

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.5330/Del./2015
(ASSESSMENT YEAR : 2011-12)**

DCIT, Central Circle 19,
New Delhi. vs. Shri Adarsh Kumar,
23, Sudharshan Apartment,
I.P. Extension,
New Delhi – 110 092.

(PAN : AAAPK6345G)

**CO No.33/Del/2016
(in ITA No.5330/Del./2015)
(ASSESSMENT YEAR : 2011-12)**

Shri Adarsh Kumar,
23, Sudharshan Apartment,
I.P. Extension,
New Delhi – 110 092. vs. DCIT, Central Circle 19,
New Delhi.

(PAN : AAAPK6345G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Amit Goel, CA
REVENUE BY : Shri S.S. Rana, CIT DR

Date of Hearing : 24.09.2018

Date of Order : 03.10.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The aforesaid appeal filed by the Revenue and cross objections filed by the assessee being inter-connected is being

disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, Deputy Commissioner of Income-tax, Central Circle 19, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order both dated 09.06.2015 passed by Ld. CIT (Appeals)-XXVII, New Delhi qua the assessment year 2011-12 on the ground that :-

“The Ld. Commissioner of Income Tax (Appeals) erred in law as well as on facts in deleting the addition of RS.90,00,000/- made by Assessing Officer.”

3. The Objector, Shri Adarsh Kumar, by filing the present cross objections challenged the assessment order dated 25.03.2014 passed by the Assessing Officer qua the assessment year 2011-12 on the ground alia that :-

“On the facts and circumstances of the case and in law, the addition Rs.90,00,000/- on account of alleged liability written off is beyond the jurisdiction of provisions of section 153C of Income Tax Act, 1961.”

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : on the basis of search and seizure operation conducted by Investigation Wing on 22.03.2012 in M/s. Focus Energy Group of cases at the business premises of M/s. Granada Service Pvt. Ltd., M/s. iEnergizer IT Services Pvt. Ltd., M/s. iEnergizer India Pvt. Ltd. and iServices India Pvt. Ltd. at A-

37, Sector 60, Noida (UP), notice under section 153C of the Income-tax Act, 1961 (for short 'the Act') was issued on the assessee after recording satisfaction note and in pursuant thereto, assessee declared income of Rs.54,74,440/- on 24.12.2013. AO noticed that the assessee has received advance of Rs.90,00,000/- from M/s. Granada Service Pvt. Ltd. in AY 2009-10 which was written off by M/s. Granada Service Pvt. Ltd. as bad debt in the books of account during AY 2011-12 but added the same in the computation of income. Declining the contentions raised by assessee, AO proceeded to note that since M/s. Granada Service Pvt. Ltd. has been paying tax under MAT, the adding back of Rs.90,00,000/- after writing off the same from the books of accounts would not make any difference on the taxability of M/s. Granada Service Pvt. Ltd. and thereby made an addition of Rs.90,00,000/- to the income of the assessee.

5. Assessee carried the matter by way of appeal before the Id. CIT (A) who has deleted the addition of Rs.90,00,000/- by partly allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal and the assessee impugned the assessment order by way of cross objections.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, the assessee has availed off the advance / loan of Rs.90,00,000/- from M/s. Granada Service Pvt. Ltd.. It is also not in dispute that the assessee took the stand before the AO that the amount of Rs.90,00,000/- is still liability of the assessee and unilaterally writing off of the amount by the company cannot be a ground for treating the said amount as income of the assessee. It is also not in dispute that the assessee is an employee/Director of one of the group companies, namely, M/s. iEnergizer IT Services Pvt. Ltd.. It is also not in dispute that the assessee had paid notional interest on the loan amount.

8. Ld. DR for the Revenue challenging the impugned order passed by Id. CIT (A) relied upon the order passed by the AO. However, the Id. AR for the assessee supporting the order passed by the Id. CIT (A) on merits further contended that in AYs 2009-10, 2010-11 and 2011-12 in the appeals filed by the assessee, initiation of proceedings u/s 153C has been quashed by the coordinate Bench of the Tribunal in ITA Nos.5095, 5096 & 5097/Del/2015 order dated 15.11.2017 on the ground that the

satisfaction note was not recorded by the AO in the capacity of AO of searched person.

9. Bare perusal of the order passed by the coordinate Bench of the Tribunal in assessee's own case in the appeals filed by the assessee for AYs 2009-10, 2010-11 & 2011-12 goes to prove that the initiation of the proceedings u/s 153C in assessee's own case for want of valid satisfaction note has been quashed. This factual position has not been controverted by the Id. DR for the Revenue. So, we are of the consider view that when proceedings initiated u/s 153C of the Act for want of "valid satisfaction note" qua seized document belonging to the assessee has been quashed vide order (supra), the present appeal is not maintainable being the cross appeal filed by the assessee for AY 2011-12. So, without entering into the merits of the case, present appeal filed by the Revenue stands dismissed. Consequently, cross objections filed by the assessee are also dismissed having been become infructuous.

Order pronounced in open court on this 3rd day of October, 2018.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 3rd day of October, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVII, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.