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

+ **ITA 497/2024**

PR. COMMISSIONER OF

INCOME TAX-1, DELHI

.....Appellant

Through: Mr. Sanjay Kumar, Advocate.

versus

M/S C.P. AND ASSOCIATES PVT. LTD.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% 23.09.2024

CM APPL. 55755/2024 (205 Days Delay in Refiling)

Bearing in mind the disclosures made in the application, the delay of 205 days in refilling the appeal is condoned.

Application stands disposed of.

ITA 497/2024

1. Having heard Mr. Kumar, learned counsel who appears in support of the appeal, we note that the issue which stands raised will be liable to be answered against the appellant bearing in mind the view that we have taken inter partes for Assessment Year 2008-09 in ITA 487/2024 dated 11 September 2024 . We had, while dismissing that appeal, held as follows:-

“1.The instant appeal impugns the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 06 September 2023 and posits the following questions of law for our consideration:

“A. Whether on the facts and circumstances of the Acts, the Ld. ITAT has erred in holding that since no



incriminating documents were found during the course of search relating to the relevant year, assessment under Section 143(3) read with Section 153A of the Act could not have been completed?

B. Whether on the fact and circumstances of the case, Ld. ITAT has erred in holding that the AO could not have proceeded to frame assessment under Section 153C in absence of any incriminating materials without appreciating the fact that the provision of the section 153C of the Act, provides for assessment and reassessment of total income of assessee and does not confine the assessment or reassessment to the incriminating documents only?

C. Whether the holding ITAT erred in interpreting section 153C in line with the intention of the legislation in introducing such provision, when the cardinal rule of construction of a statute is to read it literally, which means by giving to the words used by the legislature their ordinary, natural and grammatical meaning unless such reading leads to absurdity and the words are susceptible of another meaning. Whether the ITAT erred in ignoring the judgment of Hon'ble Supreme Court in the case of S. Narayanaswami Vs. G. Panneerselvam & others, 1972 AIR 2284, 1973 SCR(1)172 that "where the statute's meaning is clear and explicit words cannot be interpolated." What is true of the interpretation of an ordinary statute is not any the less true in the case of case of a constitutional provision, and the same rule applies equally to both?

D. Whether on the facts and circumstances of the case, Ld. ITAT has erred in interpreting Section 153A of the Act, when Hon'ble Supreme Court had held in the case of Abhiram Singh Vs C.D. Commachen (Dead) by Lrs. & Ors on 2ndJan, 2017 that "It is settled law that while interpreting statutes, wherever the language is clear, the intention of the legislature must be gathered from the language used and support from extraneous sources should be avoided?

2. We note that while dealing with the aspect of incriminating material, the Commissioner of Income Tax (Appeals) ["CIT(A)"] had in its order observed as follows:

"3.1 In **ground no. 2 of the appeal**, the appellant is aggrieved with the action of the Assessing Officer in reopening its assessment by issue of notice u/s 153C. Facts



of the case are that a search u/s 132 of the I.T. Act took place in the case of M/s. Shivam Real Estates & Developers, wherein an Annexure AS-50 was seized. This annexure contained an agreement between M/s. Shivam Real Estates & Developers of Jaipur as sellers and M/s. Y.P. Infrastructure Pvt. Ltd., Vikaspuri, New Delhi as buyers for sale of agricultural land by the former to the latter for Rs.5,56,00,000/-. This agreement was later on cancelled and the sum paid to M/s. Shivam Real Estates & Developers was refunded by it. It was found by the department that actually advance of Rs.4,56,00,000/- had been paid by M/s. C.P. & Associates Pvt. Ltd. on behalf of M/s. Y.P. Infrastructure Pvt. Ltd. Accordingly, notices u/s 153C were issued both in the cases of M/s. C.P. & Associates Pvt. Ltd. and M/s. Y.P. Infrastructure Pvt. Ltd. The Assessing Officer while issuing the notice u/s 153C has duly recorded his satisfaction. The appellant is emphasizing that no material "belonging" to the appellant was found during the course of search in the case of M/s. Shivam Real Estates & Developers, although the agreement to sell the land by M/s. Shivam Real. Estates & Developers "related to" the appellant."

3. Undisputedly, the validity of the action under Section 153C of the Income Tax Act, 1961 would have to be tested on the basis of the provision as it stood at the relevant time and prior to the words "*pertaining to*" being added.

4. It is in the aforesaid backdrop that the Tribunal has affirmed the view taken by the CIT (Appeals) following the decision rendered by the Court in **Commissioner of Income-tax vs. Kabul Chawla** [2015 SCC OnLine Del 11555].

5. In view of the aforesaid, we find that the appeal fails to raise any substantial questions of law. It shall, consequently, stand dismissed."

2. Consequently, and for reasons assigned therein, we dismiss this appeal.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 23, 2024/vp