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

\+ ITA 620/2023

PR. COMMISSIONER OF INCOME TAX 1,
NEW DELHI .....Appellant

Through: Mr. Vipul Agrawal, SSC

versus

M/S AGC REALTY PRIVATE LIMITED .....Respondent

Through: Mr. Ruchesh Sinha & Ms. Monalisa Maity, Advs.

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\+ ITA 621/2023

PR. COMMISSIONER OF INCOME TAX 1,
NEW DELHI .....Appellant

Through: Mr. Vipul Agrawal, SSC

versus

M/S AGC REALTY PRIVATE LIMITED .....Respondent

Through: Mr. Ruchesh Sinha & Ms. Monalisa Maity, Advs.

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\+ ITA 107/2024

PR. COMMISSIONER OF INCOME TAX 1,
NEW DELHI .....Appellant

Through: Mr. Vipul Agrawal, SSC

versus

M/S AGC REALTY PRIVATE LIMITED .....Respondent

Through: Mr. Ruchesh Sinha & Ms. Monalisa Maity, Advs.

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

<u>O R D E R</u>

% **25.07.2024**

<u>CM APPL. 58660/2023 (140 Days Delay) in ITA 620/2023</u>
<u>CM APPL. 58663/2023 (140 Days Delay) in ITA 621/2023</u>

Bearing in mind the disclosures made, the delay of 140 days in filing the appeals are condoned.

Applications stand disposed of.

CM APPL. 8217/2024 (130 Days Delay) & CM APPL. 8218/2024 (107 Days Delay in Re-filing) ITA 107/2024

Bearing in the mind the disclosures made, the delay of 130 days in filing and 107 days in refiling the appeal are condoned.

These applications shall stand disposed of.

ITA 620/2023, ITA 621/2023 & ITA 107/2024

1. These Appeals are directed against the order of **Income Tax Appellate Tribunal**[1] dated 15 November 2022. As is manifest from a reading of the conclusions recorded by the Tribunal and which has upheld the view as expressed by the **Commissioner of Income Tax (Appeals)**[2], the entire additions which were sought to be made in the hand of the assessee were based on the report of the **Directorate General of Central Excise Intelligence**[3]**.**

2. It is in the aforesaid backdrop that the authorities below placed reliance upon the decision of this Court in **Commissioner of Income Tax Vs. Kabul Chawla** [2015 SCC OnLine Del 11555] and **Commissioner of Income Tax Vs. RRJ Securities** [2015 SCC Online Del 13085] and held that those additions would not sustain under Section 153A of the **Income Tax Act, 1961**[4]**.** The DGCEI report was admittedly not incriminating material gathered in the course of the search. This becomes evident from a reading of paragraph 7 of the order of the Tribunal which is extracted hereinbelow:-

[1]Tribunal
[2]CIT (A)
[3]DGCEI
[4]Act

"7. The ld. CIT(A) has duly called the report of the AO who vide letter dated 20.09.2019 has reiterated that the additions have been made based on the report of the DGCEI. After obtaining the remand report and reply of the assessee on the remand report, the ld. CIT(A) held that the information received from DGCEI was not the incriminating material found during the course of search u/s 132(1) of the Act and hence the same cannot be considered to interfere with the "completed assessments". In view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Kabul Chawla (288 ITR 573), the ld. CIT(A) held that the addition made cannot be sustained. The similar view has been taken in the case of PCIT Vs. Meeta Gutgutia (395 ITR 526), PCIT Vs. Ms. Lata Jain (384 ITR 543) and CIT Vs. RRJ Securities Ltd. (380 ITR 612). Further, we also find that the Central Excise authorities have decided the appeal of the assessee vide order dated 12.03.2013 in appeal No. 76-ST/2018 in favour of the assessee holding that there was no basis for assuming the receipt of unaccounted cash and in fact, the figures mentioned in the seized material represented the discount offered by the assessee. Accordingly, the entire demand of service tax raised on unaccounted receipts was deleted and appeal of the assessee was allowed vide order No. 193/ST/DLH/2018 dated 12.03.2019 of CIT(A)-1-Central Excise, Delhi. Thus, the fate of the addition made in the Income Tax proceedings on the basis of the findings of Central Excise Department which stand nullified in appellate proceedings of Central Excise gets obliterated. Reliance is being placed on the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs. Vimal Moulders (India) Ltd. (12 taxmann.com 119) wherein it was held that, where CESTAT has returned a finding that there was no discrepancy in the stock, the addition made by the Income Tax Department on such stocks stands deleted. Further, the Hon'ble Apex Court in the case of PCIT Vs. Zirconia Cera Tech Glazes (103 taxmann.com 358) while dismissing the SLP, affirmed the order of the Division Bench of Hon'ble High Court wherein it was held that the Tribunal ultimately deleted the addition primarily on the grounds that by virtue of the judgment of CESTAT, the excise show cause notice was adjudicated in favour of the assessee and the CESTAT deleted the addition on excise side and therefore the Tribunal was justified in deleting the additions made by the Assessing Officer."

3. In view of the aforesaid, we find that these appeals raise no substantial question of law. They shall consequently stand dismissed.

4. This order however, shall be without prejudice to the rights of

the appellants to initiate such proceedings on the basis of material in their possession as may be otherwise permissible in law.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 25, 2024/*SK*