

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

I.T.A. No.1684/DEL/2012		
A.Y. : 2005-06		
M/S SVIL MINES LTD. (AMALGATED COMPANY OF AMALGATING COMPANY M/S TEXEFX MARBLE INDUSTRIES LTD.) E-3, 1 <sup>ST</sup> FLOOR, PHASE-II, MANGOLPURI INDUSTRIAL AREA, NEW DELHI -34 (PAN: AAICS5805Q)	VS.	DCIT, CENTRAL CIRCLE-25, ROOM NO. 331, ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI
<b>(ASSESSEE)</b>		<b>(RESPONDENT)</b>

Assessee by : Sh. Rajiv Saxena, Adv. & Sh.  
Shyam Sunder, Adv.  
Revenue by : Sh. S.S. Rana, CIT(DR)

**ORDER**

**PER H.S. SIDHU : JM**

The Assessee has filed this Appeal against the impugned Order of the Ld. CIT(A)-I, New Delhi relevant to assessment years 2005-06.

2. The grounds raised by the Assessee read as under:-

1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the disallowance of deduction of Rs. 21,611/- claimed u/s. 35D of the Income Tax Act, 1961.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the disallowance of claim of indexation on the sale of property for Rs. 2,32,062/-.
3. The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal.

2.1 Assessee has also raised the issue on the admission of additional grounds of Appeal vide its Application in which the assessee has stated that in view of the settled decision in the case of NTPC 229 ITR 383 (SC), (legal ground can be raised for first time in collateral and second round also). He further stated that the following additional grounds are purely legal and do not require fresh investigation of facts and therefore, the same may be admitted.

*"That Ld. CIT(A) as well as AO erred in law as well as on facts in sustaining or making addition u/s. 153A which was based on no search material.*

*4. It is well settled that the assessee can raise a legal ground or even fresh legal pleas or such legal questions at any stage of appellate proceedings. In support the appellant seeks to rely on the judgments of the Apex court in the case of CIT vs Varas International Pvt. Ltd. reported in 284 ITR 80(SC) and National*

*Thermal Power Co Ltd vs CIT reported in 229 ITR 383 (SC). Recently Hon'ble ITAT Special Bench, Mumbai in the case of M/s All Cargo Global Logistics Ltd vs DCIT, ITA Nos 5018 to 5022 & 5059/M/10 has held that "If pure question of law arises for which facts are on record of the authorities below, such a question allowed to be raised, if it is necessary to do so to assess the correct tax liability."*

*5. There is no fresh material required to decide or adjudicate this ground which is based on pure question of law. The appellant shall be highly grateful if the aforesaid ground is permitted to be urged which had not been raised on account of appropriate invalid legal advice and these are raising pure question of law and facts are already on record and no fresh material is required to be referred to."*

3. Ld. Counsel of the Assessee requested that keeping in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC 229 ITR 383 (SC) and decision of ITAT Special Bench, Mumbai in the case of M/s All Cargo Global Logistics Ltd vs DCIT, ITA Nos 5018 to 5022 & 5059/M/10 (Supra), the aforesaid additional legal grounds raised by the assessee may be admitted and decided first.

4. On the contrary, Ld. DR strongly opposed the admission of additional grounds (legal) raised by the assessee.

5. After hearing both the parties as well as perusing the additional grounds alongwith the orders passed by the Revenue Authorities, we are of the considered view that in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC Limited 229 ITR 383 (Supra) as well as according to decision of the ITAT Special Bench, Mumbai in the case of M/s All Cargo Global Logistics Ltd vs DCIT, ITA Nos 5018 to 5022 & 5059/M/10, the additional grounds raised by the assessee vide its Application placed on record, are purely legal grounds and do not require fresh facts which is to be investigated and goes to the root of the matter. In the interest of justice, we admit the aforesaid additional grounds raised by the assessee, in view of the aforesaid case laws and proceed to decide the additional grounds first.

6. The brief facts of the case are that assessee filed original return of income declaring an income of Rs. 790/- on 29.10.2005. The same was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) at the returned income. In this case a search and seizure operation was conducted u/s. 132 of the Act on 21.3.2007 in Surya Vinayak Group of cases. The assessee company is one of the Group companies of M/s Surya Vinayak Industries Ltd. The Group is headed by Sh. Sanjay Jain and his brother Sh. Rajiv Jain, resident of I-42, Ashok Vihar, Phase-I, New Delhi. The main allegation against this group was

that they had taken a large number of accommodation entries in various group companies by paying cash to the various entry operators. After recording the satisfaction note, a notice u/s. 153A of the Act was issued on 25.9.2009 to the assessee requiring it to file the return of income in the prescribed form. In response thereto, the assessee company vide letter dated 07.10.2009 submitted that the previous return declaring income at Rs. 790/- filed on 29.10.2005 may kindly be deemed as the return of income submitted in response to notice u/s. 153A of the Act. Notice u/s. 143(2) dated 25.9.2009 was issued to the assessee fixing the case for 08.10.2009. In response to the statutory notices u/s. 142(1) & 143(2) of the Act and questionnaire, the A.R. of the assessee attended the proceedings from time to time and filed the details. Thereafter the case was assessed at an income of Rs. 3,76,080/- after making certain disallowances vide his order dated 24.12.2009 passed u/s. 153A/143(3) of the I.T. Act, 1961.

7. Against the aforesaid assessment order dated 24.12.2009, assessee preferred an appeal before the Ld. CIT(A), who vide impugned order dated 05.1.2012 has partly allowed the appeal of the assessee.

8. Aggrieved with the order of the Ld. CIT(A), Assessee is in Appeal before the Tribunal.

9. Ld. Counsel of the assessee draw our attention towards the impugned order as well as assessment order and stated that the issues raised vide additional grounds is relating to upholding the validity of the

order of assessment passed u/s. 153A/143(3) of the I.T. Act, 1961 on 05.1.2012, is squarely covered in favor of the assessee by the decision dated 29.8.2017 of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax-III, Pune vs. Sinhgad Technical Educational Society reported in (2017) 84 taxmann.com 290 (SC) as well as the decisions of the Hon'ble Delhi High Court passed in the case Commissioner of Income Tax vs. Kabul Chawla reported (2016) 380 ITR 573 (Del.) and in the case of Principal Commissioner of Income Tax (Central) -2 vs. Index Securities (P) Ltd. wherein the Hon'ble High Court has held that if the additions are made, but not based on any incriminating material found during search operation, then these additions are not sustainable in the eyes of law. He further stated in the present case the AO has made the addition in dispute in a proceeding under section 153A of the Act without there being any incriminating material found during the course of the search in respect of such addition. He further stated that the additions have no relation with any incriminating material found and undisclosed income in the course of search and as such are bad in law being beyond the scope of jurisdiction u/s. 153A of the I.T. Act and therefore stated that assessment order passed by the AO, is bad in law and is liable to be quashed.

9.1 On the other hand, Ld. DR relied upon the order of the authorities below and stated that the provision of section 153A has rightly been applied in the case of the assessee on the material available with them.

He relied upon the following judgments of the Hon'ble High Courts and hence, requested that the appeal of the Assessee may be dismissed.

- *Pr. CIT v Instronics Ltd.*(2017) 82 taxmann.com 357 (Delhi)
- *Ganpati Fincap Services (P) Ltd. v CIT* (2017) 82 taxmann.com 408 (Delhi).
- *CIT v Super Malls (P) Ltd.*(2016) 76 taxmann.com (Delhi)
- *PCIT v Nau Nidhi Overseas Pvt. Ltd.*(ITA no. 58/2017)(Delhi)
- *SSP Aviation Ltd v DCIT* (20 taxmann.com 214) (Delhi)
- *Kamleshbhai Dharamshibhai Patel v CIT* (2013) 31 taxmann.com 50 (Gujrat)
- *Rajesh Sunderdas Vaswani v ACIT*(2016) 76 taxmann.com 311 (Gujarat)
- *CIT v Classic Enterprises* 35 taxmann.com 244 (Allahabad)

10. We have heard both the counsel and perused the relevant records available with us, especially the orders of the revenue authorities and the cases referred by the Ld. Counsel of the Assessee as well as by the Ld. CIT(DR). We find that the additions made by the AO are beyond the scope of section 153A of the Income Tax Act, 1961, because no incriminating material or evidence had been found during the course of search so as to doubt the transactions. It was noted that in the entire assessment order, the AO has not referred to any seized material or other material for the year under consideration having being found during the course of search in the case of assessee, leave alone the question of any incriminating material for the year under appeal. We also find that the case laws cited by the Ld. CIT(DR) are not relevant to the present case. Therefore, in our considered opinion, the action of the AO is based upon conjectures and surmises and hence, the additions made is not sustainable in the eyes of law, because this issue in dispute is now no

more res-integra, in view of the decision dated 29.08.2017 of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax-III, Pune vs. Sinhgad Technical Educational Society reported in (2017) 84 taxmann.com 290 (SC) as well as the decisions of the Hon'ble Delhi High Court passed in the case Commissioner of Income Tax vs. Kabul Chawla reported (2016) 380 ITR 573 (Del.) and in the case of Principal Commissioner of Income Tax (Central) -2 vs. Index Securities (P) Ltd.

- The Hon'ble Supreme Court of India in the case of ***Commissioner of Income Tax-III, Pune vs. Sinhgad Technical Educational Society reported in (2017) 84 taxmann.com 290 (SC)*** has held as under **(Heads Notes):-**

"Section 153C of the Income Tax Act, 1961 – Search and seizure – Assessment of income of any other person (Validity of notice) – Assessment years 2000-01 to 2003-04 – Whether as per provisions of section 153C, incriminating material which was seized had to pertain to assessment years in question – Held, yes – Whether where loose papers found and seized from residence of President of Assessee, an educational institution, indicating capitation fees received by various institutions run by assessee did not establish co-relation document-wise with assessment years in question, notice issued

under section 153C had rightly been quashed and set aside – Held, yes (in favour of assessee).”

- The Hon'ble Delhi High Court in the case of ***Commissioner of Income Tax vs. Kabul Chawla (2016) 380 ITR 573 (Del.)*** has held 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 ITA Nos. 707, 709 and 713 of 2014 of 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 ITA Nos. 707, 709 and 713 of 2014 of 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.*

*38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."*

- The Hon'ble Delhi High Court in the case of **Principal Commissioner of Income Tax vs. Index Securities Ltd. 86 taxmann.com 84 (Delhi)** has held as under **(Heads Notes) :-**

*"Section 153C of the Income-tax Act, 1961 - Search and seizure - Assessment of any other person (Condition precedent - Position prior to 1-6-2015) - Assessment years 2007-08, 2008-09 and 2010-11 - Whether essential jurisdictional requirement for assumption of jurisdiction under section 153C (prior to its amendment with effect from 1-6-2015) qua 'other person' is that seized documents forming basis of satisfaction note must not merely 'pertain' to other person but must belong to 'other person' - Held, yes - Whether in order to justify assumption of jurisdiction under section 153C, documents seized must be incriminating and must relate to each of assessment years whose assessments are sought to be reopened - Held, yes - During course of assessment proceedings in case of a company, a number of documents were found and seized which contained trial balance and balance sheet of assessee company for period 1-4-2010 to 13-9-2010 - Though seized documents might pertain to assessee, same was*

*not proved to belong to assessee - Further, said documents did not relate to relevant assessment years and secondly, they could not be said to be incriminating - Whether since, both essential requirements for assumption of jurisdiction under section 153C were not met, issuance of notice was unjustified - Held, yes [In favour of assessee]."*

11. Respectfully following the precedents as aforesaid, as aforesaid, we quash the assessment made u/s. 153A/143(3) of the I.T. Act, 1961 and decide the legal issue in favour of the Assessee and accordingly, allow the Assessee's Appeal. Since we have already quashed the assessment, therefore, the other issues have become academic in nature, hence, need not be adjudicated.

12. In the result, Assessee's Appeal stands allowed.

Order pronounced in the Open Court on 07/12/2017.

**Sd/-**  
**[L.P. SAHU]**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

*Date 07/12/2017*  
**SRBHATNAGAR**

**Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches