$~73 to 77

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

\+ **ITA 143/2025 and CM Nos.28619/2025 & 28620/2025**

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

versus

BJN HOLDINGS LTD. .....Respondent

AND

\+ **ITA 144/2025 and CM Nos. 28623/2025 & 28624/2025**

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

versus

B.J.N. HOLDINGS LTD. .....Respondent

AND

\+ **ITA 145/2025 and CM Nos. 28626/2025 & 28627/2025**

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

versus

BJN HOLDINGS LTD. .....Respondent

AND

\+ **ITA 146/2025 and CM Nos. 28872/2025 & 28873/2025**

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

versus

BJN HOLDINGS LTD. .....Respondent

AND

\+ **ITA 147/2025 and CM Nos. 28900/2025 & 28901/2025**

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

versus

BJN HOLDINGS LTD. .....Respondent

Present: Mr Ruchir Bhatia, SSC with Mr Pratyaksh Gupta, Advocate for appellant in Item Nos.73 to 77.
Mr Ajay Vohra, Senior Advocate with Mr Vaibhav Kulkarni,

Advocate for respondent in Item Nos.73 to 77.

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

O R D E R

% **15.05.2025**

1. The Revenue has filed this batch of appeals under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning a common order passed by the Income Tax Appellate Tribunal [**ITAT**] in ITA Nos.42/Del/2022 to 46/Del/2022 in respect of Assessment Years [**AYs**] 2006-07 to 2010-11. The said appeals emanate from assessment orders framed under Section 153C read with Section 143(3) of the Act.

2. The Assessee had successfully appealed the said assessment orders before the Commissioner of Income Tax (Appeals)-24, New Delhi [**CIT(A)**]. The Revenue had, thereafter, appealed the orders dated 31.01.2020 passed by the CIT(A) before the learned ITAT, which were dismissed by the impugned order.

3. The CIT(A) as well as the learned ITAT had concurrently found that the assessments made were not sustainable as it was made in the name of an assessee, which had ceased to exist.

4. However, in another offshoot to the challenge to intimation of reassessment proceedings, which emanated from orders passed by this Court in writ petition filed by the Assessee; the Supreme Court has recorded a finding that no incriminating material was found against the Assessee. Concededly, in view of the said finding, the assessment orders made for AYs 2006-07 to 2010-11 pursuant to the notice issued under Section 153C of the Act, are in any view unsustainable. It is authoritatively settled by the

Supreme Court in ***Pr. Commissioner of Income Tax v. Abhisar Buildwell Pvt. Limited: (2024) 2 SCC 433***, whereby the Court upheld the decision of this Court in ***Commissioner of Income Tax v. Kabul Chawla***: ***380 ITR 573*** that in the absence of any incriminating material, the Assessing Officer [**AO**] cannot assume jurisdiction under Section 153C of the Act.

5. We note that the said issue was recorded by this Court in the order passed on 13.05.2025, which reads as under:

> "1. The Revenue has filed the present appeals impugning a common order passed by the Income Tax Appellate Tribunal [**ITAT**] in ITA Nos.42/Del/2022 to 46/Del/2022 in respect of Assessment Years [**AY**s] 2006-07 to 2010-11. The said appeals were preferred by the Revenue against the orders dated 31.01.2020 passed by the Commissioner of Income Tax (Appeals)-24, New Delhi [**CIT(A)**]. In terms of the said orders, the respective assessment orders which were subject matter of challenge before the CIT(A) were set aside following the decision of this court in ***PCIT v. Maruti Suzuki India Ltd.: Neutral Citation No.: 2015:DHC:10110-DB*** and ***Spice Infotainment Ltd. v. Commissioner of Service Tax: (2012) 247 CTR 500*** on the ground that the assessments had been framed on a person that did not exist is illegal and an order passed pursuant to is nullity. The learned ITAT found no reason to differ from the decision of the CIT(A).
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> 2. It is in the aforesaid context that the Revenue contends that the CIT(A) and learned ITAT were not justified in passing the order and not appreciating that the assessment had been framed on the Assessee through its successor-in-interest M/s BJN Holding Ltd.
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> 3. Mr Vohra, the learned Senior Counsel appearing for the Assessee on advance notice, submits that the entire issue has been rendered academic in view of the decision of the Supreme Court in the Assessee's case rendered on 25.04.2023. He submits that the assessments in the present case were

framed under Section 153C of the Income Tax Act, 1961 [**the Act**] read with Section 143(3) of the Act. It is the Assessee's case that there was no incriminating material that would warrant exercise of jurisdiction under 153C of the Act.

4. In the aforesaid context, the Assessee had filed a writ petition before this court being WP(C) 1708/2014 challenging the validity of Section 153C of the Act. The same was disposed of by a judgment dated 02.05.2018 rendered by this court in a batch of matters where similar challenge had been raised by the Assessees in the context of the search conducted in Dhingra Group of cases. This court had rejected the said contention by referring to the decision in the case of ***Commissioner of Income Tax v. Kabul Chawla: 380 ITR 573*** as well as the certain other decisions where exercise of jurisdiction under Section 153C of the Act was held to be circumscribed to the extent that the same could be invoked only on the basis of incriminating material found during the search. These decisions, according to this court, had rendered the challenge to the provisions of Section 153 of the Act academic. The Revenue had appealed the said decision before the Supreme Court. The said batch of appeals [Civil Appeal No.6634/2021 captioned ***Deputy Commissioner of Income Tax Central Circle 20 v. M/s U.K. Paints (Overseas) Ltd.*** and other connected matters] that also included Civil Appeal No.6656/2021 which arose from the order passed by this court in WP(C) 1708/2014, were dismissed by the Supreme Court. The Supreme Court upheld the said decision and also recorded the following finding:

> "As observed hereinabove, as no incriminating material was found in case of any of the Assessees either from the Assessee or from the third party and the assessments were under Section 153-C of the Act, the High Court has rightly set aside the Assessment Order(s). Therefore, the impugned judgment and order(s) passed by the High Court do not require any interference by this Court. Hence, all these appeals deserve to the dismissed and are accordingly dismissed."

> 5. In view of the conceded position that no incriminating material was found during the search pursuant to which notices under Section 153C of the Act were issued to the Assessee, the said assessments would not stand, notwithstanding the outcome of the challenge sought to be raised in the present appeals. We note that the decision of the Supreme Court was rendered on 25.04.2023, which was few days prior to the impugned order and thus it is understandable that the said decision was not brought to the notice of the learned ITAT.
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> 6. In view of the above, we are *prima facie* of the view that no question of law would arise for consideration in the facts of this case.
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> 7. Mr Bhatia, the learned counsel appearing for the Revenue requests for time to take instructions in view of the facts that have been now placed by Mr Vohra, before this court.
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> 8. List on 15.05.2025."

6. Mr Bhatia, the learned counsel appearing for the Revenue submits that although the fate of the present appeals are concluded in view of the findings recorded by the Supreme Court in the order dated 25.04.2023 in ***Civil Appeal No.6634/2021 and Other Connected Matters*** captioned ***Deputy Commissioner of Income Tax Central Circle 20 v. M/s U.K. Paints (Overseas) Ltd.***, however, there was some material on record which the AO had found was incriminating. He submits that in the event at a subsequent stage, the findings as recorded by the Supreme Court in the said order are either clarified or recalled, the Revenue may be afforded an opportunity to revive the present appeals.

7. We find no reason to reject the said request. In view of the above, the present appeals are disposed of with liberty to the Revenue to revive the

same in the event, the findings to the effect that no incriminating material was found in respect of the Assessee are clarified, or set aside, or recalled. We also clarify that the revival of the appeal in any such event would not automatically entail admission of the present appeals, The learned counsel for the Assessee had raised the objection as to the maintainability of the present appeals at threshold and therefore, this Court has not examined whether these appeals throw up any substantial questions of law as yet.

8. The appeals are disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 15, 2025
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Click here to check corrigendum, if any