita Shahi, Ms. Anuja Pethia, JSCs, Mr. Nring Chamwibo Zeliang and Ms. Anu Priya Nisha Minz, Advs.

versus

PAWAN KUMAR DUA .....Respondent

Through: Dr. Rakesh Gupta and Mr. Dushyant Agarwal, Advs.

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\+ ITA 40/2021

PR. COMMISSIONER INCOME TAX- 1 .....Appellant

Through: Mr. Siddhartha Sinha, SSC along with Ms. Dacchita Shahi, Ms. Anuja Pethia, JSCs, Mr. Nring Chamwibo Zeliang and Ms. Anu Priya Nisha Minz, Advs.

versus

PAWAN KUMAR DUA .....Respondent

Through: Dr. Rakesh Gupta and Mr. Dushyant Agarwal, Advs.

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

O R D E R

% **22.08.2024**

1. The Principal Commissioner of Income Tax impugns the order of the **Income Tax Appellate Tribunal**[1] dated 28 April 2010 and has

[1] Tribunal

posited the following questions of law for our consideration: -

> "a) Whether on facts and circumstances of the case, the Ld. ITAT was justified in deleting the addition of Rs.6,13,71,688/- on account of unaccounted metal trading business?
>
> b) Whether on facts and circumstances of the case, the Ld. ITAT was justified in deleting the addition of Rs.98,65,563/- on account of unaccounted commission paid in cash?
>
> c) Whether the order passed by ITAT is perverse in law and on facts?"

2. From the facts on which there does not appear to be any dispute, we note that search and survey operations were undertaken both against the respondent-assessee as well as one Mr. Himanshu Kohli and who headed the Dua Group and M/s Klaxon Trading (P) Ltd respectively.

3. Appearing for the appellant, learned counsel drew our attention to the statements which were made by Mr. Himanshu Kohli in the course of the proceedings initiated under Section 132 of the **Income Tax Act, 1961**[2]. According to learned counsel, since Mr. Himanshu Kohli in his statement had asserted that the respondent-assessee was having 30% and 70% share in the metal trading business, the additions were clearly justified.

4. We however note that the Tribunal while dealing with this aspect has observed as under: -

> "**39.** Thus, a perusal of the statement of Shri Himanshu Kohli and assessment order of Shri Kewal Kohli conclusively shows that both the premises D-237, 3rd Floor Ashok Vihar, New Delhi and Flat No. 1-B, Pocket-A, Near Satyawati College, Ashok Vihar, New Delhi are owned by Shri Himanshu Kohli who is also engaged in metal trading and was owning different godowns. Under these circumstances, merely because Shri Himanshu Kohli, in his statement has admitted only 30% belongs to him and 70% of the unaccounted turnover belongs to Shri Dua cannot be the basis for making addition in the hands of Shri Pawan Kumar Dua especially

[2] Act

when the assessee in his statement had categorically stated that Shri Himanshu Kohli was doing some business through the family concern named M/s Klaxon Trading (P) Ltd. and the transactions were duly recorded in their books of account and payments were made by cheque and TDS was deducted from the said payments. We further find merit in the argument of the Id. Counsel for the assessee that had there been such huge unaccounted transactions outside the books of account by the assessee, at least some evidence in some form could have been found during the course of search from the premises of the assessee However, not a single piece of evidence was found from the premises of the assessee so as to prove that the assessee was also engaged in some unaccounted metal trading business with Shri Himanshu Kohli, Since the documents relating to unaccounted trading outside the books of account along with Dharam Kanta slips showing weight of different types of metals weighed alongwith vehicle number and handwritten slips containing noting of receipt/delivery of purchase/sale of such metals along with dates were found from the premises owned by Shri Himanshu Kohli who himself along with his father are also engaged in such metal trading business and not a single paper giving any hint of any unaccounted trading by the assessee outside his books of account was found from his premises, therefore, we are not able to agree with the finding of the CIT(A) that 70% of such unaccounted turnover belongs to the assessee for which the corresponding profit to be taxed in the hands of the assessee. In this view of the matter, we set aside the order of the CIT(A) and direct the AO to delete the addition of Rs. 1,70,72,313/- being the profit on such unaccounted turnover outside the books of account.

40. Since the addition on account of unaccounted turnover outside the books of account is deleted, the question of initial investment in such unaccounted turnover does not arise and therefore the same cannot be sustained. Accordingly, the same is directed to be deleted."

5. It is not disputed before us that the additions which were sought to be sustained in the hands of the respondents were based solely on the statement made by Mr. Himanshu Kohli. As the Tribunal has recorded, no evidence in any form was found during the course of search of the premises of the respondent. We also bear in mind that the assessment initiated against the respondent-assessee was taken in terms contemplated under Section 153A and stood restricted thereto.

6. In view of the above and in addition to the grounds which have

been ascribed by the Tribunal, we find ourselves unable to sustain the challenge which stands laid since we doubt the very applicability or impact that the statement of Mr. Himanshu Kohli could have had in a Section 153A assessment.

7. The appeals consequently fail and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 22, 2024/RW