

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

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
&
SHRI N.S.SAINI, ACCOUNTANT MEMBER**

ITA No.-3972-3978/Del/2017

**(Assessment Year: 2007-08, 2008-09, 2009-10, 2010-11,
2011-12, 2012-13, 2013-14)**

M/s. Sad Bhawana Trust C/o Kapil Goel Adv. F-26/124 Sector 7 Rohini Delhi 110085 PAN :	vs	ACIT, Central Circle-6, New Delhi
Assessee by	Shri P.C.Yadav, Adv.	
Revenue by	Shri S.S.Rana, CIT-DR	

Date of Hearing	18.12.2018
Date of Pronouncement	19.12.2018

ORDER

PER N.S.SAINI, ACCOUNTANT MEMBER :

All these appeals are preferred by the assessee. ITA Nos. 3972-78/Del/2017 are assessee's appeal against order dated 31.03.2017 passed by the Ld. CIT (Appeals)-25 for assessment year 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 respectively. Since all the appeals involved identical issues, the same were heard together for the sake of convenience.

(i) Grounds of appeal of ITA no. 3972/Del/2017 for Assessment Year 2007-08 :

"Jurisdictional Ground: Proceedings u/s 153C are void ab initio

1. That as per proviso to section 153C, 6 years have to be reckoned from date of recording of satisfaction note i.e. 10.03.2014 which falls in F.Y. 2013-14 i.e. A.Y. 2014-15 accordingly preceding six years i.e. A.Y. 2008-09 to 2013-14 can only be assessed u/s 153C and present assessment framed u/s 153C for A.Y. 2007-08 is time barred, illegal, void-ab-initio and requires to be declared as nullity.
2. That as per documents described in beginning of the order (Para 2) which are purportedly seized from search operation on another person, same as replied to AO during assessment are duly disclosed and do not give rise to any undisclosed income duly objected before AO (reply dated 11/12/2014 disposed on 16/12/2014), and sans any undisclosed income emanating out of seized documents which is further fortified from final order where none of the addition has any semblance with seized documents, accordingly, notice issued u/s 153C, order passed u/s 153C and Id CIT-A order all becomes bad in law and requires to be quashed.
3. That purported satisfaction note recorded on 10/03/2014 is not valid in eyes of law as same does not meet the mandatory criteria stipulated u/s 153C of the Act;

4. *That notice issued u/s 153C, order passed u/s 153C and subsequent order passed by Ld CIT-A are all bad in law for want of jurisdiction and requires to be quashed.*

On Merits

5. *That without appreciating mandatory jurisdictional requirement of presence of incriminating material, addition is made by the Ld AO in assessment order which is mechanically confirmed by CIT-A without adverting to inundated binding jurisprudence available on the subject, which addition without having any linkage with search based "incriminating" material, requires to be deleted in limine.*

6. *That Id CIT-A made manifest error of law and facts in sustaining the addition made by Ld AO in impugned order which suffers from serious debility and is not in accordance with law and is arbitrary, invalid and unsustainable in eyes of law."*

(ii) Grounds of Appeal of ITA no. 3973/Del/2017 for Assessment Year 2008-09 :

" Jurisdictional Ground: Proceedings u/s 153C are void ab initio

1. *That as per documents described in beginning of the order (Para 2) which are purportedly seized from search operation on another person, same as replied to AO during assessment are duly disclosed and do not give rise to any undisclosed income duly objected before AO (reply dated 11/12/2014 disposed on 16/12/2014), and sans any undisclosed income emanating out*

of seized documents which is further fortified from final order where none of the addition has any semblance with seized documents, accordingly, notice issued u/s 153C, order passed u/s 153C and Id CIT-A order all becomes bad in law and requires to be quashed.

- 2. That purported satisfaction note recorded on 10/03/2014 is not valid in eyes of law as same does not meet the mandatory criteria stipulated u/s 153C of the Act;*
- 3. That notice issued u/s 153C, order passed u/s 153C and subsequent order passed by Ld CIT-A are all bad in law for want of jurisdiction and requires to be quashed.*

On Merits

4. That without appreciating mandatory jurisdictional requirement of presence of incriminating material, addition is made by the Ld AO in assessment order which -is mechanically confirmed by CIT-A without adverting to inundated binding jurisprudence available on the subject, which addition without having any linkage with search based "incriminating" material, requires to be deleted in limine.

5. That Id CIT-A made manifest error of law and facts in sustaining the addition made by Ld AO in impugned order which suffers from serious debility' and is not in accordance with law and is arbitrary, invalid and unsustainable in eyes of law."

(iii) Grounds of Appeal of ITA no. 3974/Del/2017 for Assessment Year 2009-10 :

" Jurisdictional Ground: Proceedings u/s 153C are void ab initio

1. *That as per documents described in beginning of the order (Para 2) which are purportedly seized from search operation on another person, same as replied to AO during assessment are duly disclosed and do not give rise to any undisclosed income duly objected before AO (reply dated 11/12/2014 disposed on 16/12/2014), and sans any undisclosed income emanating out of seized documents which is further fortified from final order where none of the addition has any semblance with seized documents, accordingly, notice issued u/s 153C, order passed u/s 153C and Id CIT-A order all becomes bad in law and requires to be quashed.*
2. *That purported satisfaction note recorded on 10/03/2014 is not valid in eyes of law as same does not meet the mandatory criteria stipulated u/s 153C of the Act;*
3. *That notice issued u/s 153C, order passed u/s 153C and subsequent order passed by Ld CIT-A are all bad in law for want of jurisdiction and requires to be quashed.*

On Merits

4. *That without appreciating mandatory jurisdictional requirement of presence of incriminating material, addition is made by the Ld AO in assessment order which is mechanically confirmed by CIT-A without adverting to inundated binding jurisprudence available on the subject, which addition without having any linkage with search based "incriminating" material, requires to be deleted in limine.*
5. *That Id CIT-A made manifest error of law and facts in sustaining the addition made by Ld AO in impugned order which suffers from serious debility and is not in accordance*

with law and is arbitrary, invalid and unsustainable in eyes of law."

(iv) Grounds of Appeal of ITA no. 3975/Del/2017 for Assessment Year 2010-11 :

"Jurisdictional Ground: Proceedings u/s 153C are void ab initio

- 1. That as per documents described in beginning of the order (Para 2) which are purportedly seized from search operation on another person, same as replied to AO during assessment are duly disclosed and do not give rise to any undisclosed income duly objected before AO (reply dated 11/12/2014 disposed on 16/12/2014), and sans any undisclosed income emanating out of seized documents which is further fortified from final order where none of the addition has any semblance with seized documents, accordingly, notice issued u/s 153C, order passed u/s 153C and Id C1T-A order all becomes bad in law and requires to be quashed.*
- 2. That purported satisfaction note recorded on 10/03/2014 is not valid in eyes of law as same does not meet the mandatory criteria stipulated u/s 153C of the Act;*
- 3. That notice issued u/s 153C, order passed u/s 153C and subsequent order passed by Ld C1T-A are all bad in law for want of jurisdiction and requires to be quashed.*

On Merits

- 4. That without appreciating mandatory jurisdictional requirement of presence of incriminating material, addition is made by the Ld. AO in assessment order which is*

mechanically confirmed by CIT-A without adverting to inundated binding jurisprudence available on the subject, which addition without having any linkage with search based "incriminating" material, requires to be deleted in limine.

- 5. That Id CIT-A made manifest error of law and facts in sustaining the addition made by Ld AO in impugned order which suffers from serious debility and is not in accordance with law and is arbitrary, invalid and unsustainable in eyes of law."*

(v) Grounds of Appeal of ITA no. 3976/Del/2017 for Assessment Year 2011-12 :

"Jurisdictional Ground: Proceedings u/s 153C are void ab initio

- 1. That as per documents described in beginning of the order (Para 2) which are purportedly seized from search operation on another person, same as replied to AO during assessment are duly disclosed and do not give rise to any undisclosed income duly objected before AO (reply dated 11/12/2014 disposed on 16/12/2014), and sans any undisclosed income emanating out of seized documents which is further fortified from final order where none of the addition has any semblance with seized documents, accordingly, notice issued u/s 153C, order passed u/s 153C and Id CIT-A order all becomes bad in law and requires to be quashed.*
- 2. That purported satisfaction note recorded on 10/03/2014 is not valid in eyes of law as same does not meet the mandatory criteria stipulated u/s 153C of the Act;*
- 3. That notice issued u/s 153C, order passed u/s 153C and*

subsequent order passed by Ld CIT-A are all bad in law for want of jurisdiction and requires to be quashed.

On Merits

4. That without appreciating categorical reply of assessee where it is plainly denied that assessee is not in effective receipt of any amount from Fiit jee group which stand was taken before Id CIT-A also as noted in impugned order, the confirmation of addition of Rs 38,56,82,230/- is arbitrary and invalid being bereft of legally sustainable grounds.

5. That without appreciating mandatory jurisdictional requirement of presence of incriminating material, addition is made by the Ld AO in assessment order which is mechanically confirmed by CIT-A without adverting to inundated binding jurisprudence available on the subject, which addition without having any linkage with search based "incriminating" material, requires to be deleted in limine.

6. That Id CIT-A made manifest error of law and facts in sustaining the addition made by Ld AO in impugned order which suffers from serious debility and is not in accordance with law and is arbitrary, invalid and unsustainable in eyes of law."

(vi) Grounds of Appeal of ITA no. 3977/Del/2017 for Assessment Year 2012-13 :

" Jurisdictional Ground: Proceedings u/s 153C are void ab initio

- 1. That as per-documents described in beginning of the order (Para 2) which are purportedly seized from search operation on*

another person, same as replied to AO during assessment are duly disclosed and do not give rise to any undisclosed income duly objected before AO (reply dated 11/12/2014 disposed on 16/12/2014), and sans any undisclosed income emanating out of seized documents which is further fortified from final order where none of the addition has any semblance with seized documents, accordingly, notice issued u/s 153C, order passed u/s 153C and Id CIT-A order all becomes bad in law and requires to be quashed.

- 2. That purported satisfaction note recorded on 10/03/2014 is not valid in eyes of law as same does not meet the mandatory criteria stipulated u/s 153C of the Act;*
- 3. That notice issued u/s 153C, order passed u/s 153C and subsequent order passed by Ld CIT-A are all bad in law for want of jurisdiction and requires to be quashed.*

On Merits

- 4. That without appreciating mandatory' jurisdictional requirement of presence of incriminating material, addition is made by the Ld AO in assessment order which is mechanically confirmed by CIT-A without adverting to inundated binding jurisprudence available on the subject, which addition without having any linkage with search based "incriminating" material, requires to be deleted in limine.*
- 5. That Id CIT-A made manifest error of law and facts in sustaining the addition made by Ld AO in impugned order which suffers from serious debility and is not in accordance with law and is arbitrary, invalid and unsustainable in eyes of law."*

(vii) Grounds of Appeal of ITA no. 3978/Del/2017 for

Assessment Year 2013-14 :

“ Jurisdictional Ground: Proceedings u/s 143(3) are void ab initio

1. *That since purported satisfaction note is recorded on 10.03.2014 which falls in F.Y. 2013-14 i.e. A.Y. 2014-15, as per proviso to section 153C the six years block which will be assessed u/s 153C, will start from A. Y. 2008-09 to 2013-14, accordingly assessment framed for A.Y. 2013-14 in present case u/s 143(3) is void-ab-initio as it should have been assessed u/s 153C. (Copy of satisfaction note is enclosed herewith.)*

On Merits

2. *That Id CIT-A made manifest error of law and facts in sustaining the addition made by Ld AO in impugned order which suffers from serious debility and is not in accordance with law and is arbitrary, invalid and unsustainable in eyes of law.”*
2. At the outset, the Authorised Representative of the assessee Shri P.C.Yadav, Adv. Submitted that in all the appeals the income assessed in the hands of the assessee has been assessed in the hands of FIIT JEE Ltd. wherein due tax has been collected by the department. Hence, the additions made in the hands of the assessee is to be deleted.
3. When the bench inquired from the Ld. Counsel for the assessee whether he has the assessment order in the case of FIIT JEE Ltd. where the income has been assessed, he submitted that the said

order was not with him. He submitted that the matter may be restored back to the file of the Assessing Officer for verification if the income in these appeals has been assessed to tax in the hands of FIIT JEE Ltd. then the addition should be deleted in the hands of the assessee.

4. The Ld. Departmental Representative Shri S.S.Rana, CIT(DR) had no objection to the above submission of the Authorised Representative of the Assessee.

5. In the above facts and circumstances of the case, we set aside the orders of the lower authorities and remand the matter back to the file of the Assessing Officer for verification whether the income assessed in the hands of the assessee has been assessed in the hands of FIIT JEE Ltd. and due tax has been collected by the department. If the Assessing Officer finds on verification that the income has been assessed in the hands of FIIT JEE Ltd. and due tax has been collected then he should delete the income in the hands of the assessee. Thus, the grounds of appeal of the assesseees in all the years are allowed for statistical purposes.

6. In the final result, all the appeals are allowed for statistical purposes.

Order pronounced in the Court on 19th December, 2018 at New Delhi.

**Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER**

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

Dated: 19.12.2018

BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT, NEW
DELHI

Date of dictation	18.12.2018
Date on which the typed draft is placed before the dictating Member	19.12.2018
Date on which the typed draft is placed before the Other Member	19.12.2018
Date on which the approved draft comes to the Sr. PS/PS	19.12.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	19.12.2018
Date on which the fair order comes back to the Sr. PS/PS	19.12.2018
Date on which the final order is uploaded on the website of ITAT	19.12.2018
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	