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

+ ITA 1426/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) - 2

..... Appellant

Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

VIR SEN SINDHU

..... Respondent

Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

33

+ ITA 1427/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II

..... Appellant

Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

SH. DEV SUMAN SINDHU

..... Respondent

Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

34

+ ITA 1429/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II

..... Appellant

Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

SH. RUDRA SEN SINDHU

..... Respondent

Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

35

+ ITA 1430/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II

..... Appellant



Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

SH. VIR SEN SINDHU Respondent

Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

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ITA 1431/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II

..... Appellant

Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

SH. SATYA PAL SINDHU Respondent

Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

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ITA 1432/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II

..... Appellant

Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

SH. VRIT PAL SINDHU Respondent

Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

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ITA 1433/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II

..... Appellant

Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus



SH. KULDEEP SINGH SOLANKI Respondent
Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

39

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ITA 1434/2018
PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II
..... Appellant
Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

SH. SATYA PAL SINDHU Respondent
Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

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ITA 1435/2018
PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II
..... Appellant
Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

SH. RUDRA SEN SINDHU Respondent
Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

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ITA 1436/2018
PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II
..... Appellant
Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

SH. DEV SUMAN SINDHU Respondent
Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

42

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ITA 1437/2018



PR. COMMISSIONER OF INCOME TAX (CENTRAL) - II

..... Appellant

Through: Mr.Sanjeev Menon, Jr.SC for
Mr.Zoheb Hossain,. Sr.SC.

versus

SH. VRIT PAL SINDHU

..... Respondent

Through: Mr.Ajay Vohra, Sr.Adv with
Mr.Aniket D.Agrawal, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

ORDER

20.02.2024

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1. The Commissioner of Income Tax (Central) -2 has instituted the present appeals seeking to impugn the judgment rendered by the Income Tax Appellate Tribunal ["ITAT"] dated 31 January 2018 and proposes the following question for our consideration:-

A. Whether in the facts and circumstances of the case, the ITAT erred in sustaining the deletion of INR 4.2 crores on account of retraction of additional income disclosed under the head 'income from other sources/undisclosed income/undisclosed investment', ignoring that such a retraction was impermissible and unsustainable in law?

2. The issue itself appears to emanate from a search and survey operation conducted in respect of the Aryan Sainik Group on 12 April 2012. During the course of that search, the Income Tax officials are also stated to have taken on record the statement of the promoter director of that group under Section 132(4) of the Income Tax Act,



1961 ["Act"].

3. Subsequently, the group in terms of a letter dated 24 April 2012 offered an ad hoc estimated additional income of INR 150 Crores. According to the respondents-assesseees the aforesaid offer was made in order to cover the errors or mistakes in the records of the business owned and controlled by varied/diverse group units. Subsequently, and on 11 June 2012 the respondents-assesseees submitted a break-up of the INR 150 crores which was offered as additional income along with details of individuals against whose names the income was proposed to be offered for taxation.

4. Subsequently, the respondents-assesseees took the stand that the additional income of INR 150 crores included a sum of INR 86 crores which represented a waiver of a loan taken by Cellcap Securities Limited from Lehman Brothers. It was thus asserted that the additional income of INR 150 crores was inclusive of the aforesaid sum. The details in respect of the loan waiver were also duly placed before the authorities concerned. Subsequently, and when the respondent-assessee proceeded to file their returns pursuant to the mandate of Section 153A of the Act, the amount of INR 86 crores was not included therein. It is this which led to the Assessing Officer ["AO"] holding against the respondents.

5. While dealing with this aspect, the ITAT has in paragraph 18 observed as follows:-

" 18. There are many judicial precedents relied up on by both the parties. We have carefully considered them while deciding the issues before us. We Now coming to various case laws, which we think are relevant, which have been relied upon by the revenue as well as assessee to show their implications. First decision relied upon is of Hon'ble Madras High Court in case of B Kishore Kumar Vs. Dy. CIT 52 Taxmann.com 449. In that particular case the addition was of Rs. 5273920/- on the basis of document and the



statement. No such statement was retracted by the assessee. In the present case the assessee has ample made clear that though the waiver may be the income but same is not taxable. Further in the case the seized paper were shown which showed that assessee was giving cash loan to the several persons. In the present case before us there is no reference of any seized material. The second decision relied upon is in case of Bhagirath Aggarwal Vs. CIT 351 ITR 143. In that particular case the original statement made was further confirmed by the assessee by another letter. Further, there was no retraction of the statement. The courts have further held that the assessee has not produced any evidence to show that the admission made by him were incorrect. In the present case before us the assessee has demonstrated that waiver of Rs. 86. crores is not chargeable to tax in the hands of the individual assesses but in case Cellcap Securities only. Further such company being a foreign company same is not taxable in India. The revenue on the above information reopened the case of that particular company for several years. In view of this in the present case, assessee has demonstrated that his admission was incorrect. In case of Smt. Dayavanti Vs. CIT (supra) there was statements as well as incriminating materials also. In the present case the revenue could not lay hands on any incriminating material with respect to the disclosure corrected by the assessee. The reliance on the decision of M/s. Peeble Investment and Finance Ltd Vs. ITO (supra) there was absence of contrary evidence, and explanation as to why such statement was not reliable. In the present case, the assessee has shown the amount not taxable in India at all. Further, the reliance on Pr. CIT Vs. Avinsash kumar Setia (Supra) the Hon'ble Delhi High Court held that when the assessee has surrendered income by ways of declaration and withdrew the same after two years without any satisfactory explanation such retraction could not be bonafide. In the present case assessee disclosed Rs. 150 crores and immediately after that retracted Rs. 86 crores based on legal advise that above sum is not chargeable to tax in India. In view of this the decision relied upon by the revenue cannot help its case. Furthermore, the Hon'ble Allahabad High Court in 184 ITR 404 has held that erroneous admission by the assessee cannot be a foundation for the assessment whereas it was offered under erroneous impression or misconception of law. It is always possible for assessee to demonstrate and satisfy the authorities that particular income was not taxable and it was offered under erroneous impression. In the present case before us the revenue also could not bring forth any material to show that disclosure of Rs. 86 crores or even Rs. 150 crores is backed by any credible evidence. In view of this we do not find any infirmity in the order of the Id CIT(A) in deleting the addition on account of admission made by Shri R. S. Sindhu in his statement u/s 132(4) of the Act which was subsequently retracted."



6. As is evident from the above, what has weighed upon the ITAT is the fact that the waiver of INR 86 crores was in any case not chargeable in the hands of the individual assesseees. It also appears to have taken into consideration the fact that Cellcap Securities being a foreign company was not taxable in India. With regards to the retraction or modulation of the original offer which was made, the ITAT observes that the same was based on incorrect legal advice and was retracted soon thereafter. More importantly, the ITAT notes that the appellant had not relied upon any material including that which may have been gathered in the course of the search and which may have justified taxation of INR 86 crores.

7. We thus find that the view as taken by the ITAT was clearly one which could be said to be reasonable and just in view of the facts that obtained.

8. We are thus of the opinion that the view taken by the ITAT merits no interference. We find that the appeals raise no substantial question of law. The appeals shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDR KUMAR KAURAV, J.
FEBRUARY 20, 2024/MJ