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

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**ITA 499/2011**

CIT ..... Appellant

Through: Mr. Asheesh Jain, Sr. Standing  
Counsel for the Revenue

versus

RENU CONSTRUCTIONS PVT LTD ..... Respondent

Through: Mr. Piyush Kaushik, Advocate

WITH

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**ITA 32/2012**

CIT ..... Appellant

Through: Mr. Ashok K. Manchanda, Sr.  
Standing Counsel for the Revenue

versus

ANKIT GUPTA ..... Respondent

Through: Mr. Piyush Kaushik, Advocate

WITH

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**ITA 35/2012**

CIT ..... Appellant

Through: Mr. Ashok K. Manchanda, Sr.  
Standing Counsel for the Revenue

versus

ANKIT GUPTA ..... Respondent

Through: Mr. Piyush Kaushik, Advocate

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WITH

**ITA 41/2017**

PR. COMMISSIONER OF INCOME  
TAX, DELHI – 12

..... Appellant

Through: Ms. Lakshmi Gurung, counsel  
for the Revenue

versus

ANKIT GUPTA, L/H MANOJ KUMAR

..... Respondent

Through: Mr. Piyush Kaushik, Advocate

**AND**

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**ITA 125/2017**

PR. COMMISSIONER OF INCOME  
TAX, DELHI – 12

..... Appellant

Through: Mr. Ashok K. Manchanda, Sr.  
Standing Counsel for the Revenue

versus

ANKIT GUPTA, L/H MANOJ KUMAR

..... Respondent

Through: Mr. Piyush Kaushik, Advocate

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE PRATHIBA M. SINGH**

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**ORDER**  
**06.09.2017**

1. ITA No. 499 of 2011, ITA Nos. 32 and 35 of 2012 are appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') against a common order dated 18<sup>th</sup> June 2010 passed by the Income Tax Appellate

Tribunal (ITAT) in ITA Nos. 4566 to 4568/Del/2009 for Assessment Year (AY) 2002-03. By an order dated 15<sup>th</sup> November 2011, while admitting these appeals, the following questions were framed for consideration by this Court:

- “1. Whether the Income Tax Appellate Tribunal is correct in annulling the block assessment order?
2. Whether the Income Tax Appellate Tribunal has erred in law in presuming that the seized document did not belong to the respondent?
3. Whether the order of Income tax Appellate Tribunal is perverse in the facts and circumstances of the case?”

2. ITA Nos. 41 and 125 of 2017 are directed against a common order dated 10<sup>th</sup> December 2015 in ITA Nos. 41 and 42/Del/2010 for AYs 2000-01 and 2002-03. While admitting these appeals on 21<sup>st</sup> March 2017, this Court framed the following question of law for consideration:

"Was the ITAT justified in holding that the block assessment order in the present case was not in accordance with law."

3. A search and seizure operation took place in the BM Gupta group of cases. In the course of the search, certain documents were found which led to notices being issued to the Respondents-Assessees under Section 153C of the Act in their capacity as ‘other persons’. After assessments were framed by the concerned Assessing Officers (AOs) making additions in the subsequent assessments, the Assessees went in appeals before the Commissioner of Income Tax (Appeals) [‘CIT (A)’].

4. By orders dated 29<sup>th</sup> September 2009 (in the case of Renu Constructions Pvt. Ltd.) and 30<sup>th</sup> October 2009 (in the case of Mr. Ankit Gupta), CIT(A) held that the assumption of jurisdiction under Section 153C of the Act was erroneous.

5. The Revenue then went in appeal before the ITAT. By the impugned orders dated 18<sup>th</sup> June 2010 and 10<sup>th</sup> June 2011 the ITAT concurred with the CIT(A) that since the seized documents did not 'belong' to the Assesseees, although they may have pertained to them, the assumption of jurisdiction under Section 153C stood vitiated.

6. Mr. Manchanda, learned Senior Standing Counsel appearing for the Revenue, places reliance on decisions of the this Court in *Principal Commissioner of Income Tax v. Super Malls Pvt. Ltd.*, [2017] 393 ITR 557, *Principal Commissioner of Income Tax Central Circle-II v. Satkar Fincap Ltd.* [2017] 393 ITR 378 and *Principal Commissioner of Income Tax (Central-2) v. Nau Nidh Overseas Pvt. Ltd.* [2017] 394 ITR 753 (Delhi) to urge that, notwithstanding the fact that the search in the present case took place prior to the amendment to Section 153C of the Act with effect from 1<sup>st</sup> June 2015, it is sufficient, for the purpose of initiation of proceedings under Section 153C of Act, that the seized documents pertained to the Assessee and did not have to be shown at that stage to be belonging to the Assessee.

7. Learned counsel for the Respondents-Assesseees, on the other hand, pointed out that this Court has, in *Principal Commissioner of Income Tax*

*(Central-2) v. Vinita Chaurasia [2017] 394 ITR 758 (Del)*, after considering the aforementioned three decisions, reiterated the settled legal position as explained in *Pepsico India Holdings P. Ltd. v. ACIT [2015] 370 ITR 295 (Del)*, that for the purpose of initiating proceedings under Section 153C of the Act, the seized documents had to be shown to belong to the other person and not merely pertaining to such other person. The change brought about in this regard in Section 153 C of the Act by way of amendment has been given prospective effect from 1st June 2015. The amended provision therefore has no application to the cases on hand.

8. The recent decision of the Supreme Court in *Commissioner of Income Tax, Pune v. Sinhgad Technical Education Society [2017] 84 taxmann.com 290 (SC)* settles the legal position in favour of the Assessee. The Supreme Court, while affirming the judgment of the Bombay High Court, approved the decision of the Gujarat High Court in *Kamleshbhai Dharamshibhai Patel v. Commissioner of Income Tax-III, (2013) 263 CTR (Guj) 362* that a document seized 'should belong to a person other than the person referred to in Section 153A of the Act'. It has been categorically observed by the Supreme Court that the above position of law laid down by the Gujarat High Court is correct.

9. Consequently, this Court rejects the contention of the learned counsel for the Revenue that even prior to 1st June 2015 at the stage of initiation of proceedings under Section 153C of the Act, it is sufficient if the seized document 'pertained to' the other person and it is not necessary to show that the seized material 'belonged to' the other person. This legal position has

been explained by this Court in its recent decision dated 10<sup>th</sup> July 2017 in W.P. (C) No. 3241/2015 (*Canyon Financial Services Ltd. v. Income Tax Officer*).

10. As far as ITA No. 499/2011 is concerned, the Court finds that there is an additional ground to reject the appeal of the Revenue. The satisfaction note recorded by the AO in that case does not even refer to the seized documents.

11. For the aforementioned reasons, Question No. 2 framed by the Court is answered in the negative, i.e. in favour of the Assesseees and against the Revenue.

12. Consequently, Question No. 1 in ITA Nos. 499 of 2011 and ITA Nos. 32 and 35 of 2012 is answered in the affirmative, i.e. in favour of the Assesseees and against the Revenue. In so far as the Revenue has been unable to show that the impugned order of the ITAT is perverse, Question No. 3 is answered in the negative, i.e. in favour of the Assessee and against the Revenue. The solitary question framed in ITA Nos. 41 and 1265 of 2017 is answered in the affirmative i.e. in favour of the Assessee and against the Revenue.

13. The appeals are accordingly dismissed.

**S. MURALIDHAR, J.**

**PRATHIBA M. SINGH, J.**

SEPTEMBER 06, 2017/pk