

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.4359 to 4362/Del/2015
Assessment Year: 2008-09 to 2011-12**

**Radico NV Distilleries Maharashtra Ltd. vs DCIT, Central Circle-19,
Plot J-1/B-1, Mohan Coop. Indl. Area, New Delhi.
Mathura Road, Delhi.
PAN: AAACS6987N**

Appellant

Respondent

Assessee by	Shri Ajay Vohra, Sr. Advocate Shri Gaurav Jain, Advocate Smt. Manisha Sharma, Advocate
Revenue by	Smt. Sulekha Verma, CIT DR

Date of Hearing	04.12.2018
Date of Pronouncement	17.12.2018

ORDER

PER BENCH

All these appeals are preferred by the assessee challenging the order dated 19.2.2015 in Appeal Nos.313 to 316/13-14/1464-1467 passed by the learned Commissioner of Income-tax (Appeals)-30, New Delhi {in short "CIT(A)"} for the Assessment Years 2008-09, 2009-10, 2010-11 and 2011-12.

2. Brief facts of the case as could be culled out from the record is that there was a search u/s 132 of the Income-tax Act, 1961 ("The Act") on 15.2.2011

conducted at the business premises of the assessee along with various other companies of the RadicoKhaitan group and NV group as a result of which the cases of the assessee were transferred and centralized before the CIT, Central-III, New Delhi. On 27.1.2012, the learned AO issued notice initiating proceedings u/s 143A of the Act for the Asstt. Years 2005-06 to 2010-11 and regularassessment proceedings for the Asstt. Year 2011-12 were pending. On 30.1.2013, the assessee filed an application in Form No.34B for the settlement of their cases u/s 245C(1) of the Act for the Asstt. years 2005-06 to 2011-12. On the same day, the assessee filed intimation in Form No.34B before the AO also informing him about the application to the ITSC for the Asstt. Years 2005-06 to 2011-12, By order dated 8.2.2013 passed u/s 245D(1) of the Act, the Settlement Commission admitted the settlement application and on 14.2.2013 the ITSC sought the report from the learned CIR u/s 245D(2B) on certain aspects. Learned CIT(A) furnished the report under rule 6 of the ITSC Rules on 18.3.2013 wherein no dispute was raised regarding the compliance with the requirement of the report by the ITSC in respect of payment of taxes and filing of intimation before the AO. However, learned CIT(A) raised issues on the merits on the basis of appraisal report prepared after search and stated that the assessee had short disclosed the income. By order dated 3.4.2013 the ITSC rejected the settlement application filed by the assessee on the ground that the assessee had not made a true and full disclosure of income.

3. Consequent to the rejection of the settlement application by the ITSC, the learned AO issued notice dated 8.4.2013 u/s 153A of the Act for the Asstt. Years 2005-06 to 2010-11 and u/s 143(3) of the Act for the Asstt. Years 2011-12. Aggrieved by the rejection of the settlement application by the Settlement Commission by order dated 3.4.2013, the assessee preferred writ petition in the Hon'ble Delhi High Court and the Hon'ble High Court by interim order dated 25.8.2013 directed the assessment proceedings may continue and orders may

also be passed. Such interim was made absolute by the Hon'ble Delhi High Court on 17.3.2016. Consequently, learned AO passed the assessment orders on 3.6.2016 u/s 153A of the Act in respect of the Asstt. Years 2008-09 and 2010-11 and u/s 143(3) of the Act for the Asstt. Year 2011-12. Such assessment orders were challenged before the learned CIT(A) and learned CIT(A) by order dated 19.2.2015 dismissed the same upholding the assessment order. Challenging such orders of the learned CIT(A), these appeals are preferred by the assessee.

4. At the outset, it is brought to our notice that by order dated 9.10.2017, the Hon'ble High Court quashed the orders dated 3.4.2013 passed by the ITSC and directed the ITSC to proceed with the applications filed by the assessee and proceed on the merits. It is contended by the assessee that they intend to raise an additional ground to the effect that the impugned assessment order passed u/s 143(3) read with Section 153A of the Act is without jurisdiction and bad in law in view of the order dated 9.10.2017 passed by the High Court whereby the High Court quashed the order passed by the ITSC u/s 245D(2C) rejecting the applications of the assessee for settlement of their case for the relevant assessment years.

5. Learned DR filed a copy of the letter dated 29.11.2018 of the Secretary to the ITSC to the effect that subsequent to the rejection of the settlement applications of the assessee, no certified copy of the order dated 9.10.2017 passed by the Hon'ble High Court was received; that neither the department nor the assessee informed about the High Court order and in these circumstances; and that no further action was taken by the ITSC in this matter.

6. We have heard the learned counsels on either side. Though it is contended by the learned AR that the impugned assessment orders in relation to the Asstt. years 2008-09 to 2011-12 were passed without jurisdiction and bad in

law in view of the order dated 9.10.2017 passed by the Hon'ble High Court quashing the orders of the ITSC, we have to keep in mind that such orders were passed pursuant to the observations of the Hon'ble High Court by way of interim directions on 21.5.2013 that the assessment proceedings may continue and orders may be passed. No doubt so long as the ITSC holds the jurisdiction such an action of the AO was not permissible but when the ITSC has rejected the settlement application of the assessee, it cannot be said that the AO does not have jurisdiction to proceed with the assessment and to pass the orders. Furthermore, such a course was permitted by the Hon'ble High Court in the writ preferred by the assessee. Therefore, it cannot be said that the assessment orders in these years are without jurisdiction or bad under law ab initio.

7. However, in view of the fact that the Hon'ble High Court quashed the order dated 3.4.2013 passed by the ITSC and directed the ITSC to proceed with the matter and consider the applications filed by the assessee on merits, the impugned orders have become infructuous and now the jurisdiction stands vested in the ITSC. We, therefore, are of the considered opinion that all these appeals against the infructuous orders are also infructuous and need not be continued on the file of the Tribunal. We, therefore, while holding that the impugned orders as infructuous, allow all the appeals filed by the assessee.

8. In the result, appeals of the assessee are allowed.

Order pronounced in the Open Court on 17th December, 2018.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 17th December, 2018

/VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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