

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

	ITA No. 6845/Del/2014	
	A.Y. : 2006-07	
DEPUTY COMMISSIONER OF INCOME TAX, CC-32, ROOM NO. 359, E-2 ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI (APPELLANT)	VS.	M/S ISG ESTATE PVT. LTD., M-11, MIDDLE CIRCLE, CONNAUGHT PLACE, NEW DELHI - 110 001 (PAN: AAACI7996N) (RESPONDENT)

Department by : Sh. Naveen Chandra, CIT(DR)

Assessee by : Sh. Ajay Bhagwani, CA

ORDER

PER H.S. SIDHU, JM:

The Revenue has filed the present appeal against the impugned order dated 05/8/2014 passed by the Ld. Commissioner of Income Tax (Appeals)-XXXIII, New Delhi on the following grounds:-

1. On the facts and in the circumstances of the case, CIT(A) has erred in holding that AY 2006-07 was not covered in six year period, without appreciating the fact that date of handing over is

replaced for date of search only for the purpose of abatement of pending proceedings as per 2nd proviso of section 153A and not for counting the six year period in section 153A(1) of the Act.

2. The order of the CIT(A) is erroneous and is not tenable on facts and in law.
3. The appellant craves leave to add, alter or amend any / all of the grounds of appeal during the course of the hearing of the appeal.

2. The facts in brief are that a search and seizure operation was carried out at the various premises of M/s BPTP Ltd and its group concerns and associated persons (hereinafter called BPTP group of cases) on 07/12/2010 and was finally concluded on 05/02/2011. The assessee is associated with BPTP group of cases. During the year under consideration the company is one of the BPTP Group. During the course of search and seizure operation at the various premises of BPTP group of cases many books of account and documents belonging to the assessee company were found and seized and hence prerequisite condition to initiate proceedings u/s 153C of the Income Tax Act, 1961 (hereinafter called 'the Act'), was fulfilled. Therefore, after recording the necessary satisfaction for initiation of proceedings u/s 153C of the Act, notice u/s 153C/153A of the Act

was issued on 29/01/2013 directing it to file its return of income within 15 days of the service of the notice. This notice was duly served on the assessee vide speed post. In response to this notice u/s 153C/153A of the Act the assessee filed its return of income on 15/02/2013 declaring total income at Rs. 43,310/-. A detailed questionnaire dated 18/02/2013 was issued and was duly served upon the assessee by speed post. In response to the said notices from time to time, the A.R. of the assessee attended the office on behalf of assessee & submitted the details & clarifications. In BPTP and some of its group companies first search & seizure operation was carried out on 15/11/2007. During the earlier assessment proceedings u/s 153A of the Act, it was very well proved that the assessee was used to pay part payments of the sale consideration in respect of the land purchased at the time of execution of the sale deed and the payments of balance sale consideration were invariably made through post dated cheques (PDCs) and for the intervening period i.e. period between the date of sale deed and the date of encashment of PDCs), interest was paid in cash to the vendors of the land by the vendee company on monthly basis @1.25% p.m. on the amount of PDCs and his cash payment of interest by the vendee company, was not accounted for by it, in its books of account. The addition on the ground has been made in the

several group companies of the BPTP group during the course of earlier assessment proceedings u/s 143(3)/148/153A in consequence to search carried out on 15.11.2007. Hence vide order sheet entry dated 28/02/2013, the assessee was asked to explain as to why addition should not be made on PDCs. In response thereto, the assessee vide its letter dated 04/03/2013 filed its submission. Thereafter, after considering the submissions of the assessee, the AO assessed the income of the assessee at Rs. 51,22,800/- by making various additions u/s. 153C/153A of the Act vide order dated 28/3/2013.

3. Aggrieved with the aforesaid assessment order, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 05.8.2014 has allowed the appeal of the assessee.

4. Now the Revenue is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

6. On the contrary, Ld. Counsel of the assessee relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order, which does not need any interference.

7. We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). We find that in the instant case satisfaction note u/s 153C of the Act has been recorded on 29.1.2013 and notice u/s 153C of the Act has also been issued on same date. We further note that on similar facts, the ITAT, in the case of DSL Properties (P) Ltd. in ITA No. 11349/Del/2012 for A.Y. 2004-05 has given the ruling that date of recording of satisfaction u/s 153C of the Act may be taken as date of handing over of seized documents and other evidences and held that such date should be construed as date of initiation of search U/S 132 or date of requisition U/S 132A as per the first proviso to section 153C and accordingly ITAT has held that six A.Y. should be computed from the date of such handling over date for the purpose of section 153C. The findings of ITAT, Delhi in the case of DSL Properties (P) Ltd. cited supra is reproduced as under:-

"12.1 In the case of M/s DSL Properties (P) Ltd in ITA No. 1349/Del/2012 for the AY 2004-05, order dated 22.02.2013 the ITAT Delhi 'B' Bench held as follows:

"15. From a perusal of the said satisfaction note, it is evident that this paper does not indicate in whose case this satisfaction was recorded and who is the officer recording the

satisfaction. There is no mention of name of the assessee. There is no mention of the name of the Assessing Officer and no seal of the Assessing Officer. In the satisfaction note, the Assessing Officer has mentioned the name of various assessee's who have been covered for search and seizure action under section 132(1). The number of such assessee's are eight. Now, during the search of whose premises it was found, is not mentioned. The last line of the satisfaction note reads "I am satisfied that the above documents belong to M/s DSL Properties Pvt. Ltd and thus its case is being taken up for assessment under section 153C of the Income Tax Act 1961. "A plain reading of the above sentence indicates that it is recorded by the Assessing Officer who is taking action under section 153C Thus, it seems that the satisfaction note is recorded by the Assessing Officer of the assessee. This inference is fortified from the fact that on the very same date, i.e. 21 June, 2010, the notice under section 153C is issued by the same person. The learned CIT-DR also stated that the satisfaction note was recorded by Shri Jeetendra Kumar, ACIT, Circle-8 who issued notice uls 153C read with section 153A. However, he tried to justify the action of the Revenue on the ground that after the order

under Section 127 of the Income Tax Act by the CIT, Delhi-IV, the jurisdiction of the person searched as well as the assessee both were centralized with the ACIT, Central Circle-8. He also stated that since the Assessing Officer of both the person was the same, there was no question of handing over and taking over of the documents. We are unable to agree with this view of the learned DR. If the Assessing Officer is assessing the person searched as well as other person whose assets, the books of account or documents were found at the time of search, then also, first while making the assessment in the case of the person searched, he has to record the satisfaction that the money, bullion, jewellery or other valuable article or thing or books of account or documents belong to the person other than the person searched. Then, the copy of this satisfaction note is to be placed in the file of such other person and the relevant document should also be transferred from the file of person searched to the file of such other person, he has to issue the notice under Section 153A read with section 153C. The Assessing Officer of the person searched and such other person may be the same but these are two different assesseees and, therefore, the Assessing Officer has to carry out the dual

exercise, first as the Assessing Officer of the person searched in which he has to record the satisfaction , during the course of assessment proceedings of the person searched. After recording such satisfaction note in the file of the person searched, the same is to be placed in the file of such other person. Then, in his capacity as the Assessing Officer of such other person, he should take cognizance of such satisfaction note and thereafter issue notice under Section 153C. In this case, this exercise of recording the satisfaction during the assessment proceedings of the person searched has not been carried out. On the other hand, the Assessing officer recorded the satisfaction in the case of such other person which does not satisfy the condition of assuming jurisdiction under section 153C Moreover, no original satisfaction note is available on record. The photocopy of the satisfaction note produced before us does not bear name of any assessee, name of the Assessing Officer or any seal of the Assessing Officer. Therefore, the above satisfaction note cannot be said to be a valid satisfaction note within the meaning of section 153C

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18. *The learned counsel for the assessee has also argued that the issue of notice under section 153C is barred by limitation as per proviso of section 153C. He stated that as per Revenue, the satisfaction for initiating proceedings under section 153C was recorded on 21st June, 2010 and notice under Section 153C was also issued on 21st June, 2010. Thus, obviously, the seized paper was handed over to the Assessing Officer of such other person on 21 June, 2010. Now, as per proviso to Section 153C, the date of search is to be substituted by the date of receiving the books of account or documents or assets seized.*

Accordingly, the assessment can be reopened of the preceding six years than 21st June, 2010. They would be AY 2005-06 to 2010-11. The revenue has reopened assessment for AY 2004-05 which is clearly barred by limitation. The learned DR has contended that since in this case the Assessing Officer of the person searched and the Assessing Officer of such other person was the same, there is no question of handing over and taking over of the document, therefore, for the purpose of limitation, the date of search would be relevant and not the date of initiation of proceedings under Section 153C. Since in this case satisfaction is recorded on

21st June,2010 and notice under section 153C is also issued on the same date, then only conclusion that can be drawn is that the Assessing Officer of such other person has taken over the possession of seized document on 21st June, 2010. Accordingly, as per section 153(1), the Assessing Officer can issue the notice (or the previous year in which search is conducted (for the purpose of section 153C the document is handed over) and six AYs preceding such Assessment Year. Now, in this case, the previous year in which the document is handed over is 1st April, 2010 to 31st March. 2011.

The assessment year would be AY 2011-12. Six preceding previous years and relevant assessment year would be as under:-

Previous Year Assessment Year

1.4.2009 to 31.3.2010 2010-11

1.4.2008 to 31.3.2009 2009-10

1.4.2007 to 31.3.2008 2008-09

1.4.2006 to 31.3.2007 2007-08

1.4.2005 to 31.3.2006 2006-07

1.4.2004 to 31.3.2005 2005-06

22. The Assessing Officer has issued notice under section 153C (or AY 2004-05 which is clearly barred by limitation. Therefore, issue of notice under Section 153C issued by the Revenue cannot be sustained on both the above counts, i. e. it is legally not valid as conditions laid down under section 153C has not been fulfilled and it is barred by limitation."

7.1 We further note that the aforesaid finding has been relied by the ITAT, H Bench New Delhi in the case of V.S. Fiscal Services (P) Ltd. vs. DCIT in appeal no. 5462-5465/De1/2012.

7.2 Therefore, applying the above ratio, in the instant case, date of receiving the seized documents and other evidences should be taken as 29.01.2013. By virtue of first proviso to section 153C, date of initiation of search for computing six assessment years has to be counted as if date of search is 29.01.2013. Six assessment years covered u/s 153C would be A.Y. 2007-08 to A. Y. 2012-13. Therefore, impugned assessment years 2006-07 cannot covered within six assessment years as envisaged u/s 153C. Accordingly, Ld. CIT(A) rightly held that the impugned assessment for A. Y. 2006-07 is time barred and not covered u/s. 153C of I.T. Act. Accordingly, the impugned assessment order was rightly held annulled, which

does not need any interference on our part, hence, we uphold the same.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 04/10/2017.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 04/10/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches