

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 2943/Del/2015  
Assessment Year : 2005-06

NEELKANTH TOWN PLANNERS  
PVT. LTD.  
G-36, 2<sup>ND</sup> FLOOR,  
OUTER CIRCLE,  
CONNAUGHT PLACE,  
NEW DELHI - 110 001  
(PAN: AAACN2742D)  
(Assessee)

Vs. DCIT, CENTRAL CIRCLE-27,  
NEW DELHI

(Respondent)

Assessee by : Sh. Salil Aggarwal, Sh. Madhur Aggarwal,  
Sh. R.P. Mall, Advocates  
Department by : Sh. Surender Pal, Sr. DR.

**ORDER**

**PER H.S. SIDHU, JM**

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-29, New Delhi on 07.04.2015 in relation to the assessment year 2005-06 on the following grounds:-

*1 "That the learned Commissioner Income Tax (Appeals) has grossly erred both in law and on facts in making an assessment under section 148/143(3) of the Act at an income of Rs.1,40,00,000/- as against returned income of nil, which was assessed at nil vide assessment order u/s 143 (3) dated 31.12.2010.*

2 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in initiating the proceedings under section 147 of the Act and, further completion of assessment under section 143(3)/147 of the Act without satisfying the statutory pre-conditions for initiation of the proceedings and, completion of assessment under the Act.

3 That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts in initiating proceedings u/s 147 of the Act on the basis of information received from DIT (investigation) mechanically and without independent application of mind.

3.1 That further, the reasons recorded were mere reasons to suspect and were just to make fishing and roving enquiries, as no independent enquiry was conducted by the assessing officer before issuing such notice under section 148 and as such the proceeding initiated under section 148 was a mere pretence.

4 That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts by ignoring the basic fact that assessment was already finalized under section 143 (3) of the Act on the assessee company, wherein, assessee company made full and true disclosure of its affairs and as such, the reasons recorded by learned ITO are mere reasons to suspect and is a clear case of change of opinion, and as such, proceedings under section 147 are misconceived and misplaced in law and is liable to be dismissed as such.

5 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining an addition of Rs. 1, 20, 00, 000/- as alleged accommodation entry received from Sh. S.K. Gupta, and held to be unexplained cash credit u/s 68 of the Act.

5.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has arbitrarily brushed aside the necessary documents/ evidences which were filed before him explaining the fact that the appellant company has received advance amounting to Rs. 1, 20, 00, 000/- from M/s Vijay Shines Pvt. Ltd., which was duly reflected in the appellant company's bank account.

5.2 That further the learned Commissioner of Income Tax (Appeals) ignored the basic fact that no amount was ever received from Sh. S.K. Gupta (the alleged accommodation entry operator), rather Rs.1, 40, 00, 000/- was received from M/s Vijay Shines Pvt. Ltd., and all necessary details regarding the said transactions were filed before learned DCIT, which were totally ignored by the learned DCIT, thus, addition so made by learned DCIT was clearly based on suspicions and surmises and is liable to be deleted as such.

6 That further the learned Commissioner of Income Tax (Appeals) ignored the basic fact that undisputedly, the assessee – appellant had filed its objections before the Assessing Officer vide letter dated 22.03.2013, making a specific request to furnish the copies of any material available with him for rebuttal to the assessee. The

*Assessing Officer, however, did not furnish any material to the assessee for rebuttal. The addition was made relying on a mere general statement recorded at the back of the assessee and without providing the assessee any opportunity to cross-examine the deponent, i.e., Shri S.K. Gupta. Thus, the said addition has no legs to stand and is liable to be deleted as such following the judicial mandate of Hon'ble Delhi High Court in the case of CIT vs Ashwani Gupta reported in 322 ITR 396.*

*7 That the learned Commissioner of Income Tax (Appeals) has failed in conducting any further inquiry i.e. never asked the assessee company to produce the said party nor issued summons under section 131 to the said party, whereas all the necessary documents were filed before him. Thus, it would be clear that the order passed by the learned DCIT is clearly perverse and not backed by proper investigation and verification and as such is liable to be dismissed following the judgment of Hon'ble Delhi High Court in the case of CIT vs Goel Sons Golden Estate Pvt. Ltd. in ITA 2012.*

*8 That the learned Deputy Commissioner of Income Tax has erred in law and on facts in making additions in the hands of assessee company, without giving any fair and proper opportunity of being heard to the appellant company. Thereby, violating the principles of natural justice.*

*9 That the learned Income Tax Officer has further erred by levying interest u/s 234B of the Act, which is not leviable on the facts of the appellant company."*

2. The brief facts of the case are that the assessee engaged in the business of real estate. The Original assessment in this case was completed under section 153C/143(3) of the Income Tax Act, 1961 (in short "Act") vide order dated 31.12.2010 at an income at NIL income against the returned income of Rs. NIL. Subsequently, information was received from ACIT, CC-22, New Delhi having jurisdiction over the case of Sh. SK Gupta an entry operator that the assessee company M/s Neelkanth Town Planners Pvt. Ltd. has been the beneficiary of accommodation entries obtained from Sh. SK Gupta through various concerns floated by him for this purpose. Therefore, notice u/s. 148 of the Act was issued on 30.3.2012, requiring the assessee to file its return of income for the AY 2005-06 and assessment, thereafter, was framed under section 148/143(3) of the Act on 25.03.2013, making an addition of Rs.1,40,00,000/-, on account of alleged accommodation entry received by the assessee company. Against the assessment order dated 25.3.2013, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 07.04.2015 has gave relief of Rs. 20,00,000/- to the assessee company on account of duplication of entries added by AO. However, he sustained an addition of a sum of Rs. 1,20,00,000/- and also upheld the action of AO in framing the assessment under section 147 of the Act.

Aggrieved with the impugned order dated 7.4.2015, assessee appealed before us.

3. During the course of hearing Ld. Counsel for the Assessee, Sh. Salil Aggarwal, has stated that ground no. 2 to 4 may be decided first which are in legal nature and goes to the root of the matter. He stated that since the original assessment was framed under section 153C/143(3) of the Act, wherein, the scope of assessment was limited to the seized documents or incriminating material found as a result of search on Taneja Puri group of cases belonging to assessee company. He further submitted that admittedly no addition was made by the AO during the said proceedings, as no document was found much less incriminating as a result of search on Taneja Puri group of cases belonging to assessee company so as to make additions under section 153C of the Income Tax Act by bringing to tax any undisclosed income. He further argued that the AO by issuing of notice u/s. 148 of the Act, had reopened the assessment proceedings which were already finalized under section 153C of the Act, as is also evident from page 3 of the order of assessment, wherein, prior approval of CIT (Central) – III, New Delhi under section 151 of the Act was obtained by AO. Thus, once the scope of original assessment proceedings under section 153C of the Act was only with respect to incriminating material found as a result of search on Taneja Puri group of cases belonging to assessee company, then admittedly, the scope of assessment could not be enlarged by issuing notice under section 148 of the

Act, in absence of any incriminating material found as a result of search on Taneja Puri group of cases belonging to assessee company and as such, any addition so made by learned AO is beyond the purview of reassessment proceedings under section 148 of the Act. In support of the aforesaid proposition, he relied on the following case laws and filed the copies thereof.

- Copy of order of Hon'ble ITAT Delhi in the case of Mahesh Kumar Gupta vs CIT in ITA No. 1347/Del/2014.
- Copy of order of Hon'ble ITAT Delhi in the case of SMC Power Generation Ltd. vs PCIT in ITA No. 2161/Del/2016.
- Copy of judgment of Hon'ble High Court of Delhi in the case of PCIT vs Mahesh Kumar Gupta in ITA No. 810/2016.
- Copy of judgment of Hon'ble High Court of Delhi in the case of PCIT vs SMC Power Generation Ltd. in ITA No. 603/2017.

4. On the contrary, Ld. DR has relied upon the orders of the authorities below and that the addition in dispute is based on fresh tangible material and as such, the proceedings under section 148 of the Act have been rightly initiated by the AO, which does not need any interference. In support of his contention, he relied upon following cases laws:-

- Pr. CIT vs. NDR Promoters Pvt. Ltd. ITA 49/2008 dated 31.10.2018.
- Sonia Gandhi & Ors. vs. ACIT & Ors. Delhi High Court decision dated 10.9.2018 in WP© 8482/2018, CM Appl. 32580-32582/2018.
- Hon'ble Supreme Court decision in the case of Phool Chand Bajrang Lal and others vs. ITO & Anr. 2002-TIOL-794-SC-IT.
- ITO vs. Selected Dalurband Coal Co. Pvt. Ltd. (2002-TIOL-2198-SC-IT)
- Rajat Export Import India (P) Ltd. vs. ITO (2012) 18 taxmann.com 311 (Delhi).
- Yuvraj vs. UOI (2009) 315 ITR 84 (Bombay).
- ITAT, Delhi Bench decision dated 23.8.2018 in the case of Peer Aar Securities Ltd. vs. DCIT in ITA No. 4978/Del/2014 (AY 2005-06).
- CIT vs. Paramount Communication (P) Ltd. (2017-TIOL-253-SC-IT)
- Indu Lata Rangwala vs. DCIT (2017 80 taxmann.com 102 (Delhi)

- Thakorbhai Manganbhai Patel vs. ITO (2017) 78 taxmann.com 201 SC
- Aravali INfrapower Ltd. vs. DCIT (2017-TIOL-42-SC-IT).
- Raymond Woolen Mills Ltd. vs. ITO & Ors. 236 ITR 34
- RK Malhotra ITO vs. Kasturba Lalbahi (1977) 109 ITR 537 (SC)
- ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 161 Taxman 316 (SC)
- Ankit Financial Service Ltd. vs. DCIT (2017) 78 taxmann.com 58 (Gujarat)

5. We have heard both the parties and perused the material on record. We find that ground nos. 2 to 4 raised by the assessee are legal grounds challenging the validity of assessment under section 148 of the Act and the same goes to the root of the matter and therefore, needs to be adjudicated first, as the issues on merits will only arise once we are not satisfied with the legal grounds so raised by the assessee company. Thus, we are deciding the legal grounds first. On going through the paper books so filed by the assessee company, it becomes evident that original assessment was framed under section 153C/143(3) over the assessee company vide order dated 31.12.2010, wherein, returned income of the assessee company was accepted, as such. We further note that the AO vide issuing of notice under

section 148 of the Act dated 30.03.2012 has reopened the assessment so framed under section 153C of the Act, which is evident from reading of AO's order, wherein, approval of CIT (Central) – III, New Delhi was taken prior to issuance of notice under section 148 of the Act, which shows that the approval has been taken as per proviso to section 151(1) of the Act and as such, it is proceedings already finalized under section 153C of the Act, which have been reopened by the AO. We further find that the AO has reopened the assessment finalized under section 153C of the Act, now, the question that we need to decide is whether, the AO is allowed in law to make additions under section 148/ 147 proceedings, which he was otherwise precluded to make in original proceedings under section 153C of the Act. In short, if AO is allowed to make additions under section 148 of the Act, it would tantamount to allow him to gain a back door entry to frame assessment which he was not legally permitted to do so as per the provisions of section 153C of the Act, as something which could not have been assessed originally due to lack of incriminating material found as a result of search on Taneja Puri group of cases belonging to assessee, would thus, be allowed under section 148 of the Act. At this juncture, it would be appropriate to extract the reasons recorded so recorded by AO in order to reopen the impugned proceedings under section 147 of the Act:

*"A search & seizure action u/s 132 was carried out in M/s TDI Group of cases on 05.01.2009. The case was centralized with Central Circle-16.*

*2 The assessment in the case of M/s Neelkanth Town Planners Pvt.Ltd. was completed vide order u/s 153C/143(3) of the Act, 1961 dated 31.12.2010 at returned income of Rs. Nil.*

*3. A letter has been received from the CIT (Central)-III, New Delhi forwarding therewith copy of letter of the ACIT, Central Circle -22, New Delhi. As per information vide this letter (Supra), a survey u/s 133A was conducted on 20.11.2007 in the case of Sh. S.K. Gupta and the companies operated by him at 308, Arunachal Building, 19, Barakhamba Road, New Delhi-110001. S.K. Gupta basically a chartered accounted but he is found to have been indulged in providing accommodation entries to the different parties through the bank accounts operated by him in the name of different companies, individual and others, reported to be more than 30 in number. As per the print out taken from Annexure A-14, (laptop) impounded during the course of survey, there were huge cash found to have been deposited in various ledger accounts. Sh. S.K. Gupta is the main person controlling the concern of this group.*

4. *This fact was confronted to Sh. S.K. Gupta who, vide his statement on 26.12.2008 has admitted as under:-*

Q2. *Investigation Wing of the Income Tax Department has reported that transaction undertaken through these companies were not genuine. They were mere entries given for equivalent cash and you charged certain commission for those transactions.*

Ans. *Yes, I agree with above statement except for some genuine work of share brokerage, other transaction done are not genuine. Cash was taken and cheques were issued from different companies. The exact details of each party are recorded in the computer seized by the Department in the survey operations on 20.11.2007 at my premises. Details of premium earned by me are also recorded there. The commission income earned belongs to me and should be taxed in my hands. Details of the entries given over in different years like addresses of beneficiaries and nature of transaction will be supplied from to time.*

5. *A list of beneficiaries of accommodation entries provided by Sh. Suresh Kumar Gupta for A.Y. 2005-2006 is also enclosed with the letter (supra), A perusal of the list enclosed with the letter of the ACIT, CC-22, New Delhi reveals that M/s Neelkanth Town Planners Pvt. Ltd. Who is assessed to tax with this Circle, is*

one of the beneficiaries and has received accommodation entries  
as per details given below:

S.No	Date of entry in books	Ch.No./PO/DD	Ch.Date	Company from whom	Issuing bank	Party to whom issued	Amount
1	15.06.04	754930	15.06.04	VIJAYA SHINES	SIB	NEEL KANTH TOWN PLANNERS PVT.LTD.	1000000
2	17.06.04	754931	16.06.04	VIJAYA SHINES	SIB	NEEL KANTH TOWN PLANNERS PVT.LTD.	2000000
3	21.06.04	754939	19.06.04	VIJAYA SHINES	SIB	NEEL KANTH TOWN PLANNERS PVT.LTD.	2000000
4	21.06.04	754940	19.06.04	VIJAYA SHINES	SIB	NEEL KANTH TOWN PLANNERS PVT.LTD.	1500000
5	21.06.04	754941	19.06.04	VIJAYA SHINES	SIB	NEEL KANTH TOWN PLANNERS PVT.LTD.	500000
6	24.06.04	754946	20.06.04	VIJAYA SHINES	SIB	NEEL KANTH TOWN PLANNERS PVT.LTD.	3000000
7	04.06.04	754939	19.06.04	VIJAYA SHINES	SIB	NEEL KANTH TOWN	2000000

						PLANNERS PVT.LTD.	
7	24.06.04	754947	20.06.04	VIJAYA SHINES	SIB	NEEL KANTH TOWN PLANNERS PVT.LTD.	200000

6. *IN view of this, I am satisfied that the income to the tune of Rs. 1,22,00,000/- has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year 2005-2006."*

*Sd/-*

*(FARHAT KHAN)*

*ACIT, CENTRAL CIRCLE-18, NEW DELHI*

5.1 After perusing the reasons recorded, it is crystal clear that the main basis for AO to reopen the completed assessment under section 153C of the Act was survey conducted on Sh. S.K. Gupta on 20.11.2007 and statement of Sh. S.K. Gupta recorded on 26.12.2008, which cannot be regarded by any stretch of imagination to be document belonging to the assessee company and that too incriminating in nature so as to make any addition and the AO had rightly made no addition in the hands of assessee company while framing assessment under section 153C of the Act.

5.2 In this regard, we find that the issue at hand is no more res – integra, as in following cases Hon'ble jurisdictional High Court and also Coordinate Benches of Tribunal have dealt the instant issue and have decided the same in favour of the assessee. Our aforesaid view is fortified by the following judgments/decisions:-

- (i) PCIT vs Mahesh Kumar Gupta in ITA No. 810/2016 (Delhi High Court).

*"Para 4. There is no dispute that the search and seizure proceedings in this case did not result in anything, therefore, material either in the form of books of account or other documents related to the issue of deemed dividend under Section 2(22) of the Act. The amounts paid were in fact originally declared in the assessment returns of the assessee. The CIT, therefore, had opportunity to exercise his powers as it were on the basis of returns as filed originally and validly under Section 263 of the Act.*

*Para 5. In the circumstances in the absence of any material disclosing that the issue of deemed dividend had been wilfully derived or had been deemed or otherwise withheld from the assessment an addition*

*under Section 153A was warranted – based on the proposition taught by this Court in judgment dated 28.08.2015 in ITA 707/2014 titled: CIT vs Kabul Chawla. Therefore, we concur with the ITAT’s opinion in this regard. The search and seizure proceedings in such cases are undoubtedly meant to bring to tax amount that are to be determined on the basis of materials seized in the course of such searches; permitting anything over and above that would virtually amount to letting the Revenue have a third or fourth opinion as it were. Searches – to quote the view of Attorney-General (NSW) vs Quin (1990) HCA 21 in another context are “not the key which unlocks the treasury” of the Revenue’s jurisdiction in regard to matters that had attracted attention in the regular course of assessment.”*

*(ii) SMC Power Generation Ltd. vs PCIT in ITA No. 2161/Del/2016 (ITAT Delhi).*

*“8. We have carefully considered the rival contentions. On the basis of records produced before*

*us there are two orders passed in this case, one u/s 143(3) of the act on 22.12.2010 and second u/s 153A of the act dated 31.3.2014. Admittedly, the original order passed u/s 143(3) of the act cannot be revised as time limit for its revision was got over on 31.3.2013. Therefore, here the attempt was made to revise the assessment order passed u/s 153A of the act 31.3.2014. It is an admitted fact that original assessment was made u/s 153A of the Act is required to be made on the basis of incriminating material found during the course of search. Action u/s 263 of the act can be permitted of such order only if the incriminating documents found during the course of search based on which order u/s 153A of the Act made by the Assessing Officer is found to be erroneous so far as it is prejudicial to the interest of revenue. The Ld CIT has attempted to revise the order on the ground that assessee has accepted share application money in the impugned assessment year which was not properly verified by the Id AO. Hence in the present case the Id CIT has not referred to any document which was found*

*during the course of search relating to share application money amounting to Rs. 30 crores based on which the assessment is sought to be revised u/s 263 of the Income Tax Act. The coordinate bench has decided the identical issue in ITA No. 1347/Del/.2014 wherein it has been held as under:-*

*"Thus, in the present case the issue of deemed dividend does not arise from the provisions of section 153A of the Act and there is no seized material unearthed at the relevant time. Thus, it is beyond Assessing Officer's power to address the said issue in proceedings initiated under section 143(3) read with section 153A of the Act. The CIT was wrong in directing the examination of taxability of deemed dividend under section 2(22)(e) of the Act, in the proceedings u/s 153A of the Act while passing order u/s 263 of the Act when the proceedings u/s 153A itself has not unearthed the said issue. Thus, the Cit do not have power under section 263 of the Act to give its own opinion when there is no new*

*material unearthed. The issue taken up by the CIT was not within the purview of the Assessing Officer at the inception of assessment proceedings.”*

*9. The Id DR could not controvert the above decision or also could not cite any other decision of higher forum, which could justify the action of the Id. CIT. The power for revision u/s 263 of the Act vest with the CIT when he finds that order passed by the Assessing Officer is erroneous as far as it is prejudicial to the interest of revenue. The provisions of section 153A provides for framing a assessment in search case on the basis of incriminating documents found during the course of search. Therefore, the provisions of section 263 can be applied in assessment-framed u/s 153A of the Act only when the order framed u/s 153A is erroneous and prejudicial to the interest of revenue in ignorance of incriminating material found during the course of search. No doubt original assessment made u/s 143(3) can be revised u/s 263 of the act despite the assessment u/s 153A of the act for the same*

*assessment year, provided the time limit prescribed u/s 263 ( 2) of the act is available. In this case, it has already expired on 31.3.2013. Further, while passing impugned order u/s 263 of the Act Id CIT has not made any reference to incriminating material found during the course of search but it is admittedly made on account of observation of the Id CIT(A) while disposing of appeal of the assessee for AY 2009-10. In view of this respectfully following the decision of coordinate bench, we also hold that the Id CIT(A) has erred in assuming jurisdiction u/s 263 of the Act.”*

6. That on going through the reasons recorded in the instant case and also the aforesaid judgment/decision relied upon by the Ld. counsel for the assessee, we have no hesitation in quashing the impugned reassessment proceedings initiated under section 148/147 of the Act as on perusal of reasons recorded it is evident that AO has not made any reference to any document much less any incriminating material found belonging to assessee company during the course of search on Taneja Puri group of cases on 05.01.2009 which could clothe the AO with jurisdiction to reopen the already concluded assessments under section 153C of the Act. However, the decisions relied upon by the Ld. DR are on distinguished facts. Also Ld. D.R.

could not controvert the aforesaid facts and the reliance placed on aforesaid decisions relied upon by the Ld. Counsel for the assessee., as to how the said issue is not squarely covered by the aforesaid decision of the Hon'ble jurisdictional High Court. Therefore respectfully following the aforesaid decisions, we quash the reassessment made by the Assessing Officer u/s. 148/ 147 of the Act. Accordingly, ground nos. 2 to 4 of the appeal raised by the assessee are allowed. Since we have allowed the legal grounds no. 2 to 4 as aforesaid, the other grounds raised by the assessee on merits are not being adjudicated.

7. In the result appeal of the assessee is allowed.

Order pronounced on 08-02-2019.

**Sd/-**  
**[L.P. SAHU]**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Dated: 08-02-2019

*SRBhatnagar*

**Copy forwarded to:**

1. Assessee
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.