

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,  
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 3785/DEL/2015  
[A.Y 2009-10]**

**&**

**ITA No. 3786/DEL/2015  
[A.Y 2010-11]**

Shri Sanjay Thakur  
24/15, Lal Quarter  
Ghaziabad

**Vs.**

The D.C. I.T.  
Central Circle  
Ghaziabad

PAN : AIRTP 9741 P

**ITA No. 3787/DEL/2015  
[A.Y 2009-10]**

**&**

**ITA No. 3788/DEL/2015  
[A.Y 2010-11]**

Shri Vishnu Bhagwan  
118, Sukhi Mal, Dasna Gate  
Ghaziabad

**Vs.**

The D.C. I.T.  
Central Circle  
Ghaziabad

PAN : AKEPB 0169 K

[Appellant]

[Respondent]

**Date of Hearing : 10.07.2018  
Date of Pronouncement : 12.07.2018**

Assessee by : Shri Kapil Goel, Adv  
Revenue by : Shri Vijay Verma, CIT- DR

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

ITA No. 3785/DEL/2015 and ITA No. 3786/DEL/2015 are appeals by the assessee preferred against two separate orders of the Commissioner of Income Tax [Appeals], Ghaziabad dated 31.03.2015 pertaining to A.Ys 2009-10 and 2010-11. ITA No. 3787/DEL/2015 and ITA No. 3788/DEL/2015 are appeals by a different assessee preferred against the order of the Commissioner of Income Tax [Appeals], Ghaziabad dated 31.03.2015 pertaining to A.Ys 2009-10 and 2010-11.

2. Grievance of the appellants is common in all these captioned appeals. Therefore, all these appeals were heard together and are being disposed off by this common order for the sake of convenience and brevity.

3. The common grievance is that once the CIT(A) has held that action of the AO in assuming jurisdiction u/s 153C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'. was not valid thereby quashing the assessment order, the CIT(A) was not justified in issuing following directions to the AO:

*“AO is however directed to take action u/s 147/148 of the Act.”*

4. The appellants contend that while directing to AO to initiate proceedings u/s 147/148 of the Act, the CIT(A) has exceeded his jurisdiction u/s 250/251 of the Act.

5. Briefly stated, the facts of the case are that the assessment has been framed u/s 153C r.w.s 143(3) of the Act and additions were made on account of alleged accommodation entries provided by the appellant to Shri Ajay Sharma and Shri Pankaj Sharma. Since this fact came to the notice of the Revenue on the basis of search and seizure operations and enquiries, notice u/s 153C of the Act was issued. The appellants filed the respective returns of income. Assessment was completed after making addition on account of deposits found in the bank accounts. Assessment was challenged before the CIT(A). It was strongly contended that the AO had no jurisdiction in framing assessment u/s 153C of the Act. It was brought to the notice of the first appellate authority that this satisfaction note does not meet the requirement of section 153C of the Act. After considering the facts and submissions, the CIT(A) found that in the satisfaction note there is no reference to any seizure of assets or documents nor it is clear which

documents/money/books of account seized from the bank belong to the appellant. The CIT(A) held that the action of the AO in assuming jurisdiction u/s 153C of the Act is not valid. Accordingly, proceedings u/s 153C of the Act were quashed.

6. The bone of contention is the concluding findings of the CIT(A) and the same read as under:

*“The AO is however directed to take action u/s 147/148 of the Act.”*

7. Before us, the ld. AR vehemently contended that the CIT(A) has exceeded his jurisdiction in as much as once he has quashed the assessment order framed u/s 153C of the Act, he had no powers in giving directions to the AO to proceed u/s 147/148 of the Act.

8. Per contra, the ld. DR strongly stated that the provisions of section 150(1) have been enacted in the statute so that the AO gets time to issue notice u/s 148 of the Act for the purpose of making an assessment or reassessment or recomputed in consequence of or to give effect to any finding or direction contained in an order passed by

any authority in any proceeding under this Act by way of appeal, reference or revision. It is the say of the Id. DR that since the assessment order was quashed u/s 153C of the Act, there is no error or infirmity in the order of the CIT(A) in directing the AO to take action u/s 147/148 of the Act.

9. We have given thoughtful consideration to the orders of the authorities below. It is not in dispute that the assessment order framed u/s 153C of the Act was quashed by the first appellate authority. Before the amendment by Finance [No. 2] Act, 2014 the provisions of section 251 read as under:

**“In disposing of the appeal, the Commissioner (Appeals) as the case may be, has following powers :**

- (i) to confirm, reduce, enhance or annual the assessment**
- (ii) to confirm, cancel, enhance or reduce the penalty imposed ; and**
- (iii) in other cases to pass such orders in the appeal as he thinks fit.**

**The Commissioner (Appeals), as the case may be, will not pass any order enhancing the tax liability or a penalty or reducing the amount of refund without giving a reasonable opportunity to the appellant of being heard. He may pass orders on matters which may not have been referred to him.**

***Explanation.* In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, even if such matter was not raised before by the appellant [Section 251].”**

10. It can be seen from the above that this provision empowers the appellate authority in an appeal against the order of assessment to confirm, enhance or annul the assessment. Before 1.6.2001, there was one more power and the same reads as under:

*“Or he may set aside the assessment and refer the case back to the AO for making fresh assessment in accordance with the directions.”*

11. The CBDT in its Circular has also clarified that the power of the appellate commissioner does not include the power to set aside the assessment.

12. In our considered opinion, action of the first appellate authority has no sanction of law as powers of the CIT(A) have been set out in section 251 of the Act. The CIT(A) has more power to send the matter back to the file of the AO for making fresh decision on the issue. Once the assessment order was quashed the CIT(A) has transgressed the power given to him u/s 251(1) of the Act by giving direction to the AO to take action u/s 147/148 of the Act. Such directions are uncalled for and deserve to be expunged from the findings of the first appellate authority. We accordingly direct the AO to read the order of the first

appellate authority without direction to take action u/s 147/148 of the Act.

13. Before parting, the ld. DR in support of his claim that the provisions of section 151 of the Act squarely apply, has relied upon various judicial decisions. We have carefully considered all the judicial decisions relied upon by the ld. DR. We find that all the decisions relied upon by the ld. DR are misplaced as they were delivered on differed set of facts and in a different context.

9. In the result, all the four appeals of both the assesseees are allowed.

**The order is pronounced in the open court on 12.07.2018.**

Sd/-

**[KULDIP SINGH]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 12<sup>th</sup> July, 2018

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
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