

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.2160/Del/2015
Assessment Year: 2007-08**

**Anjali Promoters & Developers P.Ltd. , vs Asstt. Commissioner of Income-tax,
M-11, Middle Circle, Connaught Circus, Central Circle – 32, New Delhi.
New Delhi.
(PAN: AAECA2785M)**

(Appellant)

(Respondent)

Appellant by: Shri Piyush Kaushik, Advocate and
Shri Ajay Bhagnani, FCA
Respondent by: Smt. Aparna Karan, CIT DR

**Date of Hearing: 03.05.2018
Date of Pronouncement: 08 .05.2018**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 29.12.2014 in Appeal No. 305/13-14/1456 for the assessment year 2007-08 passed by the learned Commissioner of Income-tax (Appeals)-XXX, New Delhi (for short hereinafter called as "the learned CIT(A)'), the assessee preferred this appeal.

2. Brief facts of the case relevant for the disposal of this appeal are that the assessee is an associate of BPTP group of companies. A search and seizure

operation was carried out at various premises of M/s BPTP on 15.11.2017. The assessee was not covered under that search and no proceedings u/s 153A of the Income-tax Act, 1961 ("the Act") were initiated against them. However, while framing the assessment u/s 143(3) of the Act for the Asstt. Year 2007-08, the AO utilized the seized documents of M/s BPTP Ltd. and made an addition of Rs.1,00,21,779/- on account of brokerage and unaccounted transactions.

3. There was another search carried out on 7.12.2010 and finally concluded on 5.2.2011. Pursuant thereto, notice u/s 153A of the Act was issued to the assessee on 1.1.2001 pursuant to which the assessee filed their return of income on 30.1.2012 declaring a total income of Rs.1,91,140/-. After considering the submissions of the assessee to the detailed questionnaire dated 3.8.2012, the AO repeated the addition that was made u/s 143(3) of the Act and passed the order dated 28.3.2013 u/s 153A of the Act.

4. When the assessee challenged this order dated 28.3.2013 before the learned CIT(A), he allowed the appeal in part confirming all the additions except to the extent of Rs.5,83,679/-. Hence, the assessee is in appeal before us contending that nothing incriminatory was found during the search dated 7.12.2010 concluded on 5.2.2011. Though the revenue claims to have seized certain incriminatory documents in the search on 15.11.2017, the limitation to use such documents was expired u/s 153B of the Act, as such, the learned AO cannot make use of such documents relatable to the search dated 15.11.2007 to the case of the assessee inasmuch as no proceedings u/s 153C were initiated against the assessee pursuant to the search dated 15.11.2007. On this premise, learned AR argued that the addition cannot be sustained.

5. Per contra, it is the argument of the learned DR that the present proceedings initiated pursuant to the search u/s 132 of the Act on 7.12.2010 are valid proceedings u/s 153 A of the Act, as such, the documents seized in the earlier search can be used in the present proceedings. According to the learned DR, though the validity of the proceedings u/s 153A is covered under the subsequent search, still the AO has the power to assess or re-assess total income of the assessee u/s 153A of the Act by making use of the documents that were found during the earlier search. On this ground, learned DR submitted that there is no strength in the arguments advanced on behalf of the assessee and the appeal is liable to be dismissed.

6. We have gone through the material on record and submissions advanced on either side. Insofar as the factual matrix of the case is concerned, there is absolutely no dispute. The assessee is not covered by the search dated 15.11.2007 and no proceedings u/s 153A or 153C were initiated against the assessee. However, while framing the assessment u/s 143(3) of the Act, the learned AO made use of the documents that were unearthed during the search dated 15.11.2007. It is an admitted fact that the limitation to use the documents seized under the search dated 15.11.2007 had already been expired. While the matter stood thus, there was another search u/s 132 of the Act between 7.12.2010 and 5.2.2011, but no documents in respect of the assessee was found. Nevertheless learned AO initiated the proceedings u/s 153A of the Act and concluded them by order dated 31.12.2009.

7. In these circumstances, the assessee contends that the revenue circumvented the procedure established under law by conducting another search

merely to make use of the documents found on 15.11.2007 which otherwise could not have been used against the assessee because of law of limitation u/s 153B of the Act. Revenue does not contradict the contention of the assessee that in spite of search between 7.12.2010 and 5.2.2011, nothing incriminatory was found against the assessee and for the purpose of order dated 28.3.2018 u/s 153A of the Act, the documents relating to the search dated 15.11.2007 are made use of. Relevant portion of the order dated 28.3.2013 is as follows:

“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. Consequently, notice u/s 153A of the Income Tax Act, 1961 (hereinafter called the Act) was issued on 11/01/2012 directing the assessee to file its return of income within 15 days of service of the notice. This notice was duly served upon the assessee by the speed post receipt number ED 55952603 3IN. In response to this notice u/s 153A of the Act the assessee filed its return of income on 27/01/2012 declaring total income at Rs. 2,51,850/-. A detailed questionnaire dated 30/07/2012 was issued and was duly served upon the assessee by speed post. In response to the said notices from time to time, Shri Ajay Bhagwani, CA, attended the office on behalf of assessee & submitted the details clarifications as placed on record. The details submitted were discussed with him.

Assessment in this case has been completed earlier u/s 143 (3) of the Income-tax Act 1961 at an income of Rs.1,00,21,279/- after making addition of Rs. 5,83,679/- on account of disallowance out of brokerage and Rs. 91,85,750/- on account of unaccounted transactions as per seized papers. Vide order sheet entry dated 28/02/2013 the assessee was asked to explain as to why the above referred additions made in the earlier assessment, should not be made again. In response thereto, the assessee vide its letter dated 04/03/2013 filed its submission. The reply of the assessee has been considered. After discussion the addition made in the earlier assessment order is accepted in toto.

Assessed at income of Rs. 1,00,21,279/- u/s 153A of the Act. Charge

interest u/s 234 A/B/C/D as per law. Computation of income tax & interest is as per ITNS 150 enclosed. Issue requisite documents.

8. It is, therefore, clear that no addition is made in the order dated 28.3.2013 over and above the addition made in the order dated 31.12.2009 u/s 143(3) of the Act. Ld. AO simply repeated the additions made in the order dated 31.12.2009. In these circumstances, we are of the considered opinion that it is a fit case to be remanded back to the Ld. AO to take a fresh view subject to the result of the appeal against the order dated 31.12.2009 by the appellate forums. Hence, we remand the matter to the file of the AO to take a proper view depending upon the result of the appeals preferred against the order dated 31.12.2009 u/s 143(3) of the Act.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 8th May, 2018.

Sd/-

(G.D. AGRAWAL)
PRESIDENT

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 8th May, 2018
'VJ'

Copy forwarded to:

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

By order

Asstt. Registrar