

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No.4548/Del/2015
Assessment Year: 2007-08

M/s. Mascot Buildwell Pvt. Ltd., B-49, LGF, Defence Colony, New Delhi	Vs.	ACIT, Cent. Circle -14, New Delhi
PAN :AAECM7631E		
(Appellant)		(Respondent)

Assessee by	Shri Salil Agarwal, Adv. & Sh. Shailesh Gupta, CA
Department by	Shri Ravi Kant Gupta, Sr. DR

Date of hearing	01.08.2018 & 02.08.2018
Date of pronouncement	13.08.2018

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against the order dated 5th May, 2015, passed by the learned CIT(A)-XXVI, New Delhi (in short 'the CIT(A)') for assessment year 2007-08, raising the following grounds of appeal:

- The learned CIT(A) erred on facts and in law is passing ex-parte order against the assessee for failure on the part of the counsel of the assessee to appear on the date of hearing due to his personal difficulties and without intimation to the assessee company, thereby depriving assessee from the opportunity of being heard and natural justice.*

2. *The learned CIT (A) erred on facts and in law in confirming the addition of Rs.93,00,000/- made by learned AO u/s 68, by an ex-parte appellate order on mere technical ground of non-appearance and procedural irregularity by counsel of the assessee and without considering the issue on merits i.e. identity, creditworthiness and genuineness of the following parties evidenced from documents on records:
(i) BNB Construction Pvt. Ltd. - Rs.56,00,000/-
(ii) Rajan Gupta - Rs.9,00,000/-
(iii) Bhupinder Singh- Rs.24,00,000/-
(iv) Manoj Sharma- Rs.4,00,000/-*
 3. *The learned CIT(A), erred in law in confirming addition of Rs.93,00,000/- without appreciating that fact that initial onus of the assessee were duly discharged and there are no contrary findings to sustain addition other than the procedural/behavioral fault on the part of counsel of the assessee.*
 4. *Any other grounds, including the ground of impropriety and injustice to the assessee that may be raised at the time of hearing with the permission of Hon'ble Bench.*
- 2.** During the hearing of the case on 01.08.2018, the assessee filed a letter requesting for admitting additional ground, which is reproduced as under:

“That the assessment order passed by learned Assessing Officer is without jurisdiction and void-ab-initio and is liable to be quashed, as proceedings initiated under Section 153C of the Act are without satisfying the statutory conditions envisaged under the Act and are thus, without jurisdiction.”

2.1 A copy of the additional ground was provided to the learned CIT(DR) and the matter was adjourned for 02.08.2018 and heard accordingly. The facts in brief of the case are that a search and seizure action was carried out in Kalra Group of cases including

Consortium Securities Pvt. Ltd. on 28.07.2011. During the search operation in the case of M/s. Consortium Group of cases certain documents belonging to the assessee were found and seized and consequently proceedings under Section 153C of the Income-tax Act, 1961 (for short 'the Act') were commenced by way of issue of notice on 12.08.2013. The assessment was completed after making addition of Rs.93 lacs under Section 68 of the Act. Before the learned CIT(A), the assessee challenged jurisdiction assumed under Section 153C of the Act as well as contested the addition on merit, however, could not succeed. Aggrieved, the assessee is before the Tribunal.

2.2 Before us, the learned counsel submitted that the additional ground raised by the assessee should be admitted in view of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT, reported in 229 ITR 383. He submitted that all the facts in respect of the ground are already available on record and no new investigation of the facts is required and, therefore, the additional ground raised should be admitted. He also referred to the decision of the Hon'ble Supreme court in the case of Jute Corporation of India Ltd. Vs. CIT, reported in 187 ITR 688 (SC), wherein it is held that the appellate authority has jurisdiction to permit the appellant to raise an additional ground, if the grounds so raised, could not have been raised when the return was filed or when the assessment was made and the ground became available on account of change of circumstances or law.

2.3 On the contrary, learned CIT (DR) opposed the admission of the additional ground and submitted that the assessee is claiming to nullify the assessment on technical ground which is clearly

untenable and shows the shifting of stand of the assessee to wriggle out of payment of taxes by not arguing on merit.

2.4 We have heard the submissions of both the parties on the issue of admission of the additional ground. In our opinion, the facts in respect of date of search and recording of satisfaction note under Section 153C of the Act are available on record and, therefore, the investigation of the new facts is not required. In view of the above, following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. (supra), we admit the additional ground raised by the assessee.

3. The additional ground raised goes to the root of the matter and, therefore, we have heard both the parties, first on this ground.

3.1 Learned counsel for the assessee submitted that in view of the decision of the Hon'ble Delhi High court in the case of Pr. CIT Vs. Sarwar Agency Pvt. Ltd., reported in (2017) 397 ITR 0400 (Delhi), the six assessment years for reopening under Section 153C of the Act should have been taken as six assessment years preceding the year in which books of accounts or other documents have been handed over by the Assessing Officer of the searched person to the Assessing Officer of the assessee. Further, in the case of Commissioner of Income Tax-7 Vs. RRJ Securities Ltd. (2016) 380 ITR 612 (Del), the Hon'ble Delhi High Court has held that where the Assessing Officer of the searched person as well as the assessed person is the same, then the date of recording satisfaction should be reckoned as the date for calculating those preceding assessment years. The learned counsel submitted that in this case, satisfaction note under Section 153C of the Act was recorded on 08.08.2013 and,

therefore, six preceding assessment years in this case should be taken from assessment years 2008-09 to 2013-14. He further submitted that the assessment year under consideration before us is 2007-08 which is beyond the six preceding assessment years which could have been reopened under Section 153C of the Act and, therefore, the assessment completed by the Assessing Officer invoking provision of section 153 of the Act is beyond jurisdiction and liable to be quashed.

3.2 On the contrary, the learned CIT (DR) filed a written submission, contents of which are reproduced as under:

“The claim of the assessee that assessment for the relevant year is time barred without basis and it is submitted that assessment has been rightly framed within statutory time limit u/s 153A(l)(b) of the Act.

153C. —[(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A :]

Provided that *in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to 9*[subsection (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :]*

Assessee has quoted the first proviso to Section 153C for reaching the conclusion that for reopening of 6 years, the relevant date shall be the date of receiving of books of accounts i.e. 29.08.2013. However if one reads the 153C it is very clear in 153C(1) that "Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A".

The first proviso to section 153C is referring to the **word "the date of initiation of the search" and "in the second proviso to [sub-section (1) of] section 153A"**. The second proviso to 153A (1) reads as under:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] referred to in this sub-section pending on **the date of initiation of the search** under section 132 or making of requisition under section 132A, as the case may be, **shall abate**.

Thus the second proviso is referring to the abatement proceedings and exact words the date of initiation of the search"" are mentioned in this proviso.

Section 153A(1) deals with the years of reopening in case of search proceedings and as per section 153C(1) after the satisfaction, the AO shall proceed in accordance with provisions of 153A (1) which mentions as

Assessment in case of search or requisition.

153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years ^[and for the relevant assessment year or years] referred to in clause

- (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made m[andfor the relevant assessment year or years] :*

Thus 153A(1) (b) is very clear that AO shall "assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted". No where the section contains the words "the date of initiation of the search" which are referred to by the first proviso to section 153C.

Hence, the first proviso to section 153C is only referring to the abatement of existing proceedings as mentioned in second proviso to Section 153A (1) as clearly mentioned in the first proviso and further clarified by usage of words the date of initiation of the search" which are nowhere mentioned else in the Section 153A(1),

The fact is further clarified by the Amendment brought by Finance Act 2017 in section 153A for decreasing the time limit of completion of assessment and also increasing the period from 6 to 10 years in relevant cases, the consequential amendment has been done in 153C also which reads as under

153C.(1) —*[Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that, —*

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer

having jurisdiction over such other person] and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A :

Provided that in case of such other person, the ***reference to the date of initiation of the search*** under section 132 or making of requisition under section 132A ***in the second proviso to subsection (1) of section 153A*** shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Even after this amendment, the first proviso stands as it is in the statute which makes it further clear that first proviso to section 153C always referred to the abatement of proceedings as mentioned in the second proviso to section 153A(1) otherwise the current 153C shall have major incongruity as to whether six years would be reckoned from date of search as mentioned in amended 153C(1) or from the date of handing over of the documents as mentioned in the first proviso of 153C which remained unamended.

Hence, it is prayed that assessment has been rightly framed u/s 153C within statutory time limit of the Act.”

3.3 We have heard the rival submission and perused the relevant material on record. The issue in dispute before us is regarding the six preceding assessment years which could be assessed under the provision of section 153C of the Act. The contention of the learned CIT (DR) is that, as per main provision of section 153C(1) of the Act, the six assessment years have to be calculated in accordance with the provisions of Section 153A of

the Act. According to section 153A(1)(d), the six assessment years to be assessed or reassessed, are the six assessment years immediately preceding the assessment years relevant to the previous year in which search was conducted. In the case of M/s. Consortium Group a search was conducted on 28.07.2011 and, therefore, accordingly to learned CIT (DR), the six assessment years to be assessed or re-assessed should be from the assessment years 2006-07 to 2012-13. Whereas the learned counsel for the assessee has relied on the decisions of the Hon'ble Delhi High Court in the case of RRJ Securities (supra) and Sarwar Agency Pvt. Ltd. (supra). In the case of Sarwar Agency (supra), this issue has been decided as under:

“6. The case of the Revenue is that the first proviso to Section 153 C refers only to the second proviso to Section 153 A(1) of the Act, which only indicates that any assessment relating to any AY falling within the period of six AYs which is pending as of the initiation of search shall abate. Therefore, the second proviso to Section 153 C is also concerned only with the aspect of abatement of pending assessments. According to the Revenue, this makes no difference to the computation of the block of six years preceding the AY relevant to the previous year /in which the search was conducted. In other words, according to the Revenue, the block period for both the searched person and the 'other person' would remain the same notwithstanding that there may be some delay in transmitting the documents recovered during the search which belong or pertain to the 'other person' to the AO of such other person.

7. The case of the Assessee, on the other hand, is that since in the case of the 'other person' the AO issues notice only subsequent to the notices issued under Section 153 A to the searched person, the starting point for computation

of the block period would be the date on which, based on the seized documents, notice is issued to the 'other person' under Section 153 C of the Act. Thus in the present case, the six year period prior to AY 2012-13 i.e. AY 2007-08 to AY 2012-13. Thus no notice could be issued under Section 153 C of the Act to reopen the Assessee's assessment for AY 2006-07. Reliance is placed on the decision of this Court in Commissioner of Income-tax-7 v. RRJ Securities Ltd. [2016] 380 ITR 612 (Del) where this very question was examined and answered in favour of the Assessee and against the Revenue.

8. In RRJ Securities (supra), the Court after noticing the decision in SSP Aviation Ltd. v. Deputy CIT[2012] 346 ITR 177 (Del), held as follows:

"21. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the noticee to furnish returns of income in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which

have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years.....

24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee."

9. The said decision in *RRJ Securities (supra)* has been followed by this Court subsequently in *ARN Infrastructure India Ltd. v. Assistant Commissioner of Income-tax, Central Circule-28, New Delhi*[2017] 394 ITR 569 (Del.).

10. Mr. Salil Aggarwal, learned counsel for the Assessee, has drawn the attention of the Court to the recent amendment made in Section 153 C of the Act by the *Finance Act, 2017* with effect from 1st April 2017. This amendment in effect states that the block period for the searched person as well as the 'other person' would be the same six AYs immediately preceding the year of search. This amendment is prospective.

11. Mr. Ashok Manchanda, learned Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in *RRJ Securities (supra)*. The Court

declines to do so for more than one reason. First, for reasons best known to it, the Revenue has not challenged the decision of this Court in RRJ Securities (supra) in the Supreme Court. The said decision has been consistently followed by the authorities under this Court as well as by this court. Thirdly, the recent amendment to Section 153 C(1) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.”

3.4 In the above decision, the Hon’ble High Court has followed the finding in the case of RRJ Securities (supra). Thus, respectfully following the decision in the case of Sarwar Agency (supra), we hold that six preceding assessment years to be assessed/reassessed have to be calculated with reference to the date of recording satisfaction under Section 153C of the Act. Since in the instant case, the satisfaction under Section 153C of the Act was recorded on 08.08.2013, therefore, the relevant six assessment years available for assessment/reassessment would be assessment year 2008-09 to 2013-14. The year under consideration being assessment year 2007-08, which being out of the purview of this period, the assessment in the year under consideration cannot be made under Section 153C of the Act. Accordingly, we quash the assessment order passed by the Assessing Officer under Section 153C of the Act. The additional ground raised by the assessee is accordingly allowed.

3.5 Since we have already quashed the assessment proceedings, the other grounds raised by the assessee are rendered merely

academic. Accordingly, we are not required to adjudicate upon the same.

4. In the result, the appeal of the assessee is allowed.

The decision is pronounced in the open court on 13th August,2018.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 13th August, 2018.

RK/-(D.T.D.)

Copy forwarded to:

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

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi