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

% *Date of Decision : 14.05.2025*

+ ITA 132/2025

PR. COMMISSIONER OF INCOME TAX -7 .....Appellant

Through: Mr. Ruchir Bhatia, Advocate.

versus

RAJA ARORA .....Respondent

Through: Mr. Rajiv Saxena, Ms. Sumangla Saxena, Mr. Dishant Sethi, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961, **[the Act]**, *inter alia,* impugning an order dated 24.10.2024 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] setting aside the assessment proceedings for Assessment Year [**AY**] 2016-17 pursuant to the assessment order dated 06.12.2018 passed by the Assessing Officer [**AO**] under Section 143(3) of the Act, on the ground that the respondent's [**Assessee**] return was selected for scrutiny without the necessary approval of the jurisdictional Principal Commissioner of Income Tax **[PCIT]**/Principal Director of Income Tax **[PDIT]**. The learned ITAT had held that in terms of paragraph 1(vi) of the Instruction No.

5/2017 dated 07.07.2017 issued by the Central Board of Direct Taxes [**CBDT**], the return could not be picked up for scrutiny without the prior approval of the specified authority, that is, PCIT/PDIT/CIT/DIT.

2. It is the Revenue's case that the impugned order is erroneous as the return was picked up for scrutiny, being a search case, in accordance with paragraph 1(iii) of the said instructions. It is also pointed out that the assessment order specifically refers to search and seizure operations conducted at the premises of the Assessee in relation to Airwill Group of cases.

3. However, this is stoutly disputed by the Assessee. It is contended by the Assessee that there was no warrant of authorization issued for a search under Section 132 of the Act in the case of the Assessee. It is also disputed that any incriminating material was found during the search conducted in the Airwill Group of cases, which either belonged to the Assessee or contained information relating to the Assessee. In the aforesaid view, no notice was issued under Section 153A or 153C of the Act.

4. It is noted that the Deputy Commissioner of Income Tax **[DCIT]** had issued a notice under Section 143(2) of the Act clearly stating that the Assessee's tax return has been selected for scrutiny on the basis of paragraph 1(iii) of the Manual Compulsory Scrutiny Guidelines issued by the CBTD *vide* Instruction No.5/2017.

5. The present appeal was listed on 06.05.2025 and this court had noted the aforesaid contentions. In this regard, Mr. Bhatia, the learned counsel

appearing for Revenue had sought time to take instructions.

6. Mr. Bhatia states that no notice under Section 153A or 153C of the Act was issued. He also confirms the communication issued clarifying that the return was selected for scrutiny on the basis of paragraph 1(vi) of Instruction No. 5/2017, being the guidelines for selection of cases for scrutiny during Financial Year 2017-18, issued by the CBDT.

7. However, he also submits that although a search was conducted in the Airwill Group of cases, the Assessee's return was picked up for scrutiny relying on paragraph 1(iii) of the said instructions. The relevant extract (instruction no.5 of 2017) issued by the CBDT are set out below: -

> 1. In supersession of earlier instructions on the above subject, the Board hereby lays down the following procedure and criteria for compulsory manual selection of returns/cases requiring scrutiny during the financial-year 2017-2018:-
>
> (iii) Assessments in search and seizure cases to be made under Section(s) 158B, 158BC, 158BD, 153A & 153C read with Section 143(3) of the Act and also for the returns filed for the assessment year relevant to the previous year in which authorization for search and seizure was executed u/s 132 or 132A of the Act.
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> xxxxxx
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> (vi) Cases in respect of which specific and verifiable information pointing out tax-evasion is given by any Government Department/Authority. However, before selecting a case for scrutiny under this criterion, Assessing Officer shall take prior administrative approval from the concerned jurisdictional Pr.CIT/Pr.DIT/CIT/DIT.

8. In terms of paragraph 1(iii) of the said instruction, the assessment in

search and seizure cases is to be made under Section 158B, 158BC, 158BD, 153A and 153C of the Act read with Section 143(3) of the Act. Further, the return filed for the assessment year relevant to the previous year in which authorization for the search or requisition was executed under Section 132 or 132A of the Act, is also required to be picked up for scrutiny. It is apparent from the plain language of Clause (iii) of paragraph.1 of the Instruction No.5/2017 that it is applicable only in cases where the search has been conducted in the case of an assessee or where assessments are required to be framed based on any incriminating material found during the said search in case of an assessee being a person other than the searched person. In the present case, none of the said conditions are satisfied.

9. In cases where the AO has any *verifiable information pointing to tax evasion given by the Government department or Authoirty*, it will be open for the AO to select the return for scrutiny in exercise under Clause (vi) of paragraph.1 of the Instruction No.5 of 2017. In the present case, a notice dated 29.09.2017 was issued by the DCIT on the basis that the said authority had such verifiable information pointing towards tax evasion. It is not necessary for this Court to examine whether the DCIT had, in fact, any such information. However, it is undisputed that if the DCIT had any such information, it could select the Assessee's return for AY 2016-17 for scrutiny subject to the necessary approval of the concerned jurisdictional Pr.CIT/Pr.DIT/CIT/DIT.

10. Admittedly, in the present case no such approval was taken.

11. In the aforesaid view, we find no infirmity with the decision of the

learned ITAT in setting aside the assessment framed in the case of the Assessee for AY 2016-17.

12. No substantial question of law arises for consideration of this court.

13. The petition is accordingly dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 14, 2025/KG

Click here to check corrigendum, if any