

Pr. Commissioner Of Income Tax ... vs Lkg Builders P. Ltd. & Anr on 22 April, 2022

Author: Manmohan

Bench: Manmohan, Dinesh Kumar Sharma

\$~1 & 41 to 67

* IN THE HIGH COURT OF DELHI AT NEW DELHI

1

+ ITA 96/2022 & CM APPL. 19226/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... App

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

LKG BUILDERS P. LTD. & ANR. Respondents

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

41

+ ITA 97/2022 & CM APPL. 19379/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... App

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

M/S PEGASUS SOFTECH (P) LTD. Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

42

+ ITA 98/2022 & CM APPL. 19380/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... App

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

M/S LKG BUILDERS P. LTD. Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

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43

+ ITA 99/2022 & CM APPL. 19381/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... App

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

M/S KING BUILDCON PVT. LTD. Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

44

+ ITA 100/2022 & CM APPL. 19383/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... App

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

KING BUILDCON PVT. LTD. Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

45

+ ITA 101/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appell

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

M/S ALANKAR SAPHIRE DEVELOPERS (P) LTD

..... Re

Through: Mr. Gautam Jain with Mr. Piyu
Kumar Kamal, Advocates.

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+ ITA 102/2022, CM APPL. 19386/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with

Ms. Easha Kadian, Advocates

versus

BELIEVE DEVELOPERS AND PROMOTERS PVT. LTD.

..... Responde

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

47

+ ITA 103/2022, CM APPL. 19387/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

WITNESS BUILDERS PVT. LTD.

..... Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

48

+ ITA 104/2022, CM APPL. 19388/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

M/S VINMAN ESTATES (P) LTD.

..... Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

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+ ITA 105/2022, CM APPL. 19389/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

ALANKAR SAPHIRE DEVELOPERS (P) LTD

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Through: Mr. Gautam Jain with Mr. Piy

Kumar Kamal, Advocates.

50

+ ITA 106/2022, CM APPL. 19390/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates
versus

M/S ALANKAR SAPHIRE DEVELOPERS (P) LTD

..... R

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

51

+ ITA 107/2022, CM APPL. 19391/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates
versus

M/S GEE GEE BUILDTECH (P) LTD. Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

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+ ITA 108/2022, CM APPL. 19392/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... App

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

M/S PEGASUS SOFTECH (P) LTD. Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

+ ITA 109/2022, CM APPL. 19393/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

ASHUTOSH DEVELOPERS P. LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

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54

+ ITA 110/2022, CM APPL. 19394/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

ASHUTOSH DEVELOPERS P. LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

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+ ITA 111/2022, CM APPL. 19395/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

ASHUTOSH DEVELOPERS P. LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

56

+ ITA 112/2022, CM APPL. 19396/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

LAKSHYA CONSULTANTS PVT. LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

57

+ ITA 113/2022, CM APPL. 19397/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

KING BUILDCON PVT. LTD. Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

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+ ITA 114/2022, CM APPL. 19398/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

KING BUILDCON PVT. LTD. Respondent

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

59

+ ITA 115/2022, CM APPL. 19399/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

LKG BUILDERS P. LTD. Respo

Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

60

+ ITA 116/2022, CM APPL. 19400/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

M/S LKG BUILDERS P. LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

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+ ITA 117/2022, CM APPL. 19401/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

. Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

LAKSHYA CONSULTANTS PVT. LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

62

+ ITA 118/2022, CM APPL. 19402/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

. Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

M.M. BUILDCON PVT. LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

63

+ ITA 119/2022, CM APPL. 19403/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

. Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

VINMAN ESTATES (P) LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

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+ ITA 120/2022, CM APPL. 19404/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

LAKSHYA CONSULTANTS PVT. LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

65

+ ITA 121/2022, CM APPL. 19405/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

WITNESS BUILDERS PVT. LTD. Responde
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

66

+ ITA 122/2022, CM APPL. 19406/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Ap

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

M.M. BUILDCON PVT. LTD. Responde
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

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+ ITA 123/2022, CM APPL. 19407/2022
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... A

Through: Mr.Sanjay Kumar with
Ms. Easha Kadian, Advocates

versus

ALANKAR SAPHIRE DEVELOPERS (P) LTD. Respondent
Through: Mr. Gautam Jain with Mr. Piyush
Kumar Kamal, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% 22.04.2022

1. Present Appeals have been filed challenging the Order dated 27th April, 2020 passed by the Income Tax Appellate Tribunal ('ITAT').

2. Learned Counsel for the Appellant states that the ITAT erred in deleting the additions made by assessing officer relying upon the judgment of this Court in the case of CIT Vs. Kabul Chawla, 380 ITR 573. He states that the Revenue has not accepted the judgment of this Court in the case of CIT Vs. Kabul Chawla (supra) and has preferred an appeal against the same in the Supreme Court.

3. A Division Bench of this Court in PCIT vs. Neeta Gutgutia (2017) 82 taxmann.com 287 Del summarized the earlier judgment of this Court in CIT Vs. Kabul Chawla (supra) with regard to Section 153A as under:-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and

the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings. vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

4. Keeping in view the aforesaid, this Court is of the opinion that the questions of law raised in present appeals have been settled by earlier Division Bench in CIT Vs. Kabul Chawla (supra) and assessment of the respondents had attained finality prior to the date of search and no incriminating documents or materials had been found and seized at the time of search. Accordingly, no addition can be made under Section 153A of the Act as the cases of respondents are of non-abated assessments.

5. Though some of the judgments of this Court have been challenged and are pending adjudication before the Supreme Court, yet there is no stay of the said judgments till date. Consequently, in view of the judgments of the Supreme Court in Kunhayammed and Others Vs. State of Kerala And Another, (2000) 6 SCC 359 and Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1, the present appeals are dismissed being covered by the judgment passed by the learned predecessor Division Bench.

MANMOHAN, J DINESH KUMAR SHARMA, J APRIL 22, 2022 st