

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 3560/Del/2015
Assessment Year: 2011-12**

Vishnu Bhagwan, C/o O.P. Sapra & Associates, C-763, New Friends Colony New Delhi. PAN – AKEPB0169K (Appellant)	vs.	DCIT, Central Circle Ghaziabad. (Respondent)
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Appellant by	Sh. Kapil Goel, Advocate
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	10.09.2018
Date of Pronouncement	04.12.2018

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of Id. CIT(A), Ghaziabad dated 31.03.2015 for the assessment year 2011-12 on the following grounds :

1. *That the impugned order as passed by the Ld. AO u/s 143(3) of the I.T. Act on 31/03/2013 ought to have been cancelled/annulled by the Id. CIT(A) inter alia because:*
 - a) *The impugned assessment order as passed is barred by limitation as the impugned order passed u/s 143(3) has been antedated as if it was passed on 31/03/2013 as against the actual fact that it was not passed on 31/03/2013.*

- b). Principles of natural justice had also been violated because no opportunity of being heard was given to the appellant before passing the impugned assessment order.*
- 2. That the impugned assessment order deserves to be cancelled/ annulled because no valid notice u/s 143(2) of the I.T. Act had been issued.*
 - 3. That the Ld. AO was not at all justified in passing the impugned assessment order u/s 143(3) of the I.T. Act on protective basis without first making an assessment on substantive basis in the hands of the beneficiaries with regard to deposits in the bank accounts.*
 - 4. That without prejudice to Ground No. 1 to 2 above, the Ld. AO was not justified in making the following additions towards the assessable income of the Appellant and the Ld. CIT(A) had erred on facts and under the law in confirming them:*
 - a) Rs.6,58,895/- on account of commission assessed as business income by assuming the same @ 3% against 0.1% charged by the Appellant.*
 - b) Rs.2,19,63,154/- being the addition on account of deposits in bank account of the Appellant emanating from the accounts of the beneficiaries on protective basis.*
 - 5. That the Id. AO had erred on facts and under the law in making the addition of bank credits separately in the hands of the Assessee ignoring the fact that the Appellant was not operating the bank accounts and the transactions in the bank accounts were owned up by Shri Pankaj Sharma.*
 - 6. That Ld. Assessing officer has erred on law as well as on the facts of the case by making the assessment on total bank credits of Rs. 2,19,63,154/- on protective basis without giving any opportunity of hearing and also not considering the facts of the case in right perspective and therefore, protective assessment is liable to be struck down.*
 - 7. That the total income assessed at Rs.2,28,90,649/- and the tax levied thereon is arbitrary, unjust and very excessive.*
 - 8. That the levy of interest u/s. 234A, 234B, 234C and 234D is arbitrary, unjust, illegal and at any rate, without prejudice, very excessive.”*

2. Apart from the above grounds, the assessee has also raised following additional grounds with the request to admit the same and consider to impart justice to the appellant:

“That assessment framed u/s. 143(3) for the period under consideration (A.Y. 2011-12) which falls in Six years block prescribed u/s 153C, is invalid, void-ab-initio and lacks jurisdiction as it should have been framed u/s 153C, accordingly the orders passed by AO and First Appellate Authority deserves to be quashed.”

“That assessment framed u/s 143(3) for the period under consideration is ultra vires to section 153C, in as much as no document is referred in satisfaction note, much less incriminating document, much less belonging to assessee herein, much less seized during search action u/s 132 much less for the subject period, so as to give rise to any undisclosed income and therefore satisfaction note is completely inchoate and non starter and therefore orders passed by AO and First Appellate Authority deserves to be quashed. .

“That impugned assessment framed u/s 143(3) on basis of notice u/s 143(2) dated 21/01/2013 is invalid and void ab initio being made on basis of non est return filed u/s 153A/153C on 17/01/2013 as no return was there u/s 139/142 filed on 17/01/2013 to validly issue notice u/s 143(2) and even otherwise the assessment is invalid and void ab initio in as much as the original return filed u/s 139 which could be the basis to issue notice u/s 143(2) was filed as early as on 13/03/2012 for which outer date to issue notice u/s 143(2) was 30/09/2012 and therefore present assessment framed on basis of time barred notice u/s 143(2) dated 21/01/2013 is invalid and unlawful. ”

3. In order to admit above additional grounds of appeal for consideration, it has been pleaded on behalf of the assessee that these grounds were omitted in original grounds inadvertently before the Id. CIT(A) and since these grounds are purely legal in nature and challenge the validity of assessment order u/s. 143(3), and the facts relating to them are already available on record, the same can be raised at any stage of proceedings. In support of these

additional grounds, the ld. counsel for the assessee relied on various decisions as under :

- (i). Singhad Technical Society, 397 ITR 344 (SC)
- (ii). Fast Booking (I) Pvt. Ltd., 378 ITR 693 (Del)
- (iii). Siler Line, 383 ITR 455 (Del)
- (iv). M/s. VMT Spinning Co. Ltd., 389 ITR 326)
- (v). Jolly Fantasy World Ltd., 373 ITR 530 (Guj)

The ld. AR has also relied on several other decisions of ITAT, Delhi Benches in his written synopsis as under :

- (i). BNB Investment & Propeties Ltd. (ITA No. 504/Del/2015-dt. 27.06.2018)
- (ii). Reliance Estate Agency (ITA No. 1614 to 1619/Del/2011- dt. 30.07.2018)
- (iii). Pavitra Realcon Pvt. Ltd. (ITA No. 3185/Del/2015)
- (iv). Satkar Roadlines Pvt. Ltd. (ITA No. 3305/Del/2014)-dated 27.04.2016.
- (v). CIT vs. Shree Jasjeet Singh (ITA No. 337/2015 (Delhi HC)
- (vi). CIT vs. Gopi Apartments (2014) 365 ITR 411 (All).

The ld. AR has also submitted that satisfaction note was recorded on 18.09.2012 for filing of return u/s. 153C fromn A.Yrs. 2005-06 to 2010-11. In response to this notice, the assessee filed return on 17.01.2013 by showing income of Rs.2,68,600/-. The assessee had filed original return of income u/s. 139 on 13.03.2012 declaring income of Rs.1,61,003/-. Therefore, the notice issued u/s. 143(2) on 21.01.2013 is invalid and void ab initio because the due date of issuance of notice had already expired. The Assessing Officer recorded the satisfaction 18.09.2012 for filing the return from A.Y. 2005-06 to 2010-11 is also invalid as no assessment has been framed u/s. 153A/153C for the

impugned assessment year and no any material has been referred in the satisfaction note.

4. On the other hand, the ld. DR appearing for Revenue objected to admission of additional grounds, as no such pleadings were made before the authorities below nor do these grounds carry any weight on merits. It is submitted that the decisions relied by assessee are not applicable to the present case.

5. We have considered the rival submissions and have gone through the entire material available on record. It is notable that the additional grounds raised by the assessee pertain to a purely legal in nature, challenging the jurisdiction of the Assessing Officer to make the assessment u/s. 143(3) instead of section 153C of the Act, and all the material facts, necessary for its disposal, are already on record. As held by Hon'ble Supreme Court in the case of NTPC Vs CIT, 229 ITR 383, the powers of the Tribunal are not confined only to the issues arising out of order of the CIT(A) but also questions of law arising from facts which are available on record. We are, therefore, inclined to admit the additional grounds of appeal, having a pure question of law challenging the assumption of jurisdiction to pass impugned assessment order u/s. 143(3) in place of sec. 153C. Therefore, the additional grounds raised by the assessee deserve to be admitted on record. We, further observe that the issue raised in the addition ground is found squarely covered by the decision of co-ordinate Bench in the case of BNB Investment & Properties Ltd., where it is held as under :

"7. We have considered the rival submissions. Section 153C of the I.T. Act, 1961, as is applicable to assessment year under appeal reads as under :

“153C.Assessment of income of any other person.- (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 sub-section (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.

[Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.]

[(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before 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, such

Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

7.1. The Hon'ble Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (2017) 397 ITR 400 (Delhi.) (HC) (supra), considering the identical issue held as under :

"Sub-section (1) of section 153C of the Income-tax Act, 1961 provides that the assessment or reassessment of the income of the "other person" would be in accordance with the provisions of section 153A. The first proviso to subsection (1) of section 153C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to section 153A(l) "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". In terms of section 153A(1)(b) of the Act. the Assessing Officer shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted. The second proviso to sub-section (1) of section 153A of the Act states that assessment or reassessment relating to any assessment year falling within the period of six assessment years referred to in the said sub-section pending on the date of initiation of the search under section 132, would abate. In CIT v. RRJ Securities Ltd. [2016] 380 ITR 612 (Delhi), the court held that 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 Assessing Officer receives the documents or assets from the Assessing Officer of the searched person, that further proceedings, by virtue of section 153(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 or 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 or documents to the Assessing Officer of the assessee.

The amendment in section 153C of the Act by the Finance Act, 2017 with effect from April 1, 2017 to the effect that the Block Period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment years immediately preceding the year of search is prospective.

*A search under section 132 of the Income-tax Act, 1961 took place on November 11,2010 in the T group of cases. The documents pertaining to the assessee were forwarded along with a satisfaction note by the Assessing Officer of the party in respect of which the search was conducted to the Assessing Officer of the*assessee on January 3, 2013. The Assessing Officer of the assessee issued notice to the assessee under section 153C of the Act on January 4,2013 for the assessment year 2006-07. The*

Tribunal held that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07, was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision under section 153C of the Act. On appeal:

Held accordingly, dismissing the appeal, that the Tribunal was justified in holding that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07 was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision."

7.2. The ITAT, Delhi, B-Bench in the case of ACIT, C.C.-2, New Delhi vs. Empire Casting Pvt. Ltd., New Delhi (supra), held in paras 5 and 5.1 as under :

"5. We have heard the rival submission on this issue and also perused the judgment dated 30th October, 2015 of the Hon'ble jurisdictional High Court in the case of CIT Vs RRJ Securities in ITA No. 164/2015 and ITA No. 175 to 177/2015. For ready reference, the relevant Para of the judgment is reproduced as under:

"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. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to

the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year."

5.1. The fact that satisfaction u/s 153C of the Act in the case was recorded on 2nd November, 2009, is not disputed by both the parties. In the judgment cited above, the Hon'ble High Court has held that when the Assessing Officer of searched person and such other person in whose case proceedings under section 153C are initiated, is the same officer, then the date of recording of satisfaction would be construed as the date of handing over of the seized records by the Assessing Officer of searched person to the Assessing Officer of such other person in whose case proceedings under section 153C are initiated. Since the Hon'ble High Court has already construed the relevant provisions, we do not concur with the arguments advanced by the Id. CIT DR on this count. Respectfully following the above judgment of the Hon'ble High Court in RRJ Securities (supra) the date of handing over of seized material/ record by the Assessing Officer of searched party to the Assessing Officer of the assessee would be 2nd November, 2009. Further, following the judgment, the six assessment years for which assessment/re-assessment could be made u/s 153C of the Act would also have to be construed as from the reference date of handing over of assets/documents to the Assessing Officer of the assessee. In the case in hand, it would be the date of recording satisfaction under section 153 of the Act i.e. 2nd November, 2009, and therefore, six assessment years which would be eligible for assessment/re-assessment would commence from assessment year 2004-05 to assessment year 2009-10. The assessment/re-assessment in respect of assessment year 2003-04 would, thus, be beyond the period of six assessment year as reckoned with reference to the date of satisfaction recorded by the Assessing Officer of the searched person. We, therefore, hold that the learned CIT(A) was quite justified in considering the assessment for assessment year 2003-04 as outside the scope of section 153C of the Act, being barred by limitation and without jurisdiction. Accordingly, the impugned assessment order is liable to be quashed. We decide accordingly."

7.3. The ITAT, Delhi, C-Bench, in the case of Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra) under the same circumstances held that “assessment completed under section 143(3) is invalid”. The relevant para-16 of the order is reproduced as under :

16. “We find the year for which the impugned assessment order has been passed u/s 143(3) is for assessment year 2011-12. This year falls within the period of six years when counted from the date of recording of satisfaction note u/s 153/153C of the I.T. Act which is deemed date of search. The Act has been amended recently by the Finance Act, 2017 with prospective effect i.e., from assessment year 2018-19. Thus, the period is same now only for the searched parties as well as the other person as per the amended provisions of the said section. In view of the above, we hold that the assessment completed u/s 143(3) is invalid.”

8. It is not in dispute that search was conducted on Krrish Group of cases on 09.11.2011. The impounded documents have been received by the A.O. on 29.08.2013. The satisfaction under section 153C have been recorded on 03.10.2013. The A.O. passed the assessment order under section 153B(1)(b) of the I.T. Act, considering the assessment year under appeal i.e., A.Y. 2012-2013 to be the year of search. However, the First Proviso to Section 153C of the I.T. Act provides that the 06 assessment years for which assessments or re-assessments could be made under section 153C of the I.T. Act, would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee. Therefore, the 06 assessment years under section 153C of I.T. Act in the case of assessee would be A.Y. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not issued any notice under section 153C of the I.T. Act before initiating the proceedings against the assessee which is also admitted by the A.O. in reply to the assessee under RTI Act. The Amendment in Section 153C of the I.T. Act by the Finance Act, 2017, w.e.f. 01.04.2017 to the effect that block period for the person in respect of whom the search was conducted as well as the “other person” would be the same six assessment year immediately preceding the year of search is prospective in nature. The issue have been dealt in detail by the Hon’ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (supra) and by ITAT, Delhi, B-Bench, in the case of Empire Casting Pvt. Ltd., New Delhi vs. ACIT, C.C.2, New Delhi and Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra). The A.O, therefore, should have framed the assessment under section 153C of the I.T. Act in the case of the assessee and at the time of initiating the proceeding against the assessee, should have issued notice under section 153C of the I.T. Act which have not been done in this case. The issue of notice under section 153C is mandatory and a condition precedent for taking action against the assessee under section 153C of the I.T. Act. The assessment order, therefore, vitiate, void, illegal and bad in law and cannot be sustained. The contention of the Ld. D.R. have already taken care in the above judgments.

9. Considering the totality of the facts and circumstances of the case, we set aside the orders of the authorities below and quash the same and allow the additional grounds of appeals. Resultantly, all additions stands deleted. Since the assessment order is set aside on legal grounds, therefore, there is no need to decide the addition on merit which has been left with academic discussion only.”

Respectfully following the above decision, the Co-ordinate Bench in the above case, the appeal of the assessee deserves to be allowed only on this aspect.

6. Since, the legal aspect of the case raised by way of additional grounds of appeal has stands accepted thereby quashing the impugned assessment, we need not to enter into various other grounds raised on merits of additions, which now lead to academic discussion only.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 4th Dec., 2018.

Sd/-

(Bhavnes Saini)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 04.12.2018

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi