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

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**ITA 323/2016**

PR. CIT CENTRAL-1

..... Appellant

Through: Mr Rahul Chaudhary, Senior Standing  
counsel with Mr Raghvendra Singh, Junior  
Standing counsel and Mr Anup Kumar Kesari,  
Advocate.

versus

AMRAPALI GRAND

..... Respondent

Through: Mr Arvind Kumar, Advocate.

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE VIBHU BAKHRU**

**ORDER**

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**31.05.2016**

**CM No.21925/2016**

1. Since the amendment application is filed at an initial stage of the appeal i.e. before notice is issued, the application is allowed. The amended memo of appeal is taken on record.

**ITA 323/2016**

2. The Revenue has filed this appeal against the order dated 23<sup>rd</sup> November, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.6205/Del/2013 in C.O. No.150/Del/2014 for the Assessment Year ('AY') 2009-10.

3. The question that is sought to be urged is whether the ITAT erred in

holding that the assessment framed by the Assessing Officer ('AO') under Section 143(3) read with Section 153C of the Income Tax Act, 1961 ('Act') was invalid?

4. A search took place on 9<sup>th</sup> September, 2010 in the 'Amprapali group' of cases. Subsequently, a notice dated 12<sup>th</sup> April, 2012 under Section 153C of the Act was issued to the Assessee, which is a partnership firm. In the ensuing assessment proceedings, the AO made an addition of Rs.1,12,60,413/- on account of bogus purchases of raw materials and of Rs.1,71,85,440/- on account of notional interest on the interest free loan.

5. Before the Commissioner of Income Tax (Appeal) ['CIT(A)'], the question of validity of the assessment was also challenged by the Assessee apart from the merits of the additions. By the order dated 18<sup>th</sup> September, 2013, the CIT(A) rejected the challenge to the validity of the assessment. However, the additions on the bogus purchases of raw materials and the addition on account of interest were deleted.

6. An appeal was filed by the Revenue and a cross-objection by the Assessee before the ITAT. The cross objection by the Assessee was specific to the issue of two documents stated to have been recovered during the search which did not belong to the Assessee and, therefore, could not form the basis for initiating proceedings against the Assessee under Section 153 C of the Act. The ITAT was of the view that the said document i.e. a chart at pages 53 and 54 of Annexure A-1 did not belong to the Assessee. Following the decisions of this Court in *Pepsico India Holdings Pvt. Ltd. v. ACIT (2014)*

**50 Taxmann.com 299 (Del)** and **Pepsi Food Pvt. v. ACIT (2014) 52 Taxmann.com 220 (Del)**, the ITAT held that the initiation of proceedings against the Assessee under Section 153C of the Act was bad in law.

7. Mr. Rahul Chaudhary, learned Senior Standing counsel for the Revenue submitted that the two documents in question recovered in the search of the “Amrapali Group” should be taken to belong to the Assessee which is a part of the said Group. Mr. Arvind Kumar, learned counsel for the Assessee, on the other hand points out that even in the satisfaction note recorded by the AO, the said documents were stated to “pertain” to the Assessee and not belong to it. It is further pointed out by Mr. Arvind Kumar, and rightly, that the amendment to Section 153C which replaced the words “belong or belongs to” with the words “pertain or pertains to” was made only with effect from 1<sup>st</sup> June, 2015 whereas the search in the present case took place on 9th September 2010 and the notice under Section 153C was issued on 12<sup>th</sup> April, 2012.

8. Consequently, the ITAT cannot be said to have erred in holding the assessment to be unsustainable in law. No substantial question of law arises. The appeal is dismissed.

**S. MURALIDHAR, J**

**VIBHU BAKHRU, J**

**MAY 31, 2016**  
**MK**