

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SMT BEENA A PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5210/Del/2015
(Assessment Year: 2011-12)

DCIT, Central Circle-21, New Delhi	Vs.	Vision Town Planners (P) Ltd, B-116, Sector-44, Noida UP PAN: AACCV9600Q
(Appellant)		(Respondent)

Revenue by :	Shri J. K. Mishra, CIT DR
Assessee by:	None
Date of Hearing	30/01/2019
Date of pronouncement	19/03/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the ld CIT(A)-XXXII, New Delhi dated 22.05.2015 for the Assessment Year 2011-12 where in the order passed u/s 154 of the act by the ld AO was quashed by the ld CIT (A) . The revenue has raised the following grounds of appeal:-

"1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in cancelling the order u/s 154.

2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in adopting the date of filing the return of income as 15.10.2012 whereas the return was filed on 30.03.2012.*
3. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in holding that the impugned assessment order for the A.Y.2011-12 in its para 1 shows that the Assessing officer has issued notice u/s 153C on 27.07.2012 requesting the assessee to file return of income and in response to the notice u/s 153C and the appellant filed return of income on 15.10.2012. Whereas no such mention is there in assessment order.*
4. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.”*
2. Fact shows that assessee is a private limited company carrying on real estate development business. Search and seizure u/s 132 of the income tax act was conducted on 14/9/2010 in case of Shri SK Jain and Sri Virendra Jain. Consequential search operations were also carried out on the BPTP group on 7/12/2010.
3. The assessee company filed its return of income for the assessment year 2011 – 12 declaring an act loss of INR 2

72722/- the learned assessing officer passed assessment order u/s 153C of the act on the total income of INR 2 67527278/- vide order dated 28/3/2013.

4. As this assessment was passed pursuant to search dated 7/12/2010 the AO should have assessed the assessee for assessment year 2011 – 12 u/s 143 (3) of the act and for the preceding 6 years under section 153C of the income tax act. However the learned assessing officer passed the assessment order for this year titling the section under which it is passed as “under section 153C” of the act.
5. The d AO noted this mistake in mentioning the correct section under which the order is passed, therefore, he passed order u/s 154 of the income tax act 1961 on 31/10/2013 stating as under:-

“Consequent to search and seizure action in case of Shri NK Jain, A – 36 Krishna Park (BPTP group), proceedings u/s 153C were initiated in case of the assessee namely M/s vision town planners private limited. In connection with the assessment proceedings order u/s 153C were passed for assessment year 2009 – 10 and 2010 – 11. As per provisions under section 153B (1) (b) of the income tax act, 1961, AO shall also make order for assessment of

reassessment in respect of assessment year relevant to the period in which search is conducted under section 132, within a period of 2 years from the end of the financial year in which the last of the authorization for such u/s 132 was executed, hence the case for assessment year 2011 – 12 was taken up for assessment proceedings by issuing notice u/s 143 (2) of the income tax act on 13/9/2012 and the assessment order in this case was passed on 28/3/2013 determining the income at Rs. 267527280/- . In the said order prima facie mistake is apparent that the section/subsection under which the order is passed has been mentioned as section 153C of the IT act inadvertently instead of 143 (3) of the IT act. Since the mistake is apparent from the record, the same is rectified u/s 154 of the income tax act as under-

“The section & subsection under which the assessment is done of order dated 28/3/2013 is rectified as “u/s 143 (3) of the income tax act 1961” instead of “u/s 153C of the income tax act 1961” and in the same order the para 7.2 is rectified as “assessed at Rs. 267527280 u/s 143

(3 of the act instead of “assessed at Rs 267527280 under section 153C of the act.”

6. Consequently, order u/s 154 of the act was passed on 31/10/2013.
7. Assessee challenged the above order before the learned CIT (A) – XXXIII, New Delhi who passed order dated 22/5/2015 cancelling the impugned order u/s 154 of the income tax act holding that as in appeal against the original assessment order dated 26/3/2014 was initiated by issuing notice u/s 153C of the act and therefore order cannot be passed under section 143 (3) of the act.
8. Aggrieved with the order of the learned CIT – A, revenue is in appeal before us. The learned departmental representative CIT DR stated that inadvertently the AO mentioned the section under which the order was passed as under section 153C instead of section 143 (3) of the act. Therefore the rectification was passed. He submitted that identical issue has been decided by the coordinate bench in case of ITA number 1575/Bang/2016 dated 21/11/2017 wherein in para number 4 of the order the coordinate bench has dismissed the additional ground filed by the assessee. He submitted that the facts of that case are

identical to the facts before the coordinate bench in the impugned order.

9. Notices were issued to the assessee on 08/11/2018 however, none appeared. Therefore, the issue is decided on the merits of the case as per information available on record.
10. In the present case, the learned assessing officer has rectified the defect of mentioning the section under which the order has been passed. The rectification order has been passed stating that the order has been passed under section 143 (3) of the income tax act and not under section 153C of the act. The identical issue has been considered by the coordinate bench in case of Sri Cherian Abraham V s. DCIT in ITA number 1575/bang/2016 for assessment year 2012 – 13 dated 21/11/2017 wherein it has been held in para number 4 as under:-

“4. Having considered the rival submissions as well as the relevant material on record, we find that the undisputedly when the search was carried out on 6/3/2012 then the provisions of section 153C are not applicable for the assessment year under consideration i.e. 2012 – 13, therefore, the assessment framed in question for the assessment year under consideration will be treated only under section 143 (3) and mere mention of section 153C in

the assessment order will not render the assessment invalid or void ab initio. It is apparent that this is a case of only a mistake of mentioning the assessment framed under section 143 (3) read with section 153C and no other material or procedural defect either pointed out or found on the record to suggest that the assessing officer has not followed the procedure for framing the assessment u/s 143 (3). Hence this ground raised by the assessee is devoid of any merit and accordingly we dismiss the ground number 1 of the additional ground.”

11. In the present case, the learned Commissioner of income tax appeals has quashed impugned order under section 154 of the income tax act only for the reason that the notice has been issued under section 153C of the act. However he failed to appreciate that the notice u/s 143 (2) of the income tax act on 13/9/2012 was issued to the assessee. He should have appreciated that in case of search assessment there is no requirement of issuing any notice u/s 143 (2) of the income tax act. Therefore respectfully following the decision of the coordinate bench cited before us by the learned CIT DR and the fact of issue of notice u/s 143 (2) of the income tax act by the assessing officer during the course of assessment proceedings,

we do not have any other option but to sustain the order of the learned assessing officer.

12. We are also supported by several judicial precedents that because a wrong reference to the power under which an order is made does not per se vitiate the order if there is some other power under which the order could lawfully be made [P.M. Bharucha & Co. v. G.S. Venkatesan, (1969) 74 ITR 513(Guj) ; Giridharilal Jhajharia v. CIT, (1970) 78 ITR 133(Cal) ; VR. C. RM. Adaikkappa Chettiar v. CIT, (1970) 78 ITR 285(Mad) ; Bidyut Prova Raha v. ITO, (1971) 79 ITR 187(Assam) ; Indra Co. Ltd. v. ITO, (1971) 80 ITR 400(Cal) ; CIT v. Satnam Transport Co. (Pr.) Ltd, (1973) 92 ITR 42(Punj) ; CIT v. Madurai Knitting Co., (1976) 104 ITR 36(Mad) ; Addl. CIT v. Dalmia Magnesite Corporation, (1979) 117 ITR 930(Mad) ; CIT v. Srikishan Dass, (1980) 125 ITR 730(Del) ; Addl. CIT v. Pakco Engg. Pr. Ltd., (1983) 143 ITR 415(Bom)].
13. It is well-settled that mere quoting of a wrong section should not deprive a party or a litigant of a deserving relief [Bata India Ltd. v. Deputy CIT, (1996) 217 ITR 871, 875(Cal) , relying on P. Balakotaiah v. Union of India, AIR 1958 SC 232, 236, J.K. Steel Ltd. v. Union of India, AIR 1970 SC 1173, 1188 and CST v. Anoop Wines, AIR 1988 SC 2042, 2044].

14. It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power [Collector of Central Excise v. Pradyumna Steel Ltd., (2003) 9 SCC 234].
15. In view of this we do not find any reason to sustain the order of the learned CIT – A. Accordingly, the order of the learned CIT – A quashing the order of the learned assessing officer passed u/s 154 of the income tax act is set aside and the order of the AO is restored.
16. Accordingly, appeal of the learned AO is allowed.

Order pronounced in the open court on 19/03/2019.

-Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/03/2019

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
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	
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	