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

\+ ITA 310/2019

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL-3 ..... Appellant

Through: Mr. Shlok Chandra, SSC with Ms. Madhavi Shukla, JSC & Mr. Ujjawal Jain, Adv.

versus

LANDCRAFT DEVELOPERS PVT. LTD. ..... Respondent

Through: Mr. P. Roychudhari, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **15.03.2024**

1. The Principal Commissioner of Income Tax- Central-3 impugns the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 03 October 2018 and has framed the following questions for our consideration:

> "a. Whether ld. ITAT was legally justified in confirming ld. CIT(A)'s order by holding that there was a difference in scope of proceedings under section 153A/153C of the Income Tax Act, 1961 for an Assessment year for which earlier assessment proceedings were abated and the assessment proceeding that stood concluded?
>
> b. Whether there is any restriction on the power of the Assessing officer under section 153A/153C of the Income Tax Act,1961 to confine himself to the incriminating material found during the search?

c. Whether the ld. ITAT was legally justified in holding that processing of return under section 143(1) is same as completion of assessment under section 143(3) for the purposes of abatement under second proviso to Section 153A(1)?

d. Whether under the provision, of section 153A of the Act income of the assessee could only be determined on the basis of seized document and any other information could not be used?

e. Whether provision section 153A of the Act debar the Assessing Officer to determine the total income of the assessee on the basis of information available in return of income enquiries conducted by the Assessing officer?"

2. We however note from the order passed by the ITAT that it has ultimately held in favour of the assesee on the ground of no incriminating evidence having been found in the course of the search and which may have had a bearing on the assessment of income of the respondent/ assesee. This is evident from a reading of paragraph 7 of the impugned order which is extracted hereinbelow:

"**7.** We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the case laws relied upon by the Ld. DR will not be applicable in the present case as each case has its distinct facts. <u>In present case, the assessment proceedings were already completed and unabated and no incriminating evidence found. Thus the Revenue could not differ from the fact that there was no incriminating evidence found in the present case.</u> In fact, in Assessee's own case for A.Y. 2010-11, the Tribunal while dismissing the appeal of the revenue held as under:

"5. After hearing the submissions of both the sides and perusing the materials available on record, we find that the search was conducted on 23.08.2012, but the case relates to the assessment year 2010-11. We observe from the assessment order that the assessing officer has not referred any incriminating material found in the search. During the course of appellate proceedings before the ld. CIT (A), the ld. CIT(A) specifically asked the Assessing Officer for clarifying the status of assessment on the date of search for the impugned assessment year. The Assessing Officer vide his reply dated 16.10.2015 mentioned "after perusal of record, it is observed that as on the date of search, assessment in this case was not pending, hence, it was

unabated ". The case law relied by the assessee, as noted above is fully applicable. The ld. CIT (A) has made a reasoned order. The findings reached by the ld. CIT (A) are as under:

I have carefully considered the submissions made by AO and the appellant. As reported, no notice under section 143(2) is available on record, though it has been mentioned in the assessment order and order sheet. It is a settled law now that there is no need to issue a separate notice under section 143(2) for proceedings related to 153A of the Act. Accordingly, looking to the provisions of section 153A of the Act and also respectfully following the judgment in the case of Ashok Chadda vs. Income Tax Officer, as cited above, the proceedings under section 153A read with section 143(3) is held to be valid as it is not necessary to issue and serve notice under section 143(2) of the Act. Thus, the assessment proceedings are found to be in order and this ground of appeal is not maintainable.

10. As per ground no. 2, 4(A/ B, C,D,E and F) and 5(A,B, C,D,E and F), the appellant raised the issue regarding addition of Rs.75 lacs and RS.1.30 crores respectively, made under section 68 of the Act, considering the unsecured loan/share application money received from M/ s Raffle Mercantile P. Ltd. and M/ s Purishottam Vinimay P. Ltd. as unexplained. The addition has been disputed on legal ground as well as on the merits.

10. 1 The appellant has raised the legality of the addition made by stating that these two additions amounting to Rs.2.05 crores are not emanating from any incriminating material found/seized during search, therefore these additions are outside the scope of assessment under section 153A of the Act, since the proceedings for the A Y 2010-11 stands completed and unabated at the date of search.

10.2 Search was conducted in this case on 23.08.2012. Original return was submitted by the appellant on 15.10.2010, declaring nil income. This was processed under section 143(1) of the Act.

10.3 Looking to the argument put forth by the appellant that assessment proceedings were complete and unabated the AO was specifically asked to clarify the status of assessment on the date of search. Vide his reply dated 16.10.2015 it has been mentioned by the AO i.e. ACIT, Central Circle-27 that:-

Y ."After perusal of records, 'it is observed that as on the date –of search, assessment in this case was not pending. Hence, it was unabated.

10.4 From the above submissions of the AO it is clear that the assessment proceedings were complete on the date of search and hence the proceedings are unabated.

10.5 With respect to the fact that whether this additions of Rs.2.05 crores are emanating from any incriminating material found/seized during search, nowhere it has been mentioned in the assessment order that any such seized material or otherwise has been found during search to conclude that this amount is unexplained cash credit in the hands of the company. Further, nothing has been mentioned in the assessment order to show that during search any unaccounted income, cash, jewellery or any other asset has been found/ seized. No trace of any generation of unaccounted income has also been pointed out. Therefore, AO was specifically asked whether the addition made in assessment order is arising out of any incriminating material found/ seized during the search, as nothing has been mentioned in the assessment order.

10.6 Vide letter dated 16.10.2015 it was submitted that "with regard to point 2 of your letter, it is submitted that an addition of Rs.2.05 crores was made on the grounds that the assessee simply filed copy of confirmation and bank statement of M/s Raffle Mercantile P. Ltd. and Purshottam Vinimay P, Ltd. but failed to prove the genuineness and creditworthiness of the transaction. Although the number of opportunities were provided to the assessee to explain the transactions. On examination of the bank statement submitted by the assessee, it was observed that funds were transferred M/s Landcraft Developers P. Ltd. after the receipts of funds from another entity within a few days of deposit During the course of assessment proceedings, it was observed by the AO that M/s Raffle Mercantile P. Ltd. was registered in Kolkata and it was observed by the AO that M/s Raffle Mercantile P. Ltd. used to arrange bogus entries for the different companies. Notices under section 133(6) were issued in M/s Raffle Mercantile P. Ltd. for the AY 2011-12. However, the reply was not found satisfactory. Since the company involved is same, it was held by …..

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……. income nor any undisclosed/unaccounted asset, cash, jewellery and investment etc. has been discovered.

1.0.11 Therefore, looking to the facts of this case where the *assessment proceedings were already completed and unabated and no such incriminating material or evidence found/ seized during search to conclude the generation of undisclosed income of the appellant, the decision, of Hon'ble Delhi High Court relied upon by the appellant in the case of Kabul Chawla vs. CIT dated 28.08.2015 is applicable In this case.*

10.12 Accordingly, respectfully following the decision of the jurisdictional high court where it has been held that in an unabated assessment under section 153A of the Act, the addition can be made only on the basis of incriminating material found and seized during the course of search, whereas the addition made in the present case is without having any incriminating material! seized document is not sustainable.

10.13 Therefore, the addition cannot be sustained in view of the legal provisions as defined by the Hon'ble Jurisdictions! High Court in the above -eferreci case law.

10.14 Since, the issue has been decided on the legal grounds regarding jurisdiction of AO to make such additions under section 153A of the Act and the addition has not been sustained, the ground relating to the merit of this case has not been considered.

6. In view of the above findings, we dismiss the appeal of the Revenue.

7. In the result, the appeal of the Revenue is dismissed."

Thus, the issue is squarely covered by the decision of the Tribunal in assessee's own case. Hence, appeal of the Revenue is dismissed."

3. The ITAT has observed that an identical view had been taken in assessee's own case by the ITAT for AY 2010-11 and wherein also the Revenue could not substantiate that any incriminating material had been found. The conclusions arrived at would in any case sustain bearing in mind the judgment rendered by the Supreme Court in **Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell P. Ltd.** [(2024) 2 SCC 433].

4. Consequently, we find no merit in the instant appeal, No

substantial question of law arises. The appeal shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 15, 2024/kk