



2024:DHC:9624-DB



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

% *Judgment delivered on: 13.12.2024*

+ **ITA 501/2024**

THE PR. COMMISSIONER OF INCOME TAX
- CENTRAL -1Appellant

versus

CAPITAL POWER SYSTEMS LTD.Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ruchir Bhatia, Senior Standing Counsel

For the Respondent : Mr. Inder Paul Bansal, Mr. Vivek Bansal, Mr.
Vishal Chechi and Ms. Pooja Rani, Advocates

CORAM

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J

1. The Revenue has preferred the present appeal under Section 260A of the Income Tax Act, 1961 [hereafter '*the Act*'] impugning an order dated 06.11.2023 [hereafter '*the impugned order*'] passed by the learned Income Tax Appellate Tribunal [hereafter '*the learned ITAT*'] in ITA No. 211/Del/2023, in respect of the assessment year (AY) 2007-08.

FACTUAL BACKGROUND

2. Facts leading to the filing of the present appeal are that a search and seizure operation under Section 132 of the Act was carried out in



the case of Capital Meter Group on 26.06.2006. Sh. Pawan Kumar Bansal was the Chief Executive Officer (CEO) and Director of Capital Power Systems Ltd. [hereafter also referred to as '*the assessee*'] and Sh. Mahesh Kumar Gupta was another Director of the assessee – which is one of the companies of the Capital Meter Group. During the post-search proceedings, on 01.09.2006, Sh. Pawan Kumar Bansal had submitted a letter, written on the letterhead of assessee, duly signed by him as the CEO of the assessee, wherein an income of ₹7 crores was surrendered and disclosed. This surrender was again reiterated by Sh. Pawan Kumar Bansal and affirmed by him in his statements recorded under Section 132(4) of the Act on 08.09.2006 and 12.09.2006. In his statement dated 12.09.2006, Sh. Pawan Kumar Bansal also furnished the break-up of the undisclosed income of ₹7 crores in two names, i.e., partly in his name and partly in the name of Sh. Mahesh Kumar Gupta. This break-up, given by Sh. Pawan Kumar Bansal, is reproduced hereunder:

Name	Undisclosed income
1. Sh. Pawan Kumar Bansal	Rs.3,55,000,00/-
2. Sh. Mahesh Kumar Gupta	Rs. 3,45,000,00/-
Total	Rs. 7,00,000,00/-

The above money of Rs. 7 crores, received on account of undisclosed income from unaccounted property dealings have been invested in share capital/cash found. The investment have been made by me and Sh. Mahesh Kumar Gupta and the details are as follows:-

Name	Undisclosed investment
1. Shri Pawan Kumar Bansal	A. cash found at the residence of Vikram Bansal amounting to Rs.20,00,000/-. B. investment in share capital of various companies



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amounting to
Rs.3,35,00,000/-
Rs.3,55,00,000/-

2. Shri Mahesh Kumar Bansal : Investment in share capital
of various companies
amounting to
Rs.3,45,00,000/-
Rs.3,45,00,000/-

Total of 1 & 2 Rs.7,00,00,000/-

3. However, in his Return of Income for AY 2007-08, Sh. Pawan Kumar Bansal only disclosed an amount of ₹20 lakhs as undisclosed cash found, and did not include the remaining amount of ₹6.8 crores in his Returned Income. As a result, while passing the final assessment order, the concerned Assessing Officer added the amount of ₹6.8 crores to the income of Sh. Pawan Kumar Bansal – ₹3.35 crores on substantive basis and ₹3.45 crores on protective basis – and ₹3.45 crores in the hands of Sh. Mahesh Kumar Gupta on substantive basis.

4. Both the said individuals preferred appeals before the learned Commissioner of Income Tax (Appeals), who *vide* order dated 23.09.2010, directed the deletion of the addition made by the Assessing Officer to the extent of ₹3,07,42,000/- out of the addition of ₹3.35 crores made on substantive basis in the hands of Sh. Pawan Kumar Bansal, deletion of ₹3.45 crore added to the income of Sh. Pawan Kumar Bansal on protective basis, and also ordered the deletion of the addition of ₹3.45 crores in the hands of Shri Mahesh Kumar Gupta.

5. The order of the Commissioner of Income Tax (Appeals) was assailed by the Revenue as well as by Sh. Pawan Kumar Bansal before



the learned ITAT by way of filing cross-appeals i.e. ITA No. 5201/Del/2010 (captioned *Sh. Pawan Kumar Bansal v. Deputy Commissioner of Income Tax, Circle-16, New Delhi*), ITA No. 5374/Del/2010 (captioned *Assistant Commissioner of Income Tax, Circle-16, New Delhi v. Sh. Pawan Kumar Bansal*) and 5375/Del/2010 (captioned *Assistant Commissioner of Income Tax, Circle-16, New Delhi v. Sh. Mahesh Kumar Gupta*). The learned ITAT, by way of order dated 30.09.2014, approved the findings of the Commissioner of Income Tax (Appeals) and held that the cumulative effect of the statements given by Sh. Pawan Kumar Bansal should have been considered, which did not reveal the income of ₹7 crores in the hands of Sh. Pawan Kumar Bansal. The learned ITAT also held that there were some contradictions in the statements given by Sh. Pawan Kumar Bansal which rendered such statements unreliable. The learned ITAT accepted that the assessment was required to be framed with reference to the material which was seized during the search, and restricted the addition made to his income to such seized material only.

6. The Revenue preferred an appeal against the aforesaid decision of the learned ITAT before this Court in ITA 529/2015, captioned *Pr. Commissioner of Income Tax v. Pawan Kumar Bansal*. The Coordinate Bench of this Court dismissed the said appeal *vide* order dated 29.07.2015, and upheld the findings of the learned ITAT. The Court concurred with the course adopted by the Commissioner of Income Tax (Appeals), and approved by the learned ITAT, to determine the undisclosed income on the basis of loose papers found during the search.



7. The assessee had filed its Return of Income for AY 2007-08 on 31.10.2007, declaring an income of ₹80,53,110/-. The case of the assessee was picked up for scrutiny. However, eventually, an assessment order was passed on 31.12.2008 whereby the income of ₹80,53,110/-, returned by the assessee, was accepted.

8. However, the Deputy Commissioner of Income Tax, Circle-5(2), New Delhi [hereafter '*the AO*'] issued a notice under Section 148 of the Act on 19.11.2015 to the assessee, proposing to reassess its income for the AY 2007-08 on the ground that there were reasons to believe that the income of the assessee for the said AY had escaped assessment. In the reasons for initiating action under Section 148 of the Act separately recorded by the AO, the AO noted that in the proceedings pertaining to Sh. Pawan Kumar Bansal, the learned ITAT (in ITA No. 5201/Del/2010 & connected matters) as well as the Coordinate Bench of Court (in ITA 529/2015) had concluded that "the income of Rs. 7 crores was disclosed by Capital Power Systems Ltd. and not by individuals", and therefore, the said income was to be added in the hands of the assessee. The AO, therefore, invoked the provisions of Section 150 of the Act on the premise that there was a conclusive finding of the learned ITAT as well as this Court which necessitated the issuance of notice under Section 148 of the Act for the purpose of reassessment of the assessee's income. The relevant portions of the reasons for initiating action under Section 148 of the Act recorded by the AO are extracted hereunder:

"4. The department preferred an appeal before the Hon 'ble ITAT. The Hon'ble ITAT after considering the submissions



made by both the parties i.e. Revenue and the assessee, has concluded that **the income of Rs. 7 crores was disclosed by Capital Power Systems Ltd.** and not by individual assessees. The Hon'ble ITAT has further held that vide letter dt. 01.09.2006, Shri Pawan Kumar Bansal, vide his letter on the company's letter duly signed by him offered an amount of Rs. 7.00 crores and vide his letter dt. 08.09.2006, Shri Pawan Kumar Bansal modified the statement that the disclosure of Rs. 7 crores was on behalf of the Capital Group of Companies. It is pertinent to mention that Shri Pawan Kumar Bansal vide his letter dt. 1st September 2006 filed under the letter head of "**Capital Power Systems Ltd**" has categorically stated "**We Capital Power Systems Limited hereby agree to voluntarily surrender Additional Income of Rs. 7,00,00,000 (Rs. Seven Crores only).....**" The above letter forms part of order of the Hon'ble ITAT.

6. The Hon'ble High Court of Delhi vide its order in ITA No.529 of 2015 while dismissing the appeal has held that no substantial question of law arises for determination. The Hon'ble High Court in para 3 of its order has clearly stated that "*.... The ITAT has analysed the aforementioned letter and come to the conclusion, and in view of the court rightly. that it was made explicit from the said letter that the surrender was being made by the company and not by the Respondent assessee in his Individual capacity*". With regard to the assessability of undisclosed income in the hands of the company, the Hon'ble High Court has not passed any remarks.

9. The return of income was filed by the assessee on 31.10.2007 declaring an income of Rs. 80,53,110/-. The assessment proceedings were completed on 31.12.2008 accepting the returned income of the assessee. However, post search and seizure operations u/s 132 of the Income-tax Act, 1961, carried out in the case of Capital Meter Group on 26th June 2006 10, the Hon'ble ITAT, in its order in ITA No. 5375/Del/2010 dated 30.09.2014, concluded that **the income of Rs. 7 crores was disclosed by Capital Power Systems Ltd.** and not by individuals. It is therefore, obvious that Rs. 7 crore has escaped from assessment and the escapement has been resulted by the finding of Hon'ble ITAT. Hence, it is a fit case for reassessment u/s 148 r.u 150(1) of the Income Tax Act, 1961.

10. In view of the above, I have reasons to believe that an amount of Rs. 7,00,00,000 (Rupee seven crores) chargeable to



tax in the hands of M/s Capital Power Systems Pvt. Ltd. (PAN AAACC0119R) during the A.Y. 2007-08 has escaped assessment and I am satisfied that it is a case for issue of notice u/s 148 r.w.s. 150 of the Income-tax Act...”

9. The Assessment Order was passed under Section 147 read with Section 143(3) of the Act by the AO on 16.03.2019. The AO observed that Sh. Pawan Kumar Bansal had himself declared the amount of ₹7 crores and also the fact that the said amount belonged to the assessee, and the statements to this effect were not retracted by him either. Therefore, the AO concluded that the amount of ₹7 crores was undisclosed in the hands of assessee. Accordingly, the income of the assessee for the AY 2007-08 was assessed at ₹7,80,53,110/-.

10. Aggrieved by the order passed by the AO, the assessee preferred an appeal before the learned Commissioner of Income Tax (Appeals)-23 [hereafter '*the CIT(A)*']. The CIT(A), *vide* order dated 16.11.2022, set aside the assessment framed by the AO and held that Section 150 of the Act was incorrectly invoked by the AO since there was no finding or direction of the learned ITAT, in allowing the AO to bring to tax the amount of ₹7 crores in any manner whatsoever, or that the said amount belonged to the assessee herein.

11. The Revenue challenged the order of the CIT(A) before the learned ITAT by way of ITA No. 211/Del/2023. The learned ITAT, by way of the impugned order dated 06.11.2023, concurred with the reasoning of the CIT(A) and held that there was no finding given by the Coordinate Bench of ITAT, in the order dated 30.09.2014, that the income of ₹7 crores was to be brought to tax at hands of assessee. The



learned ITAT also observed that Sh. Pawan Kumar Bansal had disclosed the said income not on behalf of the assessee i.e. Capital Power Systems Ltd., but the Capital Group of Companies. The appeal of the Revenue was, thus, dismissed.

12. By way of present appeal, the Revenue seeks to assail the aforesaid decision of the learned ITAT.

QUESTION OF LAW

13. The Revenue projected the following questions of law for the consideration of the Court:

“2.1 Whether on the facts and circumstances of the case, Ld. ITAT was justified in deleting the addition of Rs.7,00,00,000/- made on the basis of statement recorded during the search without appreciating the Judgement of jurisdictional High Court in the case of Bhagirath Agarwal Vs CIT (31 taxmann.com 274) wherein Hon’ble Court held that 'an addition in Assessee’s - case relying on statement recorded during search cannot be deleted without proving the statement to be incorrect?

2.2 Whether on the facts and circumstances of the case, Ld. ITAT was justified in ignoring the finding of the Tribunal in the case of Sh. Pawan Kumar Bansal wherein Tribunal while deleting the addition made in the hands of Sh. Pawan Kumar Bansal, Director of the Assessee company (ITA No. 3375/De1/2010) held that the disclosure of Rs. 7,00,00,000/- was made by Capital Power Systems Ltd., and not by Sh. Pawan Kumar Bansal in his individual capacity?

2.3 Whether on the facts and circumstances of the case, the order passed by Ld. ITAT is perverse in law as well as on facts in respect of the terms referred to in the question herein above?”



14. However, by virtue of order dated 24.10.2024, it was observed that the principal question of law arising for the Court's consideration was:

“Whether the learned ITAT has erred in proceeding on the basis that conditions set out in Section 150 of the Act were not satisfied?”

SUBMISSIONS BEFORE THIS COURT

15. The learned counsel appearing for the Revenue contended that the learned ITAT failed to appreciate the fact that Sh. Pawan Kumar Bansal, in his capacity as the CEO of the assessee herein, had filed the letter dated 01.09.2006, surrendering the additional income of ₹7 crores. He submits that the learned ITAT also ignored the finding of its Coordinate Bench in order dated 30.09.2014 (in the case of Sh. Pawan Kumar Bansal) wherein it was clearly observed that the disclosure of ₹7 crores was made by the Capital Power System Ltd. (assessee) and not by Sh. Pawan Kumar Bansal in his individual capacity. He also pointed out that this Court in ITA 529/2015 had also noted that the disclosure of ₹7 crores was made on behalf of the company (i.e. the assessee herein) and not in the individual capacity by Sh. Pawan Kumar Bansal. The learned counsel argued that there was a finding of the learned ITAT as well as this Court in respect of the assessee, and the proceedings for reassessment were rightly initiated by the AO by invoking the provisions of Section 150 of the Act. Therefore, he prayed that the impugned order be set aside.



16. The learned counsel for the assessee, on the other hand, contended that there is no infirmity with the impugned order, and the learned ITAT has correctly observed that there is neither any finding nor any direction of the Tribunal regarding the undisclosed income of the assessee, and that there is no finding or direction of the Tribunal allowing the AO to bring to tax the amount of ₹7 crores in any manner whatsoever. In this regard, the learned counsel for the assessee specifically referred to the relevant observations in the order of learned ITAT, dated 30.09.2014, in the case of Sh. Pawan Kumar Bansal, to contended that there was no such finding rendered by the learned ITAT and the AO had misinterpreted the said decision. Therefore, it was prayed that the present appeal be dismissed.

ANALYSIS & FINDINGS

17. The short issue for consideration before us is whether the provisions of Section 150 of the Act were appropriately invoked by the AO for the purpose of reopening the assessment for the AY 2007-08 in respect of the assessee herein; and consequently, whether the learned ITAT erred in holding that the conditions stipulated under Section 150 of the Act were not satisfied?

18. At the outset, Section 150 of the Act is set out below for reference:

“150. Provision for cases where assessment is in pursuance of an order on appeal, etc.

(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or



recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.”

19. A plain reading of the above provision reveals that an assessing officer can issue a notice under Section 148 of the Act, at any time, for the purpose of making an assessment, reassessment or recomputation, **in consequence of or to give effect to any finding or direction** contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

20. In this background, it would be first relevant to consider the scope and purport of the terms ‘finding’ or ‘direction’ as contained in Section 150(1) of the Act.

21. In *ITO v. Murlidhar Bhagwan Das: (1964) 52 ITR 335*, the Constitution Bench of the Hon’ble Supreme Court elaborated on the scope of the terms ‘finding’ and ‘direction’, though in context of Section 34 of the old Indian Income Tax Act, 1922. The Court clarified that a ‘finding’ refers to a decision on a material question that is essential for the disposal of the case at hand. It is not sufficient for a



finding to be incidental or collateral; it must be directly connected to the resolution of the issue under consideration. The Court illustrated this by stating that if income is found not to belong to the assessment year in question, a finding to that effect is material to the case. However, any incidental conclusion about the income belonging to another year does not qualify as a ‘finding’ for the purposes of reopening an assessment. Regarding ‘direction’, the Court held that it must be read in conjunction with the statutory powers conferred on the appellate or revisional authority. A ‘direction’ refers to a specific instruction that an authority is empowered to issue under the Act, and it must be expressly necessary for disposing of the case at hand. The Court emphasized that neither term could be expanded beyond their statutory contexts, and that the findings or directions must be directly relevant and binding to the assessment in question.

22. Similarly, in ***Rajinder Nath v. CIT***: (1979) 4 SCC 282, the Hon’ble Supreme Court reiterated the interpretation of ‘finding’ and ‘direction’, in context of Section 153 of the Act. The Court held that a ‘finding’ must pertain to the particular assessee and assessment year under consideration, and it must be indispensable for resolving the issue before the authority or court. A finding cannot be incidental or ancillary; it must form a necessary step in the reasoning process to determine the liability of the assessee or the assessment year in question. The Hon’ble Supreme Court illustrated this with an example: if the facts indicate that income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B is crucial to determining whether it can be taxed as A’s income. Such a



finding about B is directly linked to resolving A's liability. However, if A's liability can be decided without addressing B's status, any finding about B would be incidental and not necessary for the disposal of A's case. As to 'direction', the Court emphasized that it must be an express, specific mandate that is statutorily empowered and directly necessary for the disposal of the case.

23. From the above-noted judicial precedents, it is evident that the terms 'finding' and 'direction' have a confined and precise meaning under the Act. A 'finding' refers to a decision on a core issue directly necessary for resolving the specific case at hand, while a 'direction' is a statutorily empowered instruction that is indispensable for the disposal of the case. Both terms demand a direct and substantive nexus to the matter under adjudication and cannot extend to incidental or ancillary conclusions. Consequently, the invocation of Section 150 of the Act requires a strict and cautious application of these terms to prevent the reopening of assessments based on findings or directions that are only incidental, tangential, or beyond statutory authority.

24. Thus, the sole question to be answered by us, in the given set of facts, is whether there was any 'finding or direction' in the order of the learned ITAT (in ITA No. 5201/Del/2010 and connected matters) or in the order of Coordinate Bench of this Court (in ITA 529/2015) to give effect to which the AO could have issued notice under Section 148 of the Act for the purpose of reassessment or recomputation and specifically with regard to the addition of an amount of ₹7 crores on



the ground of the same being undisclosed income of the assessee i.e. Capital Power Systems Ltd.

25. In this regard, the operative portion of the order dated 30.09.2014 passed by the learned ITAT (in ITA No. 5201/Del/2010 and connected matters) is extracted hereunder:

“9. From the above letter, it is evident that the letter was written on the letter head of Capital Power Systems Ltd. In the body of the letter, it is mentioned "we Capital Power Systems Limited hereby agree to voluntarily surrender additional income of Rs.7,00,00,000/-". The letter is signed by Shri Pawan Kumar Bansal as CEO of Capital Power Systems Ltd. Thus, the disclosure of Rs. 7 crores was by Capital Power Systems Ltd. and not by Shri Pawan Kumar Bansal in his individual capacity. That on 8th September, 2006, the statement of Shri Pawan Kumar Bansal was recorded. The entire statement is related to the disclosure of Rs.7 crores, therefore, the same is reproduced below:-

“Q-1: Please identify yourself?

Ans. I Pawan Kumar Bansal S/o Sh. Nihal Chand Kejriwal
R/o A-156, New Friends Colony, New Delhi.

Q-2: During the course of search proceedings in the Capital Group of cases on 26-7-2006, a number of incriminating documents/diaries/papers have been found and seized, which indicate that you have undisclosed income, which is not recorded in the regular book of a/cs. Do you want to offer any explanation regarding these documents and the transactions enumerated therein?.

Ans. **I have already filed a letter dated 1-9-06 vide, which I on behalf of the Capital Group of companies has voluntarily offered an additional income of Rs.7 (seven) crores.** As the search proceedings in our group of cases are yet to be concluded as a number of restraints are yet to be lifted and this statement being recorded u/s 132(4) of the I.T. Act 1961, I would like to take the benefit of explanation 5 to section 271C and I once again reiterate my earlier statement made vide letter dated 1-9-06 and voluntarily offered an additional income of Rs.7 crore



(seven crores) to avoid litigation and buy peace of mind subject to non initiation of penalty or prosecution or other coercive actions as per provision of law, on behalf of the company, its directors, senior executives, their spouse, family members and relatives including other companies, firm in which such persons are partners, directors or interested.

Q-3: Kindly give the assessee wise details of this disclosure?

Ans: The same will be provided after go through the seized material.

Q-4: Kindly give the source of generation of this Rs . 7 crores of additional income?

Ans: The detailed explanation regarding the source of this additional income of Rs. 7 crore will be submitted later on after going through the seized material. In general this additional income of Rs. 7 crores have been generated through different transactions conducted outside the regular books of accounts.

Q-5: Do you want to say anything else?

Ans: No. The above statement has been given by me voluntarily out of my free will without any pressure, force, coercion, undue influence. I have read over the above statement and found that it is correctly recorded and/stand by the above statement.”

10. From the above, it is evident that in response to question No. 2, it has been stated by the assessee that Shri Pawan Kumar Bansal disclosed the income on behalf of Capital Group of companies. In response to question No.8, it was also mentioned that the details of the disclosure can be given by the assessee only after going through the seized material. The same was reiterated in response to question No.4 also. Thus, from the entire statement, it is evident that the disclosure was made by Shri Pawan Kumar Bansal for and on behalf of the Capital Group of companies due to undisclosed income as may be represented by the seized material. As per this statement also, the disclosure is not in the individual capacity of Shri Pawan Kumar Bansal. Again, the statement of Shri Pawan Kumar Bansal was recorded on 12th



September, 2006. This statement is also reproduced below for ready reference:-

“Q-1: Please identify yourself?

Ans: I Pawari Kumar Bansal S/o Sh. Nihal Chand Kejriwal aged about 45 years and r/o A-156, New Friends Colony, New Delhi.

Q-2: During the course of search action u/s 132(1) of the I.T. Act 1961, on 26-7-2006, at your business as well as residential premises, a number of documents/loose papers etc. have been seized. These documents are being duly perused by you. You are hereby given an opportunity to describe and explain the contents pertaining to the undisclosed income of the group?

Ans: Yes, I have gone through very carefully all the seized papers

and documents. I reiterate my earlier submission stated vide letter dated 1.9.2006 and the statement subsequently given u/s 132(4) on 8.9.06 and voluntarily after an additional income of Rs.7,00,00,000/- (Rs. Seven crores).

Q-3: Give the details of these additional income of Rs.7,00,00,000/- (Rs. Seven crores), i.e. the details of the source of this money and the details of its investment?

Ans: This additional income of Rs. 7 crores was generated in different years during the block period from undisclosed/or unaccounted dealings in various property transactions and the said income of Rs. 7 crores has been earned by me and Sh. Mahesh Kumar Gupta (Director-Capital Power Systems Ltd.). The bifurcation is as under:-

* * *

Q--4: Do you. want to say anything else?'

Ans: **This statement given by me is final and I understand that no penalty or prosecution proceedings against me and the group will be initiated** in relation to the aforestated voluntary disclosure of additional income of Rs. 7 crores.

The above statement has been given by me voluntarily out of my free will without any pressure, force, coercion, undue influence. I have read over the above statement and found



that it is correctly recorded and I stand by the above statement.”

11.When we see the cumulative effect of all the facts as well as the statements, following position emerges:-

12. Shri Pawan Kumar Bansal is an individual who is not carrying on any business in his individual capacity. **The business is carried on by Capital Group of Companies including Capital Power Systems Ltd. whose CEO is Shri Pawan Kumar Bansal, i.e., the assessee. The original disclosure made vide letter dated 1st September, 2006 was for and on behalf of Capital Power Systems Ltd.** The assessee signed the above letter in his capacity as CEO of the said company. **In the statement dated 8th September, 2006, he deposed before the Revenue authorities in which he affirmed the voluntary disclosure of additional income of Rs. 7 crores on behalf of Capital Group of companies.** Thus, even in the statement dated 8th September, 2006, there was no disclosure in the individual capacity of Shri Pawan Kumar Bansal. In another statement dated 12th September, 2006, he reiterated his earlier statement vide letter dated 1st September, 2006 and statement dated 8th September, 2006. **Thus, the disclosure of income was by Capital Group of companies.** However, in reply to another question in his statement dated 12th September, 2006, he disclosed the income of Rs.3,55,00,000/- in his individual capacity and the income of Rs.3,45,00,000/- in the name of Shri Mahesh Kumar Gupta. The Revenue authorities who recorded the statement did not bother to point out the contradiction between the reply to question No.2 and question No.4. In reply to question No.2, he reiterated his letter dated 1st September, 2006 and statement dated 8th September, 2006 wherein no income was disclosed in the individual names of Shri Pawan Kymar Bansal and Shri Mahesh Kumar Gupta. But, in reply to question no.3, the income was disclosed in the individual names. It is a settled law that the statement has to be considered as a whole and Revenue cannot chose to rely upon only one part of the statement ignoring the other statements. Moreover, statement dated 12th September, 2006 is not the only statement but it is only one part of the series of letter/statements. In the statement dated 8th September, 2006, Shri Pawan Kumar Bansal has stated that the details of the disclosure would be given after going through the seized material. Therefore, the statement has a relevance with the seized material and statement is made by him to disclose the income as represented by the seized



material. No other corroborative evidence to support the income of Rs. 7 crores in the hands of the assessee and Shri Mahesh Kumar Gupta is found. In the above circumstances, after considering the cumulative effect of the letter dated 1st September, 2006 and both the statements, the proper course would be to determine the undisclosed income on the basis of loose papers found and seized at the time of search. The CIT(A) did the same.”

(Emphasis added)

26. A perusal of the aforesaid reveals that the learned ITAT had examined the letter dated 01.09.2006 written by Sh. Pawan Kumar Bansal, as well as his subsequent statements dated 08.09.2006 and 12.09.2006. Regarding the letter dated 01.09.2006, the learned ITAT observed that it was written on the letterhead of the assessee i.e. Capital Power Systems Ltd., which had clearly mentioned: “We Capital Power Systems Limited hereby agree to voluntarily surrender Additional Income of Rs.7,00,00,000.00”. The letter was signed by Sh. Pawan Kumar Bansal in the capacity of being CEO of the assessee. Consequently, the learned ITAT observed that the disclosure of ₹7 crores was made by Capital Power Systems Ltd. and not by Sh. Pawan Kumar Bansal in his individual capacity.

27. At this juncture, it is pertinent to note that the reasons recorded by the AO for the purpose of issuance of notice under Section 148 of the Act reveal that he has placed reliance solely on the above-noted observations of the learned ITAT, as contained in paragraph 9 of the order dated 30.09.2014. The AO appears to have considered these observations as a conclusive finding that ₹7 crores constituted undisclosed income of the assessee. However, we are of the opinion



that this reasoning is erroneous for the reason that the AO has overlooked the subsequent findings contained in the same order.

28. Notably, in the succeeding paragraphs of the same order, the learned ITAT had noted that Sh. Pawan Kumar Bansal in his statement recorded on 08.09.2006 had stated that the income of ₹7 crores was disclosed on behalf of the Capital Group of Companies. The learned ITAT also referred to the statement of Sh. Pawan Kumar Bansal recorded on 12.09.2006, wherein he had reiterated his earlier statements and had provided bifurcation of the amount of ₹7 crores – disclosing part of the income in his own hands and the remainder in the hands of Sh. Mahesh Kumar Gupta. Significantly, the learned ITAT observed in paragraph 12 of its order that the business was not being carried out by Sh. Pawan Kumar Bansal in his individual capacity but by the Capital Group of Companies, which included Capital Power Systems Ltd. (the assessee herein) of which Sh. Pawan Kumar Bansal was the CEO. It further observed that a statement must be considered in its entirety, and the Revenue cannot selectively rely on certain portions of a statement while disregarding the rest of it. Further, in case of statements more than one, the cumulative effect of the statements has to be considered for reaching just decision of a given case. In the absence of corroborative evidence, the learned ITAT concluded that the letter dated 01.09.2006 and statements dated 08.09.2006 and 12.09.2006 of Sh. Pawan Kumar Bansal, which contained certain contradictions, could not serve as a reliable basis for assessing the income of Sh. Pawan Kumar Bansal. Instead, the learned ITAT held that the proper course would be to determine the



undisclosed income based on the loose papers found and seized during the search under Section 132 of the Act conducted in connection with the present case.

29. The learned ITAT, thus, had given a material finding that the additional surrendered income of ₹7 crores did not belong to Sh. Pawan Kumar Bansal, which was the issue in question before the learned ITAT in the said case. However, the other incidental observations in the order dated 30.09.2014, pertaining to the income being surrendered either on behalf of the Capital Power Systems Ltd. or Capital Group of Companies – as inferred from letters and statements made by Sh. Pawan Kumar Bansal – would not fall within the scope of the term ‘findings’ under Section 150 of the Act.

30. In light of the above, we are of the considered opinion that the observations made by the learned ITAT cannot be construed as findings or directions which are required to be given effect to by reopening the concluded assessments of the assessee. The learned ITAT has, at no point, rendered any finding in its order that the amount of ₹7 crores is required to be assessed in the hands of Capital Power Systems Ltd.

31. Similarly, in the order dated 29.07.2015 of the Coordinate Bench of this Court in ITA 529/2015, there was no categorical finding or direction that the assessee had declared income of ₹7 crores so as to invoke Section 150 of the Act by the AO. The relevant portion of the order dated 29.07.2015 is set out below:



“2. The question sought to be urged is whether the ITAT erred in upholding the order of the Commissioner of Income Tax (Appeals) [CIT(A)] which in turn held that the income of the Respondent Assessee was to be determined on the basis of the undisclosed income as per the noting on the loose papers recovered during search and consequently deleted the addition of Rs.3,07,00,000/- which was made on account of a statement recorded of the Respondent Assessee during the Course of search.

3. The central plank of the Revenue's case is a letter written on 1st September 2006 whereby the company of which Respondent Assessee was Chief Executive Officer voluntarily surrendered additional income of Rs.7 crores "to avoid litigation and buy peace of mind subject to non-initiation of penalty or prosecution...". **The ITAT has analysed the aforementioned letter and come to the conclusion, and in view of the Court rightly, that it was made explicit from the said letter that the surrender was being made by the company and not by the Respondent Assessee in his individual capacity.**

4. It transpires that the above letter was followed by other letters and statements made on 8th 12th September 2006. **The ITAT has pointed out a contradiction in the answers given in the subsequent statements by the Respondent Assessee where he suggested that the said income of Rs.7 crores was partly earned by him and partly by Mr. Mahesh Kumar Gupta. The ITAT in the impugned order has pointed out that the Department did not confront the Assessee in the contradictions in its replies and allowed the earlier letter and the subsequent replies to the questions to remain. In the circumstances, after considering the cumulative effect of the letter dated 1st September 2006 and the subsequent statements the proper course was to determine the undisclosed income on the basis of the loose sheets seized during the search.** The ITAT, therefore, found no error in the approach adopted by the CIT (A). On examining the loose papers the ITAT held that the only addition which can be sustained is Rs.7, 90,000.

* * *

6. The Court finds that the said decision is distinguishable in its application to the facts of the present case. There is no retraction as such by the company of its letter dated C September 2006 or of any of the other statements made



subsequently. Further, the statement made by the Respondent Assessee on 12th September 2006 in response to Question No.3 which required him to give the details of the additional income of Rs.7 crores was to the effect the said additional income was generated during the block period from undisclosed/or unaccounted dealings in various property transactions and that "the said income of Rs.7 crores has been earned by me and Shri Mahesh Kumar Gupta (Director-Capital Power Systems Ltd.)." The Respondent Assessee then proceeded to give the bifurcation of said income as under:

* * *

7. The above statement cannot be said to be a categorical admission by the Respondent Assessee that the above income had been earned by him in his individual capacity. **The cumulative effect of the letter dated 1st September, 2006 and both the statements rendered them unreliable. There was no other corroborative material. In the circumstances, the course adopted by the CIT (A), and concurred with by the ITAT, to determine the undisclosed income on the basis of loose papers found during the search does not appear to be erroneous.**

8. It requires to be also noted that in response to a query by the Court whether the above undisclosed-income was added in the hands of the company, the learned counsel for the Revenue stated that he would have to seek instructions."

(Emphasis added)

32. We are of the view that though the order of the Coordinate Bench of this Court did not contain any finding or direction, as has been assumed by the AO, evident from the reasons mentioned by him for initiating action under Section 148 of the Act recorded by him, he had committed an error by assuming that there were findings for invoking jurisdiction under Section 147 of the Act by him. It will be relevant to note that the AO had concluded that the Coordinate Bench of this Court had observed in paragraph 3 of the order dated 29.07.2015 that ₹7 crores constituted the undisclosed income of the



assessee. However, a closer reading of paragraph 3 of the order dated 29.07.2015 makes it clear that the Coordinate Bench had made the said observation specifically in paragraph 3 of the order in context of discussing the contents of the letter dated 01.09.2006 and had concurred with the view of the learned ITAT in that regard. However, the AO had committed an error as he had relied on paragraph 3 of the order selectively, completely ignoring the contents of the succeeding paragraph 4 of the same order. Rather, the Court in paragraph 4 of the said order had discussed and had taken note of the two additional statements made by Sh. Pawan Kumar Bansal and had highlighted the contradictions therein. Further, in paragraph 6, the Court noted that there had been no retraction of either the letter dated 01.09.2006 or any of the subsequent statements made by Sh. Pawan Kumar Bansal. However, in paragraph 7, the Court concluded that the cumulative effect of the letter and the two statements rendered them unreliable, particularly in the absence of corroborative material available with the Revenue.

33. It is thus apparent that the Coordinate Bench of this Court did not render any specific finding that ₹7 crores constituted the undisclosed income of the assessee herein. Moreover, there was also no direction to the Revenue by the Court to treat the said amount as undisclosed income in the hands of the assessee. Rather, the Court had dismissed the petition on the ground that no substantial question of law arose for adjudication. Thus, tested on the anvil of there being any finding or direction by the Coordinate Bench in its order dated 29.07.2015, the order of the AO suffers from inherent error, as it holds



that there was a finding by the Coordinate Bench of this Court in the said order which bestowed jurisdiction on him, to issue notice under Section 148 read with Section 150 of the Act.

34. Further, the learned ITAT, in the order impugned before us, has rightly noted that in the letter dated 01.09.2006, Sh. Pawan Kumar Bansal had mentioned that:

“we Capital Power Systems limited hereby agree to voluntarily surrender Additional Income of Rs.7,00,00,000.00 on behalf of the company, its Directors, Senior Executives, their spouse, family members and relatives **including other companies, firms in which such persons are partners, directors or interested**”

(Emphasis added)

35. We note that even in the letter dated 01.09.2006 which was the first letter written by Sh. Pawan Kumar Bansal, it was mentioned by him that the additional income of ₹7 crores was being declared and surrendered by Capital Power Systems Ltd. “*on behalf of the company, its directors, senior executives, their spouse, family members and relatives including other companies, firms in which such persons are partners, directors or interested*”.

36. Additionally, as noted above, in the second statement dated 08.09.2006, Sh. Pawan Kumar Bansal had disclosed that the additional income of ₹7 crores was being declared and surrendered on behalf of the Capital Group of Companies, not by assessee alone. The AO had not conducted any further inquiry to find out as to whether the undisclosed income of ₹7 crores belonged to the assessee or any other



company of the Capital Group of Companies, its directors, senior executives, spouse, family members, relatives, etc.

37. Resultantly, we are of the view that the AO, in the present circumstances of the case, despite there being contradictions in the letter dated 01.09.2006 and the two statements of Sh. Pawan Kumar Bansal had failed to notice, the common thread in the statements as well as the letter that, the income of ₹7 crores was not declared by him in his individual capacity or on behalf of the assessee but on behalf of the Capital Group of Companies etc., as observed in the preceding paragraphs.

38. The necessary conclusion, in such circumstances and background of facts, is that the income so declared and surrendered was not declared on behalf of the assessee but could have been spread amongst the Group's entities, individuals and their relatives and friends. The AO, however, merely relied upon the surrender made during search and did not make any effort to determine the clear bifurcation of such amounts, especially after identifying contradictions in the statements of Sh. Pawan Kumar Bansal.

39. Further, the statement recorded on 12.09.2006 in answer to question no. 3, Sh. Pawan Kumar Bansal had mentioned that the amount of ₹7 crores, which was being declared on behalf of Capital Group of Companies, had been generated over a period of years "during the block period from undisclosed/or unaccounted dealings in various property transactions". There have been no inquiries or satisfaction as to in which assessment year, which part of this income



had been generated and by which entities of the companies or individuals.

40. The language of Section 150(1) of the Act is also relevant for the purposes of determining whether a notice under Section 148 of the Act could be issued notwithstanding the period of limitation stipulated under Section 149 of the Act. The *non obstante* clause of Section 150(1) of the Act is applicable only where a notice under Section 148 of the Act is required to give effect to any finding or direction contained in any order passed by any authority in any proceedings under the Act. It is clear that the nature of the findings or directions contemplated are such that a notice under Section 148 of the Act is warranted for the purposes of giving effect to the findings. In this view, the findings are required to be dispositive of the issue concerned and only the procedure is required to be involved to give effect to the same.

41. We are unable to accept that any of the orders passed in the case of Sh. Pawan Kumar Bansal and Sh. Mahesh Kumar Bansal are dispositive of the assessee's liability to pay tax and therefore, no notice under Section 148 of the Act was warranted for giving effect to any such finding.

42. To sum up, we hold that it is clear from the perusal of the order of the Coordinate Bench of this Court dated 29.07.2015 as well as the order of the learned ITAT, CIT(A) that in none of the orders, there was any finding or direction that the undisclosed income of ₹7 crores was required to be assessed to tax in the hands of the assessee, which



warranted issuance of notice under Section 148 of the Act to give effect to such finding or direction.

43. We are thus of the view that in the present case, the learned CIT(A) and the learned ITAT have rightly examined the decisions of the learned ITAT in ITA No. 5201/Del/2010 and connected matters, and of Coordinate Bench of this Court in ITA 529/2015, and held that there was no finding or direction given by the Courts on the basis of which powers under Section 150 of the Act could have been invoked for issuance of notice under Section 148 of the Act beyond the period stipulated under Section 149 of the Act.

44. In view of the foregoing discussion, we opine that the conditions set out in Section 150 of the Act were not fulfilled in the present case, and the reassessment proceedings could not have been initiated by the AO by issuing notice under Section 148 of the Act, and the learned ITAT made no error in holding so.

45. The question of law is thus answered in favour of the assessee and against the Revenue.

46. The appeal is accordingly dismissed.

SWARANA KANTA SHARMA, J.

VIBHU BAKHRU, ACJ.

DECEMBER 13, 2024/zp