

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA ACCOUNTANT MEMBER, AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 3212/DEL/2015  
[Assessment Year: 2005-06]

The A.C.I.T  
Central Circle-30  
New Delhi

Vs.

M/s Rangoli Buildtech Pvt Ltd  
1105, Akash Deep Building  
Barakhamba Lane,  
Connaught Place, New Delhi

PAN : AACCR 8695 P

[Appellant]

[Respondent]

Date of Hearing : 19.06.2018  
Date of Pronouncement : 25.06.2018

Assessee by : Dr. Rakesh Gupta, Adv  
Shri Dipesh Garg, Adv

Revenue by : Smt. Meeta Singh, CIT- DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the Revenue is directed against the order dated 27.01.2015 of Commissioner of Income Tax [Appeals] - 30, New Delhi pertaining to assessment year 2005-06.

2. The only grievance of the Revenue is that the Id. CIT(A) erred in deleting the addition by holding that the jurisdiction u/s 153C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] is not assumed properly. The Revenue is further aggrieved by the fact that the Id. CIT(A) allowed appeal of the assessee without going into the merits of the case.

3. Briefly stated, the facts of the case are that a search and seizure operation u/s 132 of the Act was conducted on 22.03.2011 in the Amtek Group of cases. Documents belonging to the assessee were also found and seized from the premises. Accordingly, notice u/s 153C of the Act was issued to the assessee on 08.11.2012. Satisfaction note was supplied to the assessee on 26.10.2012. In response to the said notice, the assessee filed return of income declaring income at Rs. NIL on 05.02.2013.

4. On perusing the seized documents, the Assessing Officer came to know that the assessee has made advance payment to various farmers for purchase of land totaling to Rs. 2.06 crores out of which payment in cash was Rs. 1.29 crores. The assessee was asked to explain the transaction.

5. In its reply, the assessee explained that these documents contained details of advances made to different parties for land. The details contained the name of the party, area of land to be sold, total amount agreed upon and amount paid in advance. It was explained that the said payments are in the balance sheet of the concerned company.

6. After considering the detailed submissions made by the assessee, the Assessing Officer observed as under:

*“4.3 The reply of the assessee has been duly considered and it is particulars to mention here that the same documents in which cash payments of Rs. 1,29,36,400/-made different persons has been shown were again found and seized during the course of larch u/s 132 of the IT Act, 1961 in the case of Amtek group of cases on 22-03-2011 rom its premises at 9, Tolstoy Marg, Connaught Place, New Delhi-110001 and on the basis of which the addition of Rs. 48,28,400 was already made by the DCIT Centre Circle-18 New Delhi u/s 153C of the I.T. Act on 31.12.2010, mentioned below in point no- (a). On verification it was found by then assessing officer that sum of the payments were twicely booked in the seized documents as also clarified by the assessee. Therefore the total of the figures mentioned in the seized documents was actually came to Rs. 48,28,400/- against the total amount of Rs. 1,29,36,400/- shown in the seized documents which has already been added to the income of the assessee. Hence, no double addition is required to be made again on the*

*basis of same seized documents.*

4.4 *In this case the assessment was already completed u/s 153C of the I.T.Act,1961 at the income of Rs.79,42,030/- on 31-12-2010 against the original returned income of Rs. NIL by the DCIT Centre Circle-18 New Delhi by making following additions`.-*

- a) *Rs 48,28,400/- under section 69 of the IT Act, 1961 on account of cash payments made outside the books of accounts as per seized documents.*
- b) *Rs.23,40,625/- under section 69 of the IT Act, 1961 on account of cash payments made outside the books of accounts as per seized documents.*
- c) *Rs. 3,18,600/- under section 69 of the IT Act, 1961 on account of cash payments made outside the books of accounts as per seized documents.*
- d) *Rs. 3,12,800/- under section 69 of the IT Act, 1961 on account of cash per seized documents payments made outside the books of accounts as per seized documents assessee filed appeal against the order u/s 153C before the CIT(A) where relief of Rs. 28,10,825 has been given to the assessee by CIT(A) vide order dated 09- 04- 2012, hence the income after giving appeal effect which arrived at Rs. 51,31,200/- is being considered for assessing its income.*

*After discussion assessment is completed at the income of Rs. 51,31,200/-".*

7. Aggrieved by this, the assessee carried the matter before the ld. CIT(A) and vehemently contended that the Assessing Officer has wrongly assumed jurisdiction u/s 153C of the Act. It was strongly contended that the satisfaction note is not recorded in the file of the searched person, therefore, jurisdiction assumed u/s 153C of the Act is not in accordance with law.

8. After considering the facts and submissions and decision of the coordinate bench in the case DSL Properties Pvt. Ltd in ITA No. 1344/DEL/2012 which followed the judgement of the Hon'ble Supreme Court in the case of Manish Maheshwari 289 ITR 341, the ld. CIT(A) was convinced that Assessing Officer has not properly assumed jurisdiction u/s 153C of the Act and accordingly quashed the assessment order so framed. Since the ld. CIT(A) has quashed the assessment on assumption of wrong jurisdiction, he did not think it fit to go into the merits of the case. Aggrieved by this, the Revenue is before us.

9. The ld. DR strongly relied upon the findings of the Assessing Officer.

10. Per contra, the ld. counsel for the assessee pointed out that the notice u/s 153C of the Act was issued to the assessee on 08.11.2012, therefore, the impugned assessment order is beyond the scope of

provisions of section 153C of the Act. It is the say of the counsel that the Assessing Officer himself admitted that the additions are being made on the basis of very same documents which were considered while framing original assessment and the additions made thereon were deleted by the Tribunal in ITA No. 3304/DEL/2012 vide order dated 14.07.2016. The ld. counsel for the assessee concluded by stating that there is no infirmity in the findings of the first appellate authority and the appeal deserves to be dismissed.

11. We have given thoughtful consideration to the orders of the authorities below. There is no doubt that the notice u/s 153C of the Act was issued to the assessee on 08.11.2012. The Hon'ble High Court of Delhi in the case of RRJ Securities Pvt. Ltd 380 ITR 612 has held that limitation will start on the date of recording of satisfaction that incriminating material belonged to third person. Since the date of notice in the case in hand is 08.11.2012, assessment framed u/s 153C of the Act for assessment year 2005-06 is beyond the scope of provisions of section 153A/153C of the Act, in the light of ratio laid down by the Hon'ble Delhi High Court [supra]. Relevant finding of the Hon'ble Delhi High Court reads as under :

*" That in any case the date of recording of satisfaction u/s 153C was September 8,2010. The assessments made in respect of assessment years 2003-04 and 2004-05 would be beyond the period of six assessment years. The assessments for the assessment years 2003-04 and 2004-05 were outside the scope of section 153C and the Assessing Officer had no jurisdiction to make an assessment of the assessee's income for those years."*

12. For the sake of completeness of the adjudication and as mentioned elsewhere, the Assessing Officer himself admitted that the additions have been made on the basis of same documents which were considered while farming earlier assessment order u/s 153C of the Act. As mentioned elsewhere, that assessment order has been set aside by the Tribunal while allowing the appeal of the assessee, therefore, addition is based upon the very same documents cannot be sustained in any case.

13. In the result, the appeal of the Revenue in ITA No. 3212/DEL/2015 is dismissed.

The order is pronounced in the open court on 25.06.2018.

Sd/-

[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 25<sup>th</sup> June, 2018

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	19.06.2018
Date on which the typed draft is placed before the dictating Member	19.06.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	