

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

BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER

ITA No.987/DEL/2018
Assessment Year: 2011-12

Sh. Girish Chandra Sharma 38, Moh. Chotti Holi Khurja, Padam Singh Gate, Bulandshahr PAN : AGNPS2979P	Vs	ITO Ward-3(1) Bulandshahr
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ashwani Taneja, Advocate
Respondent by	Sh. S.L.Anuragi, Sr. DR

Date of hearing:	27/11/2018
Date of Pronouncement:	30/11/2018

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-1, Aligarh dated 03.11.2017 pertaining to A. Y. 2011-12.

2. The only grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.3,05,610/-.

3. The grievance is twofold. Firstly the assessee is aggrieved by the assessment order framed u/s 143 (3)/147 of the Act. Secondly the assessee is aggrieved by the addition of Rs.25 lacs made u/s 69 C of the Act on account of alleged unexplained expenditure.

4. Briefly stated the facts of the case are that as per the information available with the department the Assessing Officer came to know that the assessee has given donation/capitation fee of Rs.40 lacs for the admission of his son Shiv Kumar Gaur for the course of MS ENT. The assessee was asked to furnish source of investment in capitation/ donation fees of Rs.40 lacs and to furnish his assessment details.

5. The assessee filed a detailed reply explaining that he has paid only Rs.15 lacs was paid in cash during the financial year 2010-11 out of cash savings of his family and remaining Rs.10 lacs was paid through two demand drafts of Rs.5 lacs each during F. Y. 2011-12 and 2012-13 out of the education loan. It was firmly stated that the assessee has not paid any capitation fees/ donation of Rs. 25 lacs to Santosh Group of Institutions for the admission of his son in MS ENT course. The Assessing

Officer did not accept this contention of the assessee and made addition of Rs. 25 lacs u/s 69 C of the Act.

6. The assessee carried the matter before the CIT(A) but without any success.

7. Before me the counsel for the assessee vehemently stated that the assessment has been framed u/s 147 of the IT Act on some information derived by the department on the basis of a search operation conducted u/s 132 of the Act. It is the say of the counsel that assessment so framed is bad in law in as much as appropriate section is section 153C of the Act. The counsel heavily relied upon the decision of the coordinate bench in the case of Sushil Gaur vs. ITO in ITA No.1500/Del/2017. The Counsel further pointed out that the seized document does not appear the name of the assessee and therefore, making addition on the basis of an incorrect document is not sustainable. Per contra the DR strongly supported the findings of the Assessing Officer.

8. I have given a thoughtful consideration to the orders of the authorities below. The reasons recorded for initiating proceedings u/s 147 of the Act read as under :-

*“Dr. Girish Chandra Sharma,
38, Chhoti Holi, Near Ganga Mandir, Khurja,
Bulandshahr*

PAN:- AGNPS2979Q

Reason for initiating proceeding u/s 147 of IT Act 1961.

A search operation u/s 132 was carried on 27.06.2013 in the premises of Santosh Group of institution and Dr. P. Mahalingam. Certain documents/ books of account were seized from the above premises which revealed that donation /capitation fee over and above the regular courses, During the course of recording statement u/s 132(4) of I. T. Act, 1965 relevent seized materials were confronted to Dr. P. Mahalingam , chairman of the Trust . He has categorically admitted of accepting donation / capitation fee in cash and offered unaccounted money so received for taxation.

On perusal of list given with the above information, it is revealed that Sh. Girish Chand Sharma, 38, Chhoti Holi, Near Ganga Mandir, Khurja, Bulandshahr, has given donation/capitation fee for the admission of his son Sh. Shiv Kumar Gaur for the course of MS ENT on 27.04.2010 amounting to Rs. 40,01,000/- . In view of the above facts I have reason m believe that income of Rs. 40,01,000/- has escaped assessment due to failure on the part of the assessee to disclose true and correct particulars of income. In order to assess the same, notice u/s 148 of the I.T. Act needs to be issued.”

9. It can be seen from the above that search operation was carried on in the premises of Santosh Group of Institutions. This means that any document found during the course of the search makes the assessee “other person” therefore the correct section for initiation of any proceeding against the assessee is section 153C of the Act. On identical set of facts the coordinate bench in the case of Sushil Gaur (supra) had the occasion to consider identical set of facts. In that case also the search in the premises of Santosh Medical College was under consideration. The relevant findings of the coordinate bench reads as under :-

“8.1 have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, reassessment was initiated on the basis of incriminating material found in search of third party and the

validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153 C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec.

153C, reassessment order was rightly quashed by the Learned CIT(Appeals). I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/20i5 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of ITO vs. Arun Kumar Kapoor (supra). In the present case before me, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information available with the AO. I thus respectfully following the decision of Co-ordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kapur - 140 TTJ 249 vs. (Amritsar) and the ITAT, Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/20i5 dated 20.5.2016 hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which that the Assessing Officer has initiated reassessment proceedings in the present case on the basis of information received based on the material found excludes the application of sec. 147 of the ~ hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Hence, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds.

9. In the result, both the appeals filed by the different Assessees stand allowed in the aforesaid manner.”

10. A similar view was taken by Lucknow Bench of the Tribunal in ITA No.205/LKW/2016 wherein also the search in the premises of Santosh Medical College was under consideration

and coordinate bench was pleased to delete the impugned addition.

11. Respectfully following the findings of the coordinate bench (supra). I am inclined to hold that the notice issued u/s 148 of the Act and assessment framed u/s 147 of the Act is void ab initio.

12. Since I have already quashed the reassessment there is no need to adjudicate other grounds.

13. In the result, the appeal is filed by the assessee is allowed.

Order pronounced in the open court on 30.11.2018.

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- .11.2018

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	26.11.2018
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	
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	30.11.2018
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

