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

+ **ITA 239/2018**

THE PR. COMMISSIONER OF INCOME TAX

-CENTRAL -3

.... Appellant

Through: Ms. Vibhooti Malhotra, Advocate

versus

ABHISAR BUILDWELL P. LTD Respondent

Through: Dr. Rakesh Gupta, Mr. Anil Aggarwal, Mr. Somil Agarwal and Ms. Monika Ghai, Advocates.

AND

+ **ITA 240/2019**

THE PR. COMMISSIONER OF INCOME TAX

CENTRAL-3

..... Appellant

Through: Ms. Vibhooti Malhotra, Advocate

versus

ABHISAR BUILDWELL PVT. LTD. Respondent

Through : Dr. Rakesh Gupta, Mr. Anil Aggarwal, Mr. Somil Agarwal and Ms. Monika Ghai, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

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ORDER
24.07.2019

CM Appl. 7359/2018 (exemption) in ITA No.240/2018

1. Allowed, subject to all just exceptions.

ITA 239/2018 and ITA 240/2019

2. These are two appeals filed against the impugned common order dated 4th July 2017 passed by the ITAT in ITA No.4877/Del/14 & 2878/Del/2014 for the Assessment Years (AYs) 2007-08 and 2008-09, respectively.

3. The issue urged in the present appeals is whether the ITAT erred in deleting the additions made by the Assessing Officer in the assessments framed under Section 153A of the Income Tax Act, 1961 (the Act) on the basis that there was no incriminating material *qua* the Assessee.

4. The facts in brief are that a search was conducted on 21st January, 2011 in Dharampal Satyapal group of cases. Consequent thereto, a notice under Section 153A of the Act was issued to the Respondent Assessee, an entity created on demerger of rubber thread unit of Dharampal Satyapal Ltd. (DSL). The Assessee, in the return filed in response to the notice, declared a loss in each of the AYs. The Assessee claimed depreciation in the sum of Rs.1,05,84,885/- for AY 2007-2008 and Rs.9,50,75,091/- for AY 2008-2009. The Assessing Officer (AO) acted on the report of Special Audit ordered in the

case of DSL under Section 142 (2A) of the Act, after the search, and concluded that the depreciation could not have been claimed in respect of assets acquired by DSL out of the deferred government grant in terms of Explanation 10 to Section 43 (1) of the Act.

5. The Commissioner of Income Tax (Appeals) [CIT(A)] by the common order dated 25th April 2014 allowed the Assessee's appeals for the AYs in question on the ground that no incriminating material *qua* the Assessee was recovered during the search. On this ground account the CIT (A) deleted the additions made by the AO.

6. The ITAT has dismissed the Revenue's appeal relying essentially on the decisions of this Court in *CIT v. Kabul Chawla (2015) 380 ITR 573 (Del)* and *Pr. CIT v. Meeta Gutgutia Proprietor Ferns 'N' Petals (2017) 395 ITR 526*

7. Learned counsel for the Revenue repeated the submission made before the ITAT viz., that the report of Special Audit should be treated as incriminating evidence. Clearly the report of the Special Auditor, having been commissioned subsequent to the search, and during the assessment proceedings against DSL, cannot obviously be treated as incriminating material *qua* the Assessee, recovered during the course of search, in order to justify the addition made in the assessment under Section 153A of the Act. This is consistent with the legal position explained in both *CIT v. Kabul Chawla (supra)* (which still

holds the field) and *Pr. CIT v. MeetaGutgutia Proprietor Ferns 'N' Petals* (*supra*). Dr. Rakesh Gupta, learned counsel for the Assessee appearing on advance notice produced before this Court copy of an order dated 2nd July 2018 passed by the Supreme Court dismissing the Revenue's Special Leave Petition against the aforementioned judgment in *Pr. CIT v. Meeta Gutgutia Proprietor Ferns 'N' Petals* (*supra*) on merits. The said order is reported as *Pr CIT v. Meeta Gutgutia (2018) 257 Taxman 441 (SC)*.

8. This Court, therefore, finds there is no legal infirmity in the impugned order of the ITAT. No substantial question of law arises therefrom.

9. The appeals are accordingly dismissed.

S.MURALIDHAR, J.

TALWANT SINGH, J.

JULY 24, 2019

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