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

\+ ITA 1150/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) -1 ..... Appellant

Through: Mr. Aseem Chawla, SSC along with Ms. Pratishtha Chaudhary and Mr. Naveen Rohila, Advs.

versus

M/S KAVERI INFRASTRUCTURE PVT. LTD. ..... Respondent

Through: Mr. Ved Jain, Mr. Nischay Kantoor and Ms. Soniya Dodeja, Advs.

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\+ ITA 1152/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) -1 ..... Appellant

Through: Mr. Aseem Chawla, SSC along with Ms. Pratishtha Chaudhary and Mr. Naveen Rohila, Advs.

versus

M/S KAVERI INFRASTRUCTURE PVT. LTD. ..... Respondent

Through: Mr. Ved Jain, Mr. Nischay Kantoor and Ms. Soniya Dodeja, Advs.

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\+ ITA 1153/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) -1 ..... Appellant

Through: Mr. Aseem Chawla, SSC along with Ms. Pratishtha Chaudhary and Mr. Naveen Rohila, Advs.

versus

M/S KAVERI INFRASTRUCTURE PVT. LTD.

..... Respondent

Through: Mr. Ved Jain, Mr. Nischay Kantoor and Ms. Soniya Dodeja, Advs.

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

O R D E R

% **28.05.2024**

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal [‘**Tribunal**’] dated 16 March 2018.

2. Mr. Chawla, learned counsel, who appears in support of these appeals, has proposed the following questions of law for our consideration:-

- Whether on the facts & circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal ('ITAT') has erred in misconstruing the provisions of deduction under Section 801A of the Income Tax Act, 1961 ('Act') thereby upholding the claim of the said deduction.

- Whether on the facts & circumstances of the case and in law, the Hon'ble ITAT has erred in deletion of disallowance of claim of Project Consultancy Expenses & Technical Support Expenses in complete disregard to the findings of the Learned CIT(A) that the said provision of expenses was not a genuine but a sham transaction.

- Whether on the given peculiar facts & circumstances of the case, the Hon'ble ITAT has erred in deleting the disallowance made under Section 37(1) of the Act in complete disregard to the findings that neither any documentary evidence was available with regard to the said claim of expenditure under the head 'Site Expenses' or 'Site Labour Expenses' nor any cogent explanation was forthcoming.

- Whether on the given peculiar facts & circumstances of the case and in law, the Hon'ble ITAT has erred in deleting the disallowance amounting to 10% of the Total Site Expenditure disregarding the fact that no bills & vouchers were made available for verification purposes.”

3. Undisputedly, insofar as the completed assessments are concerned, the appeals in respect thereof came to be dismissed by an order of 21 August 2023. While dismissing those appeals, the Court rested its view on the judgment rendered in **Commissioner of Income-tax vs. Kabul Chawla** [2015 SCC OnLine Del 11555], since undisputedly the action was based on a search which was conducted and it being found that no incriminating material had been unearthed.

4. In these appeals Mr. Chawla has sought to address various submissions on merits pertaining to Section 80IA and Section 37(1) of the Income Tax Act, 1961 [‘**Act**’]. We find the following facts which stand duly reflected in the order of the Tribunal:-

> “72. We have considered the submission of both the parties and gone through the orders of the lower authorities. The Ground No. 1 a2 are relating to validity of order u/s. 153A and claim of statutory deduction u/s. 80IA. It is observed that for the year under consideration, 2 separate orders were passed u/s. 143(3) and u/s. 153A/143(3) after search on 24/04/2007. The order u/s. 143(3) was passed on 28/4/2008 and order u/s. 153A was passed on 29/12/2009. There is no evidence or argument even by DR that there is any dispute regarding validity of order passed u/s. 143(3). As per the scheme of act and in conformity with search provisions, all pending proceedings shall abate and Assessing Officer shall have jurisdiction 153A to pass one order. It is further noted that the assessing Officer in the order u/s. 143(3) has duly accepted the claim W statutory, deduction u/s. 80IA and various other claims of expenses as per audited accounts. In the circumstances, any disallowance if called for u/s. 153A has to be on the basis of incriminating material.
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> 73. It is noted that claim u/s. 80IA is of statutory nature and have been accepted by AO himself in the order u/s. 143(3) for this very year and various other years and as such merit of claim is not in dispute. Further, this being purely of legal nature, issue of incriminating material has no relevance as benefit u/s. 80IA is to be allowed on the basis of income as may be computed. Further, the contrary view taken by the AO in the order u/s. 153A is merely on the basis of change of opinion. In conformity with facts of the case, nature of the claim and past history, there is no dispute regarding claim u/s. 80IA and accordingly this ground of appellant is accepted.”

5. As is evident from the above, it appears that although we are concerned with abated assessments and ordinarily the provision of Section 153A of the Act sufficiently empowered the Assessing Officer [‘**AO**’] to proceed further, it chose to firstly resort to Section 143(3) of the Act and passed an order dated 28 April 2008. Thereafter, the matter appears to have been reviewed and an independent order purporting to be referable to Section 153A of the Act came to be drawn. It is this procedure as adopted which had fallen for adverse comment by the Tribunal.

6. As we view the conclusions which stand reflected in paragraphs 72 and 73 of the impugned order, we find no justification to entertain the questions which have been posited for our consideration, as the Tribunal has found that the order passed under Section 153A of the Act amounted to essentially a change of opinion. In any case, once the AO had chosen to follow the procedure contemplated under Section 143(3) of the Act in respect of the abated years, there existed no justification for a further or a fresh assessment being undertaken in exercise of Section 153A of the Act.

7. We further take note of the undisputed position of the question under Section 80IA of the Act having been duly examined and answered in favour of the respondent-assessee in the previous years.

8. In view of the aforesaid, the appeals fail and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 28, 2024/RW