2024:DHC:4453-DB

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

% **Judgment reserved on: 14 May 2024**
Judgment pronounced on: 29 May 2024

ITA 579/2018

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-3 …. Appellant

Through: Mr. Shlok Chandra, SSC alongwith Ms.Priya Sarkar, Ms. Madhavi Shukla, JSCs and Mr. Sudarshan Roy, Adv.

versus

PAVITRA REALCON PVT. LTD …. Respondent

Through: Appearance not given.

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\+ ITA 587/2018

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-3 …. Appellant

Through: Mr. Shlok Chandra, SSC along with Ms. Priya Sarkar, Ms. Madhavi Shukla, JSCs and Mr. Sudarshan Roy, Adv.

versus

DESIGN INFRACON PVT. LTD. …. Respondent

Through: Appearance not given.

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\+ ITA 590/2018

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-3 …. Appellant

Through: Mr. Shlok Chandra, SSC along with Ms. Priya Sarkar, Ms. Madhavi Shukla, JSCs and Mr. Sudarshan Roy, Adv.

versus

DELICATE REALTORS PVT. LTD. …. Respondent

Through: Appearance not given.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. These appeals by the Revenue impugn the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 04 October 2017 passed in ITA 3185/DEL/2015, ITA 3186/DEL/2015 and ITA 3253/DEL/2015 for Assessment Year ["**AY**"] 2011-12.

2. The facts of the case would indicate that the respondents M/s Pavitra Realcon Pvt. Ltd, M/s Delicate Realtors Pvt. Ltd. and M/s Design Infracon (P) Ltd ["**respondent-assessee companies**"] are part of a group of companies namely, M/s BPTP Ltd. The controversy essentially emanates from a search and seizure operation under Section 132 of the

Income Tax Act, 1961 ["**Act**"], which was conducted on 07 December 2010 on M/s BPTP Ltd. group of companies and was concluded on 05 February 2011. On 30 September 2011, the respondent- assessee companies filed their Income Tax Return ["ITR"] declaring the income to be nil in the cases of M/s Pavitra Realcon Pvt. Ltd. and M/s Delicate Realtors Pvt. Ltd., whereas, a total loss of INR 3254/- was declared in the case of M/s Design Infracon (P) Ltd.

3. During the course of search, it came to light that the respondent-assessee companies had shown a total amount of INR 325.23 crores as advance against property, from the three companies namely, M/s Attractive Finelease Pvt. Ltd., M/s Ashish Capital Pvt. Ltd. and M/s Aquiss Pvt. Ltd. [**"Jain group of companies"**].

4. Consequently, when the Directors of the respondent-assessee companies were confronted with the information that the Jain group of companies are merely accommodation entry providing companies, they accepted that they were not in a position to explain the receipts of abovenoted amount and came up with a voluntary disclosure of INR 325.23 crores to be their unaccounted income for AY 2011-12.

5. As per the statement dated 08 April 2010 of Mr. Sanjiv Kumar, Director in the respondent-assessee companies, it was accepted by him that the said income was received in the form of cheques from the Jain group of companies for collaboration in future projects.

6. In the aforesaid backdrop, a notice dated 23 July 2012 under Section 143(2) of the Act was issued in the case of M/s Design Infracon (P) Ltd. and another notice dated 13 September 2012 under the same provision was issued in the cases of M/s Pavitra Realcon Pvt. Ltd and M/s Delicate Realtors Pvt. Ltd. Pursuant to the said notices, the Assessing Officer

[**"AO"**] passed the assessment order dated 28 March 2013 under Section 143(3)/153C of the Act.

7. In the aforenoted assessment order, it was observed that the AO had relied upon *firstly*, the statements given by the Directors of the respondent-assessee companies and *secondly*, the documents that were seized from the residential premises of the owner of Jain group of companies namely, Mr. Surendra Kumar Jain and Mr. Virendra Kumar Jain, who are stated to have provided accommodation entries amounting to INR 341 crores to the respondent-assessee companies for Financial Year ["**FY**"] 2010-11. The said addition was made to the tune of INR 120 crores in the case of the M/s Pavitra Realcon Pvt. Ltd, INR 105 crores in the case of M/s Delicate Realtors Pvt. Ltd. and INR 116 crores in the case of M/s Design Infracon (P) Ltd. under Section 68 of the Act. The Commissioner of Income Tax (Appeals) ["**CIT(A)**"] further affirmed the additions made under the said provision.

8. Being aggrieved thereto, the respondent-assessee companies approached the ITAT. The ITAT deleted the additions made under Section 68 of the Act and held that no assessment could have been made on mere presumption of existence of incriminating material.

9. Mr. Shlok Chandra, learned counsel appearing on behalf of the Revenue contended that the additional grounds were raised for the first time only before the ITAT urging that the assessment made under Section 143(3) ought to have been made under Section 153C of the Act.

10. He further contended that the finding of the ITAT that no incriminating material was found during the search is *ex-facie* invalid, particularly in light of the explicit admission of the Directors of the respondent-assessee companies that accommodation entries were taken.

Consequently, the assessment was done under Section 143(3) read with 153C of the Act.

11. He further submitted that as per the AO's understanding, the date of the search i.e., 05 February 2011, was taken to be the date for initiation of assessment proceedings. Therefore, on a *bona fide* belief that notice under Section 153C was to be sent from the date of the search for six preceding AYs i.e., 2005-06 to 2010-11, it was issued and hence no notice for AY 2011-12 was sent.

12. He, however, submitted that the statement of Mr. Jain, owner of Jain group of companies was not provided to the respondent-assessee companies and no opportunity of cross-examination was given. He also contended that the ITAT has erroneously held that the statement recorded under Section 132(4) of the Act by itself is not sufficient and an independent corroborative material should have been relied upon by the AO while passing the assessment order.

13. He lastly submitted that although no notice under Section 153C of the Act was ever sent to the respondent-assessee companies, however, it was contended that the assessment order under Section 143(3) read with Section 153C of the Act was a rectifiable mistake under Section 292B of the Act, but the said contention was rejected by the ITAT.

14. *Per contra*, learned counsel for the respondent-assessee companies vehemently opposed the submissions advanced by the learned counsel for the Revenue.

15. He contended that the assessment order under Section 143(3)/ 153C of the Act was wrongly framed as no incriminating material against the respondent-assessee companies was found during the course of search. According to him, since there is gross violation of principles of natural

justice on the ground of lack of opportunity of cross-examination, the assessment order itself is void.

16. He, therefore, submitted that the ITAT has correctly quashed the assessment order and deleted the additions made under Section 68 of the Act.

17. We have heard the learned counsels appearing on behalf of the parties and perused the record.

18. The primary grievance which arises in the present appeals pertains to whether the ITAT was right in deleting additions made under Section 68 of the Act by holding that no assessment could have been made on mere presumption of existence of incriminating material.

19. Undisputedly, during the period of search, no incriminating material appears to have been found. However, the Revenue proceeded to issue notice under Section 143(2) of the Act on the pretext of the statements of the Directors of the respondent-assessee companies recorded under Section 132(4) of the Act and material seized from the search conducted on Jain group of companies. The assessment order was also passed under Section 143(3) read with Section 153C of the Act making additions under Section 68 of the Act.

20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements.

21. In the case of **Kailashben Manharlal Chokshi v. CIT**[1], the Gujarat High Court held that the additions could not be made only on the

[1] 368 SCC OnLine Guj 436

basis of admissions made by the assessee, in the absence of any corroborative material. The relevant paragraph no. 26 of the said decision has been reproduced hereinbelow: -

> 26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority**. We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission.** We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary state ment, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retrac tion made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has com mitted an error in ignoring the retraction made by the assessee.
>
> [Emphasis supplied]

22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of **CIT v. Harjeev Aggarwal**[2], wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below: -

> **"20.** In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. **The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations.** However, the

[2] 56 SCC OnLine Del 1512

> statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act. **However, such statements on a stand alone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation.**
>
> [Emphasis supplied]

23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material discovered during the search which would corroborate said statements, do not grant the AO the authority to make an assessment.

24. Coming to the findings of the ITAT with respect to incriminating material in the case of M/s Pavitra Realcon Pvt. Ltd and M/s Delicate Real Estate Pvt. Ltd, it is seen that the ITAT has explicitly held in paragraph no. 18 that no addition has been made on the basis of any incriminating material found during the course of search. Further, the ITAT relied on the decision of the Supreme Court in the case of **CIT v. Sinhgad Technical Education Society**[3] and held as follows: -

> "18. Further, while writing the order it has come to our notice that the Hon'ble Apex Court in the case of Sinhgad Technical Education Society has held that section 153C can be invoked only when incriminating materials assessment year-wise are recorded in satisfaction note which is missing here. Therefore, the proceedings drawn u/s 143(3) as against 153C are invalid for want of any incriminating material found for the

[3] (2018) 11 SCC 490

impugned assessment year.

> 19. In view of the above, the additional grounds raised by the assessee in the case of M/s Pavitra Realcon Pvt. Ltd. And M/s Delicate Real Estate Pvt. Ltd. are accepted. Since the assessee succeeds on this legal ground, we refrain ourselves from adjudicating the issue on merit as far as these two cases are concerned."

25. Also, the Supreme Court in the case of **CIT v. Abhisar Buildwell (P) Ltd.**[4], has clarified that in case no incriminating material is found during the search conducted under Section 132 of the Act, the AO will have no jurisdiction to make an assessment. The relevant paragraph is reproduced herein below: -

> "36.4. In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved."
>
> [Emphasis supplied]

26. This Court in the case of **CIT v. Kabul Chawla**[5], has explicitly noted that the information/material which has been relied upon for assessment has to relate with the assessee. The relevant portion of the said decision is extracted herein below: -

> (iv) Although section 153A 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 Assessing Officer which can be related to the evidence found, it does not mean that the

[4] 2023 SCC OnLine SC 481
[5] 2016 SCC OnLine Del 11555

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 the seized material."

[Emphasis supplied]

27. Recently, this Court, in the case of **Saksham Commodities Limited v. Income Tax Officer, Ward 22(1), Delhi & Anr**[6], while relying upon the decision of the Supreme Court in *Abhisar Buildwell (supra)* and this Court's decision in the case of **CIT v. RRJ Securities Ltd.**[7], upheld the position of law that the AO would not be justified to assess income in case no incriminating material is found during the search. The relevant paragraph is reproduced herein below: -

> **"54. In any case, *Abhisar Buildwell*, in our considered opinion, is a decision which conclusively lays to rest any doubt that could have been possibly harboured. The Supreme Court in unequivocal terms held that absent incriminating material, the AO would not be justified in seeking to assess or reassess completed assessments. Though the aforesaid observations were rendered in the context of completed assessments, the same position would prevail when it comes to assessments which abate pursuant to the issuance of a notice under Section 153C.** Here too, the AO would have to firstly identify the AYs' to which the material gathered in the course of the search may relate and consequently it would only be those assessments which would face the spectre of abatement. The additions here too would have to be based on material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. The provision while speaking of AYs' falling within the block of six AYs' or for that matter all years forming part of the block of ten AYs', appears to have been put in place to cover all possible contingencies. The aforesaid provisions clearly appear to have been incorporated and made applicable both with respect to Section 153A as well as Section 153C *ex abundanti cautela.* Which however takes us back to what had been observed earlier, namely, the existence of the power being merely enabling as opposed to a statutory compulsion or an inevitable consequence which was advocated

[6] 2024 SCC OnLine Del 2551
[7] 2015 SCC OnLine Del 13085

by the respondents.

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> 56. We also bear in mind the pertinent observations made in *RRJ Securities* when the Court held that merely because an article or thing may have been recovered in the course of a search would not mean that concluded assessments have to *"necessarily"* be reopened under Section 153C and that those assessments are not liable to be revised unless the material obtained have a bearing on the determination of the total income. **This aspect was again emphasised in para 38 of *RRJ Securities* with the Court laying stress on the existence of material that may be reflective of undisclosed income being of vital importance. All the aforenoted judgments thus reinforce the requirement of incriminating material having an ineradicable link to the estimation of income for a particular AY."**
>
> [Emphasis supplied]

28. So far as the submission made by the learned counsel for the Revenue that the AO acted on a *bona fide* belief that the date of search has to be taken as the date of initiation of proceedings under Section 153C of the Act is concerned, it is apposite to refer to our decision in the case of **CIT v. Ojjus Medicare (P) Ltd.**[8] This Court, in the said case, reiterated the already settled law that the date of initiation of assessment proceedings under Section 153C would be calculated from the date of handing over of the books of accounts, documents or assets seized to the jurisdictional AO of the non-searched person. The relevant paragraphs of the said decision are extracted herein below: -

> **"K. SUMMARY OF CONCLUSIONS**
> **119.** We thus record our conclusions as follows:
>
> A. Prior to the insertion of Sections 153A, 153B and 153C, an assessment in respect of search cases was regulated by Chapter XIVB of the Act, comprising of Sections 158B to 158BI and which embodied the concept of a block assessment. A block assessment in search cases undertaken in terms of the provisions placed in Chapter XIVB was ordained to be undertaken simultaneously and parallelly to a regular assessment. Contrary to the scheme underlying Chapter XIVB, Sections 153A, 153B

[8] 2024 SCC OnLine Del 2439

and 153C contemplate a merger of regular assessments with those that may be triggered by a search. On a search being undertaken in terms of Section 153A, the jurisdictional AO is enabled to initiate an assessment or reassessment, as the case may be, in respect of the six AYs' immediately preceding the AY relevant to the year of search as also in respect of the "*relevant assessment year*", an expression which stands defined by Explanation 1 to Section 153A. Of equal significance is the introduction of the concept of abatement of all pending assessments as a consequence of which curtains come down on regular assessments.

B. Both Sections 153A and 153C embody non-obstante clauses and are in express terms ordained to override Sections 139, 147 to 149, 151 and 153 of the Act. By virtue of the 2017 Amending Act, significant amendments came to be introduced in Section 153A. These included, inter alia, the search assessment block being enlarged to ten AYs' consequent to the addition of the stipulation of "*relevant assessment year*" and which was defined to mean those years which would fall beyond the six year block period but not later than ten AYs'. The block period for search assessment thus came to be enlarged to stretch up to ten AYs'. The 2017 Amending Act also put in place certain prerequisite conditions which would have to inevitably be shown to be satisfied before the search assessment could stretch to the "*relevant assessment year*". The preconditions include the prescription of income having escaped assessment and represented in the form of an asset amounting to or "*likely to amount to*" INR 50 lakhs or more in the "*relevant assessment year*" or in aggregate in the "*relevant assessment years*".

C. Section 153C, on the other hand, pertains to the non-searched entity and in respect of whom any material, books of accounts or documents may have been seized and were found to belong to or pertain to a person other than the searched person. As in the case of Section 153A, Section 153C was also to apply to all searches that may have been undertaken between the period 01 June 2003 to 31 March 2021. In terms of that provision, the AO stands similarly empowered to undertake and initiate an assessment in respect of a non-searched entity for the six AYs' as well as for "*the relevant assessment year*". The AYs', which would consequently be thrown open for assessment or reassessment under Section 153C follows lines *pari materia* with Section 153A.

D. The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "*relevant*

assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in _SSP Aviation_ and _RRJ Securities_ as well as the decision of the Supreme Court in _Jasjit Singh._ The aforesaid legal position also stood reiterated by the Supreme Court in _Vikram Sujitkumar Bhatia._ The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

E. The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A.

F. While the identification and computation of the six AYs' hinges upon the phrase "*immediately preceding the assessment year relevant to the previous year*" of search, the ten year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of Section 153A requires us to reckon it "*from the end of the assessment year*". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "*immediately preceding*" when it be in relation to the six year period and employing the expression "*from the end of the assessment year*" while speaking of the ten year block."

[Emphasis supplied]

29. It is thus seen that in order to determine block of six AYs, one must first identify the FY in which the search occurred, leading to the identification of the AY relevant to the previous year of the search. The block of six AYs will then be those immediately preceding the AY relevant to the search year. For a search assessment under Section 153C of the Act, the only difference is that the previous year of the search is replaced by the

date or year in which the seized books of accounts, documents, and assets are handed over to the jurisdictional AO, rather than the year of the search, which is the basis for an assessment under Section 153A of the Act. Therefore, the relevant AY in the present case would come under the block of six AYs immediately preceding the AY in which the satisfaction note was recorded by the AO of the respondent-assessee companies.

30. Further, in the case of M/s Design Infracon Pvt. Ltd., the ITAT held that there is violation of principles of natural justice as neither the statement of owner of Jain group of companies was provided to the said company, nor the opportunity of cross-examination was given. The ITAT in paragraph no. 23 has held as under: -

> "23.Now, coming to Design Infracon (P) Ltd., we find from the material available on record that there is brazen violation of principles of natural justice inasmuch as neither the statement of Mr. Jain recorded at the time of search nor his cross-examination was provided to the assessee by both the lower authorities despite specific and repeated requests made by the assessee in this regard. The Hon'ble Supreme Court in the case of M/s Andaman Timber Indusgies vs. CCE reported in 281 CTR 241 has held that not giving opportunity of cross-examination makes the entire proceedings invalid and nullity. The Co-ordinate Bench of the Tribunal in the case of Best City Infrastructure Ltd. (supra) has also held that not providing opportunity of cross-examination makes the addition invalid. It has come to our notice that the Hon'ble Delhi High Court recently has upheld the said decision as reported in 397 ITR 82."

31. On this aspect, it is beneficial to refer to the decision of the Supreme Court in the case of **Andaman Timber Industries v. CCE**[9], wherein, it was held that not providing the opportunity of cross-examination to the assessee amounts to gross violation of the principles of natural justice and the same will render the order passed null and void. The relevant paragraph of the said decision is extracted herein below: -

[9] 2015 SCC OnLine SC 1051

> **"6. According to us, not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected.** It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross- examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them."
>
> [Emphasis supplied]

32. Additionally, the Supreme Court in the case of **State of Kerala v. K.T. Shaduli Grocery Dealer**[10], held that tax authorities being quasi-judicial authorities are bound by the principles of natural justice. The relevant paragraph is extracted herein below: -

> **"2. Now, the law is well settled that tax authorities entrusted with the power to make assessment of tax discharge quasi- judicial functions and they are bound to observe principles of natural justice in reaching their conclusions.** It is true, as pointed out by this Court in *Dhakeswari Cotton Mills Ltd.* v. *CIT* [AIR 1955 SC 154 : (1955) 1 SCR 941 : (1955) 27 ITR 126] that a taxing officer "is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law", but that does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law as principles of natural justice. It is, however, necessary to remember that the rules of natural justice are not a constant: they are not absolute and rigid rules having universal

[10] (1977) 2 SCC 777

> application. It was pointed out by this Court in *Suresh Koshy George* v. *University of Kerala* [AIR 1969 SC 198 : (1969) 1 SCR 317 : (1969) 1 SCJ 543] that "the rules of natural justice are not embodied rules" and in the same case this Court approved the following observations from the judgment of Tucker, L.J. in *Russel* v. *Duke of Norfolk* [(1949) 1 All ER 109] :"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."
>
> [Emphasis supplied]

33. Further, the argument of learned counsel for the Revenue that this mistake is curable under Section 292B of the Act lacks merit as the plain language of the said Section makes it abundantly clear that this provision condones the invalidity which may arise merely by mistake, defect or omission in notice. The said Section reads as under: -

> 292-B. Return of income, etc., not to be invalid on certain grounds.—No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

34. Reliance can also be placed upon the decision in the case of **CIT v. Micron Steels P. Ltd.**[11], whereby, it was held that the jurisdictional defects cannot be cured under Section 292B of the Act and they render the entire proceedings null and void.

[11] 2015 SCC OnLine Del 7321

35. In the present case, it is seen that the Revenue has failed to allude to any steps which were taken to determine that the seized material belonged to the respondent-assessee group. Notably, the satisfaction note has also been prepared in a mechanical format and it does not provide any details about the incriminating material. Therefore, a failure on the part of the Revenue to manifest as to how the material gathered from the search of Jain group of companies belonged to the respondent-assessee group and the same is incriminating, vitiates the entire assessment proceedings.

36. Accordingly, we find no reason to intermeddle with the order of the ITAT which has rightly set aside the assessment order and deleted the additions made therein.

37. In view of the aforesaid and on the basis of the findings of fact arrived at before the authority, these appeals do not raise any substantial question of law and consequently, they stand dismissed. Pending applications, if any, are also disposed of.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

May 29, 2024/MJ