

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

**BEFORE SHRI G. S. PANNU, AM &  
SHRI SANDEEP GOSAIN, JM**

**आयकरअपीलसं./ I.T.A. No. 6418/Mum/2012(AY 2004-05)**

ITO (IT) 4(1) 139, 1 <sup>st</sup> floor, Scindia House, Ballard Estate, Mumbai Pin-	<b><u>बनाम/</u></b> Vs.	Maya C. Mehta 51, Shivner 84, Nepeansea Rd, Mumbai-400036
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AJCPM4026B		

**&**

**Cross Objection No. 290 & 295/Mum/2013(AY2004-05)**

Maya C. Mehta 51, Shivner 84, Nepeansea Rd, Mumbai-400036	<b><u>बनाम/</u></b> Vs.	ITO (IT) 4(1) 139, 1 <sup>st</sup> floor, Scindia House, Ballard Estate, Mumbai Pin-
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अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Tokepgen, DR
प्रत्यर्थीकीओरसे/ <b>Respondentby</b>	:	Shri Deepak Tralshawala

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	28/02/2018
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	28/02/2018

आदेश / ORDER

**Per Shri Sandeep Gosain, Judicial Member:**

The present Appeal filed by the revenue and two Cross Objections filed by the assessee are against the order of Commissioner of Income Tax (Appeal) – 11, Mumbai dated 02.07.12 for AY 2004-05.

2. Since all the issues involved in these appeal /cross objections are common, therefore, they have been clubbed, heard together and a consolidated order is being passed for the sake of convenience and brevity.

**ITA No. 6418/Mum/2012 (AY 2004-05)**

3. First of all we take up appeal bearing ITA No. 6418Mum/2012 filed by the revenue as lead case.

4. The brief facts of the case are that the assessee is a foreign citizen and filed her return of income declaring total income of Rs. at NIL on 01.09.14. Subsequently AO issued notice u/s 153C

/153A of the Act on 25.03.11 and served the same on 26.03.11.

The background for issuance of notice is contained in para no. 2 of the orders passed by AO. The AO also provided the copies of satisfaction recorded while issuing notice u/s 153C/153A, documents, statements and seized materials received from the ACIT Cen. Cir 24 & 26, Mumbai on 07.09.11.

In response of notice u/s 153C/153A of the Act, assessee filed the return on 20.04.11 and declared income at Rs. NIL for AY 2004-05. The AO after considering the submissions of the assessee had assessed the income of the assessee at Rs. 1,93,57,051.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties had partly allowed the appeal of the assessee by holding that the assessment order passed by AO is barred by limitation.

Now before us, the revenue has preferred the present appeal.

5. The sole ground raised by the revenue relates to challenging the order of Ld. CIT(A) in quashing the assessment order by holding the same as time barred.

6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A) which is contained in para no. 3 in its order. The operative portion of the order of Ld. CIT(A) contained in para no. 3.2 and 3.3 of its order and the same is reproduced below:-

*3.2 Drawing parallel with the said order, the Ld. AR has argued that seized documents have been received by the AO on 24.03.2011 which falls in previous year 2010-11 and the relevant assessment year is 2011-12. Therefore, the assessment years, for which notice u/s.153C could be validly issued, are A.Ys.2010-11, 2009-10, 2008-09, 2007-08, 2006-07 & 2005-06 and, therefore, A.Y.2004-05 is beyond the scope of section 153C in this case.*

*3.3 The facts of the case and submission of the Ld. AR has been examined. The AO has clearly recorded in para 2 of the order that seized material was received from the ACIT, Mumbai on 24.03.2011 and notice u/s.153C for A.Y.2004-05 was issued on 25.03.2011. Applying the order of Hon'ble ITAT, Ahmedabad in case of Vijay M. Vimawal, the present case is squarely covered by the said order of Hon'ble ITAT and therefore, it is hereby held that the AO was not empowered to issue notice u/s.153C for A.Y.2004-05 since the seized documents were handed over to him on 24.03.2011, i.e. relevant to A.Y.2011-12 and previous year 2010-11. The AO could reopen the six preceding assessment years i.e .2010-11, 2009-10, 2008-09, 2007-08 and 2005-06. Thus AY 2004-05 is barred by limitation of time in this case. Thus, second ground of appeal is hereby allowed and the assessment order is hereby quashed.*

After having gone through the facts of the present case, arguments addressed by the parties, judgment cited before us and the orders passed by revenue authorities, we find that Ld. CIT(A) after appreciating the facts of the present case has rightly concluded that the seized documents were received by the AO on 24.03.11, therefore the assessment years, for which notice u/s 153C would have been validly issued were AY 2010-11, 2009-10, 2008-09, 2007-08, 2006-07 and 2005-06 and thus the AY

2004-05 i.e. year under consideration is beyond the scope of section 153C in the present case.

In the present case, the seized material was received by the AO from ACIT, Mumbai on 24.03.11 and notice u/s 153C for AY 2004-05 was issued on 25.03.11, therefore while applying the decision rendered by the Coordinate Bench of Hon'ble ITAT in the case of **Vijay M. Vimawal**, it was held that reopening the assessment for AY 2004-05 is barred by limitation of time in this case.

No other facts or contrary judgments have been brought on record before us by the Ld. DR in order to controvert or rebut the findings recorded by the Ld.CIT (A). Moreover, there are no reasons for us to deviate from the findings recorded by the Ld. CIT (A). Therefore, we are of the considered view that the findings recoded by the Ld. CIT (A) are judicious and are well reasoned. Accordingly, we uphold the same. Resultantly, this ground raised by the Revenue stands **dismissed**.

7. In the net result, the appeal filed by the revenue stands **dismissed.**

**Cross Objection No. 290 & 295/Mum/2013 (AY 2004-05)**

8. Now we take up Cross Objections No. 290 & 295/Mum/2013 (AY 2004-05) filed by the assessee. Since we have already decided the appeal filed by the revenue in ITA No. 6418/Mum/12 and upheld the finding of Ld. CIT(A) wherein the reopening of assessment for the year under consideration is upheld as barred by limitation of time as the AO has wrongly assumed jurisdiction u/s 153C of the Act, therefore in view of our findings in ITA No.6418/Mum/12, the present CO becomes infructuous. Resultantly these cross objections filed by the assessee stands dismissed.

9. In the net result, the appeal as well as Cross Objections filed by the revenue as well as assessee stands **dismissed**.

*Order pronounced in the open court on 28<sup>th</sup> Feb 2018.*

Sd/-

Sd/-

(G. S. Pannu)

(Sandeep Gosain)

लेखासदस्य / Accountant Member

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :

28.02.2018

*Sr.PS. Dhananjay*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**

(Dy./Asstt.Registrar)

**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**