

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER AND  
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.5630/M/2012  
Assessment Year: 2006-07**

Joint Commissioner of Income Tax (OSD), Circle -15(10), Room No.104, Matru Mandir, 1 <sup>st</sup> Floor, Tardeo Rd., Mumbai - 400007	Vs.	Shri Yogesh S. Karia, 14, Padia Bhuvan, 3 <sup>rd</sup> Floor, 95-97 Bhandari Street, Masjid Bandar, Mumbai - 400003 <b>PAN: ANEPK6161F</b>
(Appellant)		(Respondent)

**ITA No.2148 /M/2014  
Assessment Year: 2006-07**

Shri Yogesh S. Karia, 14, Padia Bhuvan, 3 <sup>rd</sup> Floor, 95-97 Bhandari Street, Masjid Bandar, Mumbai - 400003 <b>PAN: ANEPK6161F</b>	Vs.	DCIT 15(1), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Dharmesh Shah, A.R.  
Revenue by : Shri K. Krishna Murty, D.R.

Date of Hearing : 06.10.2015  
Date of Pronouncement : 31.12.2015

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The above captioned are two appeals one by the assessee and the other by the Revenue. The assessee has filed the appeal against the order dated 11.06.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] in relation to the original assessment order dated 29.12.2008 whereas the Revenue has preferred the present appeal against the order of the

Ld. CIT(A) dated 11.06.2012 in relation to the assessment order passed under section 143(3) read with section 153C of the Act dated 23.12.2010.

2. The technical point involved in both the above titled appeals is that prior to the passing of the original assessment order under section 144A read with section 143(3) of the Act on 29.12.08, a search and seizure action under section 132 of the Act was conducted on 26.06.07 in the case of Parwani Group of cases (Parwani Group Companies). The assessee being connected person with the Parwani Group, the provisions of section 153C of the Act were invoked in the case of the assessee and a notice under section 153C of the Act dated 19.03.10 was issued and served upon the assessee accordingly. In the original assessment completed under section 144A read with section 143(3) of the Act vide order dated 29.12.08, certain additions were made in the case of the assessee. Identical additions were made by the Assessing Officer (hereinafter referred to as the AO) in the subsequent assessment order passed under section 143(3) read with section 153C of the Act.

3. The Ld. CIT(A), vide his order dated 11.06.12 in relation to the original assessment proceedings, has upheld those additions whereas in appeal in relation to assessment proceedings conducted under section 153C of the Act, he recorded that since the identical additions have been confirmed in the original assessment order, hence the same additions were not warranted in subsequent assessment made under section 153C of the Act.

4. The Ld. A.R. of the assessee has brought our attention to the provisions of section 153A read with section 153C of the Act wherein as per the 2<sup>nd</sup> proviso to sub section (1) of section 153A, it has been provided that in case of search action under section 132A the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in the said sub section pending on the date of initiation of search under section 132 or making of requisition under section 132A as the

case may be shall abate. However, in case of other person, wherein the proceedings under section 153C of the Act have been initiated it has been provided that the reference to the date of initiation of the search under section 132 or making of requisition under section 132A as referred to in the 2<sup>nd</sup> proviso to sub section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents seized or requisitioned by the AO having jurisdiction over such other person. The Ld. A.R. of the assessee has, thus, contended that the seized material/documents had already been received by the AO prior to the finalization of the original assessment proceedings and thus, the original assessment proceedings should be deemed to be treated as abated whereas the AO has completed the original assessment proceedings on 29.12.08. He has further contended that the valid assessment proceedings would have been under section 153C of the Act whereas the Ld. CIT(A) has upheld the original assessment proceedings, however, he has not confirmed any additions in relation to assessment made under section 153C of the Act observing that since the identical additions have been made in the original assessment, no further additions were warranted. The Ld. A.R. of the assessee, thus, has submitted that since the first assessment order is void as the same stood abated and no additions have been made in the subsequent assessment order under section 153C of the Act, hence no addition was warranted in the case of the assessee.

The Revenue, however, has agitated the action of the Ld. CIT(A) holding that the addition under section 153C of the Act was not warranted on the ground that the same was already made in the original assessment order.

5. Considering the above contentions and after going through the record, we find that the issue is required to be looked into by the Ld. CIT(A) after verifying the necessary records. It is made clear that if it is found that the seized material was received by the AO before the conclusion of the original assessment proceedings, then the original assessment proceedings should abate

and the validity of the additions, if any, will have to be decided in the subsequent assessment proceedings under section 153C of the Act. However, in the case the original assessment proceedings were completed before receipt of seized material by the AO of the assessee, then in that case identical additions, if any, can be repeated for the sake of clarify and for complying the statutory requirement of passing a fresh order under section 153C of the Act, but there will not be double taxation on account of the same additions. However, fresh additions, if any, could be made only on the basis of any incriminating material found during the search action otherwise the AO will be bound to pass formal order repeating the same additions and in that event the original assessment order will stand as such and the Ld. CIT(A) will decide the appeal of the assessee in that event afresh. If in the opinion of the Ld. CIT(A), the original assessment proceedings are to be treated as abated, then he will remand the matter to the AO to pass a fresh assessment order under section 143(3) read with section 153C of the Act. With the above observation, both the appeals are restored to the file of the Ld. CIT(A) for adjudication afresh.

6. In the result, both the appeals are treated as allowed for statistical purposes.

**Order pronounced in the open court on 31.12.2015.**

**Sd/-**  
**(N.K. Billaiya)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Sanjay Garg)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 31.12.2015.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.