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

\+ ITA 404/2023

PR. COMMISSIONER OF INCOME TAX-7, DELHI

..... Appellant

Through: Mr.Puneet Rai, Sr.SC with Mr.Ashivini Kumar and Mr.Rishabh Nangia, Jr.SCs.

versus

MEERA GUPTA ..... Respondent

Through: Mr.Aditya Kumar Garg, Adv.

\+ ITA 407/2023

PR. COMMISSIONER OF INCOME TAX-7, DELHI

..... Appellant

Through: Mr.Puneet Rai, Sr.SC with Mr.Ashivini Kumar and Mr.Rishabh Nangia, Jr.SCs.

versus

MEERA GUPTA ..... Respondent

Through: Mr.Aditya Kumar Garg, Adv.

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

O R D E R

% **16.04.2024**

1. The instant appeals have been preferred against the order of the Income Tax Appellate Tribunal [**"ITAT"**] dated 12 October 2022 and have proposed the following questions of law for our consideration:

> "i. Whether on the facts and in the circumstances of the case and in law, Hon'ble ITAT was correct in deleting the addition made by AO on account of withdrawal of indexation cost while computing Long term capital gain on Sale of jewellery and sale of shares?
> ii. Whether on the facts and in the circumstances of the case and in law, Hon'ble ITAT was correct in deleting the addition made by AO u/s 68 of the act on account of unexplained unsecured loan?

> iii. Whether on the facts and circumstances of the case and in law, Hon'ble ITAT was correct in relying upon the decision of Kabul Chawla(supra) as the said issue is pending before Hon'ble Supreme Court?"

2. Having heard learned counsels for parties and on going through the judgment impugned, we find that the appeal would merit consideration on the questions of law as are proposed. We accordingly, formally admit this appeal.

3. The record would bear out that assessments under Section 153A of the Income Tax Act, 1961 ["**Act**"] came to be initiated pursuant to a search and seizure operation which was conducted on 11 November 2014. It was on the aforesaid basis and the incriminating material gathered that assessment proceedings appear to have been drawn for Assessment Years ["**AYs**"] 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14.

4. It becomes pertinent to note that while dealing with the appeal for AY 2009-2010, the ITAT came to record the following conclusions:-

> "17. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the deletion of the additions made by AO in the order framed u / s 153A r. w.s 143(3) of the Act. We find that CIT(A) while deleting the additions has given a categorical finding that on the date of search, no assessment or reassessment was pending for any of the years under appeal and the AQ in the remand report also has not disputed the aforesaid facts. He has further given a finding that no seized document or material pertaining to A.Y. 2009-10 was found during the course of search and the additions that have been made by the AO are not based on any incriminating material found during the course of search. While deleting the additions, CIT(A) has also placed reliance on the decision of Hon'ble Delhi High Court in the case of Kabul Chawla reported in 380 ITR 573 and other decisions cited in the order. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. Further Revenue has also not placed any contrary binding decision in its support. Considering the totality of the aforesaid facts, we find no reason to interfere with the order of CIT(A) and **thus the grounds of Revenue are dismissed."**

5. On the basis of its conclusion that there was no seized document or material pertaining to AY 2009-2010, it proceeded to uphold the view taken by the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] and dismissed the appeal of the Revenue.

6. However, and in so far as the connected appeals pertaining to AYs 2010-2011 to 2013-2014 were concerned, it failed to record any reasons independently and merely followed the decision rendered on the appeal for AY 2009-2010. Those appeals consequently came to be dismissed without any consideration on whether the material could be said to be inculpatory for those years and would have had a bearing on the computation of total income.

7. The ITAT has thus clearly failed to rest its decision on a consideration of the material that was gathered in the course of search and whether it would be incriminating for the AYs' in question other than AY 2009-2010. In view of the aforesaid, we find ourselves unable to sustain the judgment rendered.

8. The appeals consequently stand allowed. The question stands answered in favour of the Revenue. The appeals for AYs 2010-2011 and 2012-2013, with which we are concerned shall consequently stand revived on the Board of the ITAT.

9. All other rights and contentions of respective parties are kept open.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 16, 2024/MJ