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

+ **ITA 276/2024**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr. Sanjay Kumar, SSC along
with Ms. Easha Kadian, Adv.

versus

LIZER CYLINDERS LTD.

..... Respondent

Through: Mr. Mahir Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINdra KUMAR

KAURAV

ORDER

13.05.2024

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CM APPL.28424/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The Principal Commissioner impugns the order dated 23 November 2023 passed by the Income Tax Appellate Tribunal [‘ITAT’] and poses the following questions for our consideration:-

“A. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in deleting the addition made under Section 68 of the Act on account of receipt of unsecured loan aggregating to Rs. 12,00,00,000/- by the assessee company?

B. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in considering assessee's case under consideration as identical with the bunch of cases of the other assesses decided by this Hon'ble Court vide its decision respectfully following the decision order of the Co-ordinate bench of Delhi ITAT rendered on



23.12.2021 in Revenue's appeal in the case of M/s. Jay Auto Components Ltd. & Others?

C. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in observing that the statement recorded under Section 131 of the Act has no evidentiary value despite the fact that specific details and corroborative banking transactions were identified by the entry operator?

D. Whether on the facts and circumstances of the case, the Ld. ITAT has ignored the fact that no reply was received during the course of assessment proceedings from the lender company in the response of notice under Section 133(6) of the Act?

E. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in observing that requisite details and evidences filed by the assessee were sufficient to prove the genuineness of the transaction related to bogus unsecured loan whereas the assessee failed to discharge the primary onus cast upon it under Section 68 of the Act of proving identity, satisfactorily explaining the creditworthiness and genuineness of these transactions. This is compounded by the fact that the assessee company failed to produce the directors of the lender company in spite of opportunities given?

F. Whether on the facts and in law, the Ld. CIT(A) is correct in deleting the additions made by the AO, ignoring, the judgement of the Hon'ble Supreme Court in DCIT vs NRA Iron and Steel Pvt Ltd in Civil Appeal No. 29855 of 2018?

G. Whether on the facts and in law, the Ld. CIT(A) is correct in deleting the additions ignoring the judgement of this Hon'ble Court in the case of N.R Portfolio Pvt Ltd (ITA No. 1018/2011), wherein it is held that the transaction through bank accounts do not reflect the creditworthiness or even the genuineness of the transaction?"

4. As we go through the order impugned before us, it becomes manifest that no incriminating material was gathered in the course of the search and which could be said to have the potential to impact the total income of the respondent-assessee.

5. We also take note of the judgment rendered by a Division Bench of this Court on 26 September 2022 in **PCIT (Central) – 2 vs. JPM Tools Ltd** [2022 SCC Online Del 3109], wherein while dealing with the case of other entities who formed part of the same search, the judgement of the ITAT came to be upheld.



6. In addition to the above, we bear in mind the principles with respect to incriminating material as was enunciated in **Saksham Commodities Limited vs. Income Tax Officer, Ward 22(1), Delhi & Anr** [2024 SCC OnLine Del 2551]. We consequently find no merit in the instant appeal. The relevant paragraphs of the said decision read as follows:

“52. The decisions which hold that an assessment is liable to be revised only if incriminating material be found, even if rendered in the context of Section 153A, would clearly govern the question that stands posited even in the context of Section 153C. It would be relevant to recall that the Division Bench in *Kabul Chawla* had observed that in the absence of any incriminating material, a completed assessment may be reiterated and the abated assessment or reassessment be concluded. The importance of incriminating material was further underlined in *Kabul Chawla* with the Court observing that completed assessments could be interfered with, only if some incriminating material were unearthed. This aspect came to be reiterated in *RRJ Securities* when the Court held that it would be impermissible to either reopen or reassess a completed assessment which may not be impacted by the material gathered in the course of the search and which may have no plausible nexus. The aforesaid position also comes to the fore when one reads para 17 of *ARN Infrastructure* and which annulled an action aimed at reopening assessments for years to which the incriminating document which was found did not relate.

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63. On an overall consideration of the structure of Sections 153A and 153C, we thus find that a reopening or abatement would be triggered only upon the discovery of material which is likely to “have a bearing on the determination of the total income” and would have to be examined bearing in mind the AYs' which are likely to be impacted. It would thus be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the “relevant assessment year”.

64. In our considered view, abatement of the six AYs' or the “relevant assessment year” under Section 153C would follow the formation of opinion and satisfaction being reached that the material received is likely to impact the computation of income for a particular AY or AYs' that may form part of the block of ten



AYs'. Abatement would be triggered by the formation of that opinion rather than the other way around. This, in light of the discernibly distinguishable statutory regime underlying Sections 153A and 153C as explained above. While in the case of the former, a notice would inevitably be issued the moment a search is undertaken or documents requisitioned, whereas in the case of the latter, the proceedings would be liable to be commenced only upon the AO having formed the opinion that the material gathered is likely to inculcate the assessee. While in the case of a Section 153A assessment, the issue of whether additions are liable to be made based upon the material recovered is an aspect which would merit consideration in the course of the assessment proceedings, under Section 153C, the AO would have to be prima facie satisfied that the documents, data or asset recovered is likely to “have a bearing on the determination of the total income”. It is only once an opinion in that regard is formed that the AO would be legally justified in issuing a notice under that provision and which in turn would culminate in the abatement of pending assessments or reassessments as the case may be.

7. The appeal shall accordingly stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 13, 2024/RW