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

% *Date of Decision : 28.05.2025*

\+ **ITA 179/2025**

PR. COMMISSIONER OF INCOME TAX-1 .....Appellant
Through: Mr Vipul Aggarwal, SSC, Mr Akshat Singh, Ms Sakshi Shairwal, JSCs and Mr Gaoraang Ranjan, Advocates.

versus

M/S CHARVAK TRADING PVT. LTD. .....Respondent
Through: Dr Rakesh Gupta, Mr Somil Agarwal and Mr Dushyant Agarwal, Advocates.

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

VIBHU BAKHRU, J. (*ORAL*)

CM APPL. 33763/2025(condonation of delay in refiling)

1. For the reasons stated in the application, the delay in refiling the above captioned appeal is condoned.

2. The application stands disposed of.

CM APPL. 33762/2025(condonation of delay in filing)

3. For the reasons stated in the application, the delay in filing the above captioned appeal is condoned.

4. The application stands disposed of.

ITA 179/2025

5. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning the order dated 16.06.2023 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**Tribunal**] in ITA No.3270/Del/2018 in respect of Assessment Year [**AY**] 2010-11.

6. The impugned order is a common order passed by the learned Tribunal in two appeals pertaining to the AY 2010-11 and AY 2011-12 being ITA No.3270/Del/2018 and ITA No.3271/Del/2018 preferred by the Revenue. However, the present appeal is confined to the impugned order insofar as it relates to the ITA No.3270/Del/2018.

7. The Tribunal had rejected the appeal preferred by the Revenue on the ground that the assessments framed under Section 153A of the Act were not based on any incriminating material found during the search. The learned Tribunal following the decision of this Court in ***Commissioner of Income Tax (Central) -III v. Kabul Chawla : Neutral Citation No.: 2015: DHC: 7044-DB*** which was affirmed by the Supreme Court in ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd.: Neutral Citation No.:(2024) 2 SCC 433*** concluded that the assumption of jurisdiction under Section 153A of the Act would not be permissible absent any incriminating material.

8. The present appeal emanates from the assessment order dated 30.12.2016 passed under Section 153A read with Section 143(3) of the Act. The Assessing Officer [**AO**] had made additions on account of unexplained investment in unquoted shares of unlisted companies. However, there is no dispute that the assessment order was premised on search and seizure

operations that were conducted on 25.04.2014 under Section 132 of the Act in the case of Dua group of cases. An authorisation of search was also issued in the case of the Assessee. It is not in dispute that during the course of search no material was found which could be construed as incriminating material and the assessment was passed on the basis of entries in the books of accounts that were also the subject matter of the examination during the original proceedings.

9. The Assessee had appealed the said decision before the Commissioner of Income Tax Appeals – XXVI, New Delhi [**CIT(A)**] on various grounds, including that the assessment order was invalid on the ground that no incriminating material was found during the search operations. Whilst, the CIT(A) rejected the assessee's contention that the AO did not have the jurisdiction to pass the assessment order for want of incriminating material found during the search proceedings, he allowed the appeal on merits and deleted the additions.

10. The Revenue, being aggrieved by the said order, preferred the appeal before the Tribunal. The Assessee also assailed the learned CIT(A)'s finding that the assumption of jurisdiction by the AO was valid. Accordingly, the Assessee filed an application under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, which came to be allowed by the impugned order.

11. Concededly, there was no material found during the search and seizure operations conducted under Section 132 of the Act, which could be termed as incriminating. The question whether in such circumstances, addition could be made is no longer *res intergra*. The said issue is covered by the decision of this Court in ***Commissioner of Income Tax-7 v. RRJ***

Securities Limited: Neutral Citation No.: 2015:DHC:8989-DB and ***Commissioner of Income Tax (Central) -III v. Kabul Chawla*** (supra). The position of law as summarised in ***Commissioner of Income Tax (Central) -III v. Kabul Chawla*** (supra) was upheld by the Supreme Court in ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd*** (supra). In subsequent decision by this Court in ***Saksham Commodities Limited v. Income Tax Officer Ward 22(1), Delhi & Anr: Neutral Citation No.: 2024:DHC:2836-DB,*** the earlier decisions were considered and the principle was reiterated.

12. In ***Saksham Commodities Limited v. Income Tax Officer Ward 22(1), Delhi & Anr.*** (supra), this Court also considered the difference in assumption of jurisdiction under Section 153A of the Act and Section 153C of the Act. In cases covered under Section 153A of the Act, the AO is required to reiterate the earlier assessment in the absence of any incriminating material.

13. In view of the above, we find no infirmity with the impugned order. No substantial question of law arises for consideration of this Court.

14. The appeal is unmerited and, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 28, 2025
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Click here to check corrigendum, if any