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

+ ITA 1475/2018 & CM APPL. 16076/2019

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

..... Appellant

Through: Mr.Sunil Agarwal, Sr.SC with
Mr.Shivansh B.Pandya, Jr.SC
and Mr.Utkarsh Tiwari, Adv for
I.T.Dept.

versus

DEVYANI INTERNATIONAL LTD. Respondent

Through: Mr.Divyansh Jain, Mr.Paritosh
Jain and Mr.Abhishek Jain,
Advs.

19

+ ITA 1476/2018

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

..... Appellant

Through: Mr.Sunil Agarwal, Sr.SC with
Mr.Shivansh B.Pandya, Jr.SC
and Mr.Utkarsh Tiwari, Adv for
I.T.Dept.

versus

DEVYANI INTERNATIONAL LTD. Respondent

Through: Mr.Divyansh Jain, Mr.Paritosh
Jain and Mr.Abhishek Jain,
Advs.

20

+ ITA 1478/2018

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

..... Appellant

Through: Mr.Sunil Agarwal, Sr.SC with
Mr.Shivansh B.Pandya, Jr.SC
and Mr.Utkarsh Tiwari, Adv for
I.T.Dept.



versus

DEVYANI INTERNATIONAL LTD. Respondent

Through: Mr.Divyansh Jain, Mr.Paritosh
Jain and Mr.Abhishek Jain,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

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

ORDER

18.03.2024

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1. The present appeals have been preferred questioning the correctness of the judgment handed down by the Income Tax Appellate Tribunal ["ITAT"] dated 23 April 2018.

2. Since issues are common, we propose to take up for consideration the questions which pertain to Assessment Year 2006-2007 relevant to ITA 1475/2018. The assessments themselves appear to have been drawn consequent to a search which was initiated and proceedings taken in terms thereof pursuant to Section 153A of the Income Tax Act, 1961 ["Act"].

3. While dealing with the view taken by the Commissioner of Income Tax (Appeals) ["CIT(A)"] the ITAT has observed as follows:-

"9. We have heard both the sides and perused the relevant material on record. The ld. AR contended that the ld. CIT(A) wrongly recorded the fact about assessee having suo motu disallowed Rs.13,89,653/-. Replying on the Tribunal order for the A.Ys. 2009-10 and 2011-12 passed in the assessee's own case, the ld. AR contended that no incriminating material was found during the course of search and, hence, the addition sustained u/s 14A of the Act cannot be upheld because of the judgment of the Hon'ble jurisdictional High Court in the case of CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del). It is noticed that the assessee filed similar Cross objections for the assessment years 2009-10 and 2011-12 and the Tribunal, respectfully following the judgment of the Hon'ble jurisdictional High Court in Kabul Chawla (supra) preferred to delete such additions.



10. It is, no doubt, true that no addition can be made u/s 14A of the Act in respect of completed assessments as on the date of search if no incriminating material is found. In such a scenario, the amount of income finally determined in the original assessment is liable to be repeated in the assessment made u/s 153A of the Act. The Id. CIT(A) in the instant case has recorded a finding that the assessee itself disallowed Rs.13,89,653/- u/s 14A of the Act, which has been assailed on behalf of the assessee. On a pertinent query, the Id.AR could not produce a copy of the computation of income or its original assessment order, which was stated to have been passed u/s 143(3) of the Act on 30.12.2009 to demonstrate that no such disallowance was offered by the assessee and further that a return was actually filed u/s 139 of the Act for the year under consideration. Under these circumstances, we set aside the impugned order and remit the matter to the file of Assessing Officer for examining, firstly, if the assessee filed its return u/s 139 of the Act or offered disallowance of Rs.13 .89 lac in the original return or any such addition was made. If it is found that no return was filed or the disallowance was so offered or an addition made in the order u/s 143(3) of the Act that, then, such a disallowance has to be repeated in the assessment made u/s 153A read with section 143(3) of the Act. In the otherwise scenario, the ratio laid down in the case of *Kabul Chawla (supra)* will apply and the addition will stand deleted. The ground raised by the Revenue is, therefore, dismissed and that taken by the assessee is allowed for statistical purposes.

11. In the result, the appeal of the Revenue is dismissed and the C.O. filed by the assessee is allowed for statistical purposes.”

4. As is manifest from the aforesaid, the additions which were sought to be made were in no manner connected with any material that may have been gathered in the course of the search. It is this which had weighed upon the CIT(A) as well as the ITAT bearing in mind the exposition of the legal position in **CIT v. Kabul Chawla** [2015 SCC OnLine Del 11555]. We note that the view as expressed in *Kabul Chawla*, has been upheld by the Supreme Court in **Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell P._Ltd.** [(2024) 2 SCC 433]. We thus find no ground to interfere with the view as expressed by the ITAT.

5. In so far as the appeal pertaining to Assessment Year 2008-2009 is concerned, the same was restricted to an addition made on



account of advertisement expenses. The said additions came to be deleted by the CIT(A) and which has been affirmed by the ITAT while holding as follows:-

"13. The other ground raised by the Revenue and the only issue raised by the assessee in its cross objection is against the addition u/s 14A of the Act. The facts and circumstances of this issue are, again, similar to the preceding year. Following the view taken for the assessment year 2007-08, we set aside the impugned order and remit the matter to the file of Assessing Officer for examining the issue in the way directed above. Thus, the ground taken by the Revenue is dismissed and that by the assessee is allowed for statistical purposes.

14. In the result, the appeal of the Revenue is dismissed and the C.O. filed by the assessee is allowed for statistical purposes."

6. Similar was the fate of the appeal preferred in respect of AY 2010-2011 and which too pertained to alleged unexplained advertisement expenses.

7. In view of the aforesaid, we find no ground to entertain the instant appeals. They shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.
MARCH 18, 2024/MJ