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

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

ITA Nos.1608 to 1611/Del/2017
Assessment Years: 2010-11 to 2013-14

Sunil Bhalla, 161/1C, Lane W3/2, Western Avenue, Sainik Farms, New Delhi. PAN: AFGPB9442N	vs	Asstt. Commissioner of Income-tax Central Circle-8, New Delhi.
Appellant		Respondent

Assessee by: Shri C.S. Aggarwal, Sr. Advocate
Department by: Shri S.S. Rana, CIT DR

Date of Hearing: 28.02.2019
Date of Pronouncement: 28.03.2019

ORDER

PER NARASIMHA K. CHARY, JM

This is a batch of four appeals filed by the assessee for Assessment Years 2010-11 to 2013-14 challenging orders, all dated 23.01.2017 in Appeal Nos. 167 to 170/15-16 passed by the Learned Commissioner of Income-tax (Appeals)-24, New Delhi {for short "CIT(A)"}, assessee preferred these appeals.

2. Brief facts of the case are that the assessee is an individual and salaried employee. For the Assessment Years 2010-11, 2011-12, 2012-13 and 2013-14, he filed returns of income on 30/7/2010, 11/7/2011,

31/8/2012 and 27/7/2013 respectively declaring a total income of Rs.8,97,764/- Rs.16,00,769/-, Rs.14,91,016/-and Rs.13,17,925/- respectively. Search and seizure action under section 132 was conducted on the Vatika group of cases on 16/1/2013 and according to the Revenue the case of assessee was also covered by it. Notice under section 153A of the Act was issued to the assessee on 29/10/2014, in response to which the assessee submitted their return of income. Subsequently notice under section 143(2) and a notice under section 142(1) of the Act were issued on 12/12/2014.

3. Learned AO concluded the assessment under section 153A/143(3) of the Act in respect of Assessment Years 2010-11, 2011-12, and 2012-13 and under section 143(3) of the Act in respect of the Assessment Year 2013-14 by making the following additions:-

i. Rs.3,41,619/-for the assessment year 2010-11;
ii. Rs. 1,80,000/-for the assessment year 2011-12;
iii. Rs.21,00,876/- for the assessment year 2012-13; and
iv. Rs.1,85,03,206/-for assessment year 2013-14

4. In respect of Assessment Years 2010-11 to 2012-13, the contention of the assessee is two-fold. Firstly, the search and seizure action under section 132 of the Act was conducted on Vatika group of cases and in that process search was carried out at 2 lockers held in the name of the assessee at a Metropolis Vault Private Limited;the premises of Metropolis Vault Private Limited was subjected to search and that an order under section 132(3) of the Act restraining the operation of lockerNos. 722 and 875 standing in the name of the assessee was issued and not on the assessee. The vault was owned by the company, so also the premises belong to such company. Assessee, therefore, contends

thatmerely restraining the assessee from operatingthelocker by passing an order under section 132(3) of the Act is not enough in law to hold that Search has been initiated against the assessee under section 132(1) of the Act.

5. Insofar as the legality of the additions are concerned, the contention of the Ld. AR is that for the assessment years 2010-11, 2011-12 and 2012-13 the assessee filed the returns of income on 30/7/2010, 11/7/2011 and 31/8/2012 respectively and the aforesaid returns were not scrutinised as no notice under section 143(2) of the Act was issued and, therefore, it is clear that there was no pending assessment for such assessment years. Further, in the search, no incriminating material was found other than the jewellery which was duly explained and, therefore, in the absence of any incriminating material, no concluded assessment could be reopened nor any addition could be made. In view of the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Kabul Chawla, 380 ITR 573, any such addition made is not sustainable.

6. Ld. AR placed reliance on the decisions reported in Ld. PCIT vs. MeetaGutgutia, 395 ITR 526 and Ld. PCIT vs Lata Jain, 384 ITR 543 for the principle that there has to be incriminating material recovered during search qua the assessee in each year for the purpose of a framing an assessment under section 153A of the Act.

7. It is the argument of the Ld. DR that insofar as the Assessment Year 2012-13 is concerned, due date for issuance of notice under section 143(2) of the Act was available till 30/9/2013 and since the search took place and notice under section 153A of the Act was issued, there is no need to issue notice under section 143(2) of the Act and, therefore, it

cannot be said that the concluded assessment was sought to be reopened in the absence of any incriminating material. It is further submitted by Ld. DR that in the statement on oath under section 132(4) of the Act, the assessee claimed that the jewellery found during the search was recorded in wealth tax returns filed by the assessee on 15/1/2013, namely, a day before the search on 16/1/2013 and a verification from the Department proved that no such wealth tax returns were filed by the assessee on that date. Ld. DR, therefore, submitted that the assessee had failed to discharge the onus cast on him under the provisions of section 132(4 A) of the Act and accordingly the addition is justified.

8. We have gone through the record in the light of the submissions made on either side. For proper appreciation of the first contention of the assessee that no proceedings were initiated under section 132(1) of the Act against the assessee and, therefore, the search of lockers of the assessee was beyond jurisdiction under section 132(1) of the Act inasmuch as the said action could not have been adopted against the assessee or that the assessee is not a person in whose case such section 132(1) of the Act has been initiated leading to the consequence that the issuance of notice under section 153A of the Act is bad under law is concerned, it is necessary for us to look into the order under section 133 (2) in respect of locker nos. 722 and 875 at Metropolis Vault Private Limited and the Punchnama prepared at the time of operation of locker No. 722 along with Annexures.

9. Page numbers 35&36 of the paper book are comprised of the order under section 132(3) of the Act restraining the lockers No. 722 and 875 of the assessee with the Metropolis Vault Private Limited. It is

clearly mentioned therein that "lockers No. 875 and 722 in the name of Suneel Bhalla, r/o: 161/1C, W3 lane, Western Avenue, Sainik forms, New Delhi at Metropolis Vault, Aurbindo Marg, Hauz Khas, New Delhi or any other locker/save/vault in his name or in the name of any other person who is the authorised signatory" etc. Further page 25 to 34 of the paper book is a copy of Punchnama prepared at the time of operation of locker No. 722 which also contains the entry "warrant in the case of: locker No. 722, in the name of Sh. Sunil Bhalla at Metropolis vault private limited". This Punchnama is prepared in the presence of the assessee and he is one of the signatories there for. Admittedly Mr Sunil Bhalla is the brother of Mr Anil Bhalla who is Chairman of the Vatika group. The particulars furnished in the order under section 132(3) of the Act and the Punchnama are sufficiently clear to establish the nexus of the assessee and the lockers searched and the purpose of search.

10. It is pertinent to note that it is the emphatic statement made on behalf of the assessee that the assessee does not challenge the search conducted on him but what is being challenged is the assessment made under section 153A of the Act as not in accordance with law on the ground that no search under section 132(1) of the Act was initiated against the assessee. When the search is not under challenge, and when something incriminating is found in the lockers belonging to the assessee, we have a grave doubt in our mind as to whether it is open for the assessee to contend that he doesnot want to challenge the search but he wants to challenge the consequences of such search. The consequences are inevitable and mandatory when something incriminating in the shape of jewellery, which according to the Revenue remained unaccounted for, was found. Assessee and assessee alone is

responsible for the consequences of search when something incriminating is found in the lockers which are admittedly belonging to him and the search against which he does not challenge. With this view of the matter, we do not find any substance in the argument advanced on behalf of the assessee that there is no proper search in this matter by initiating the proceedings under section 132(1) of the Act and, therefore, the initiation of proceedings under section 153A of the Act against the assessee is bad under law. Stretching the logic to the extent of leading to absurd inferences or attributing redundancy to the wisdom of legislature is not permissible. It is something different to argue that nothing incriminating was found during the search and, therefore, it is not open for the learned Assessing Officer to make any addition qua the assessee. We, therefore, reject the first contention of the assessee.

11. Now coming to the 2nd limb of argument advanced on behalf of the assessee, there is no dispute that by the date of search, the assessee had already filed the returns of income relating to the Assessment Years 2010-11, 2011-12 and 2012-13 by 30/7/2010, 11/7/2011, and 31/8/2012 respectively, and the due date for issuance of notice under section 143(2) of the Act was 30/9/2011, 30/9/2012 and 30/9/2013 respectively. Further, it is also not in dispute that no notice under section 143(2) of the Act was issued till date of search in respect of any of these years. It could, therefore, be seen from the record that for non-issuance of notice under section 143(2) of the Act by the respective due dates, the assessments for assessment years 2010-11 and 2011-12 stood concluded.

12 It is an admitted fact that except jewellery, no material much less incriminating material was found during the search that took place on

16/1/2013. It is, therefore, clear that after the search, Ld. AO sought to reopen the concluded assessment for the Assessment years 2010-11 and 2011-12. In view of the decision of the Hon'ble judicial High Court in the cases of Kabul Chawla (supra);MeetaGutgutia (supra); and Lata Jain (supra,) no assessment could be framed and section 153A of the Act in the absence of any incriminating material recovered during the search qua the assessee qua the assessment years. We are, therefore, of the considered opinion that the additions made for the Assessment Years 2010-11 and 2011-12 made in the absence of any incriminating material is bad under law and cannot be sustained. On this score the assessee succeeds in respect of Assessment Years 2010-11 and 2011-12.

13. Now coming to the assessment year 2012-13, the due date for issuance of notice under section 143(2) of the Act was 30/9/2013 and in view of the search that took place on 16/1/2013, it cannot be said that by such date the assessment for the assessment year 2012-13 was a concluded one. Since no notice under section 143(2) of the Act is required to be given in a case of search and section 153A of the Act, in view of the decision of the Hon'ble jurisdictional High Court in the case of Ashok Chadda vs. ITO (2011) 337 ITR 399, it is not open for the assessee now to contend that because notice under section 143(2) of the Act was issued on 12/12/2014, reopening is bad. In respect of the assessments which are not concluded by the date of search, it is open for the Ld. Assessing officer to proceed with the assessment without issuing any notice under section 143(2) of the Act. We, therefore, find that the assessment was rightly proceeded by the learned Assessing officer in respect of the Assessment year 2012-13.

14. In respect of assessment year 2012-13 the additions are in respect of the change in head of income from “income for house property” to “income from other sources” to the tune of Rs.1,80,000/-and also income from undisclosed sources to the tune of Rs.19,20,876/-.

15. In respect of the firstaddition, case of the assessee is that he had let out the house property at Western Avenue, Sainik form, New Delhi and received a sum of Rs.6 Lacs towards rent. When called upon to substantiate his claim, assessee produced the copy of rent agreement with one Mr Gurinder Singh, resident of village and post office Bahadurgarh, Patiala district of Punjab. Learned Assessing officer noted that such an agreement of rent does not bear any signature of Mr Gurinder Singh.Assessee was asked to explain and verify the cash receipt of rental income by producing confirmation from the tenant and also the PAN and ITR of the tenant. Reply of the assessee was that the property was vacated by the tenant about 2 years back and the lessee was not the interactingwith him and, therefore, he cannot arrange the details required of him. In the circumstances, having no material substantiating the claim of the assessee on record, Ld. Assessing officer proceeded to treat the income from house property offered by the assessee as ‘income from other sources’ and denied the standard deduction of 30% claimed by the assessee.

16. Before the Ld. CIT(A) also assessee did not produce any evidence whatsoever and on the other hand contended that by producing the rent agreement the assessee discharged his onus and Ld. AO could not have decided the issue against the assessee without any independent exercise to disprove the submissions made by the assessee.

17. Learned CIT(A) on a careful consideration of the contentions raised before him by the assessee held that the persons who claim the benefit under the provisions of the Act has to prove before the authorities that he is entitled to the benefit by placing proper and sufficient material to that effect but in so far as this case is concerned, the so called rent agreement is a self serving one signed by the assessee alone and not verified by the other party, and in the absence of any address of the tenant being given, it is not possible for the department also to make any enquiry. Learned CIT(A), therefore, felt that this aspect remains unverifiable and for want of evidence, the assessee shall fail.

18. In so far as the addition of Rs.19,20,876/- is concerned, it is the finding of the authorities below that the assessee failed to provide any explanation much less the evidence in support of his claim that the receipts are exempt from tax. The authorities recorded that for want of explanation as to the source of these receipts and also the supporting evidence, it is not possible to allow the same.

19. Even before us also, in so far as these two aspects are concerned, no evidence is produced by the assessee and we do not find any reason to take a different view in the absence of any material before us in support of the claim of the assessee. We, therefore, also find that for want of evidence, the case of the assessee must fail and ITA No.1610/Del/2017 stands dismissed.

20. ITA No.1611/Del/17 relates to the AY 2013-14 and since the search took place on 16.1.2013,the assessment is made u/s 143(3) of the Act. By way of order dated 30.3.2015, learned AO made additions and

assessed the income of the assessee at Rs.1,93,40,467/- as against the returned income of Rs.13,17,928/-.

21. Appeal of the assessee was dismissed by the learned CIT(A) in respect of the additions made on account of income from house property and other sources, deduction under Chapter VIA but reduced the additions made on account of unexplained jewellery. Learned CIT(A) also rejected the contention of the assessee that there was no proper compliance of Section 153A of the Act and in fact there were no search proceedings held on the assessee.Assessee, therefore, preferred this appeal both on law as well as on facts.

22. In so far as the validity of the search is concerned, as a matter of fact, learned CIT(A) on verification of assessment record found that on a consolidated proposal, learned AO sought the approval of the Addl. CIT and the clubbing of the draft assessment order for AY 2013-14 appears to be a bonafide mistake. Since there were no directions issued by the Addl. CIT to AO to complete the assessment order for AY 2013-14 in any particular manner, there was no prejudice to the assessee by the action of the AO in submitting a draft order to Addl. CIT for approval. On this aspect, we do not find any reason to take a different view.

23. The other contention raised before us is that for this year the assessee filed their return of income on 30.9.2014 declaring a total income of Rs.13,17,925/- and the due date for issuance of notice u/s 143(2) was 30.9.2014. it is submitted that no notice u/s 143(2) was issued till 20.9.2014 beyond the period provided u/s 143(2) of the Act.

24. Learned AR submitted that the service of notice u/s 143(2) of the Act on the assessee within the period provided under proviso to Section

is mandatory and in the absence of such notice being served within the stipulated period, the assessment proceedings come to an end and any assessment made in violation of this provision is without jurisdiction. He placed reliance on the decision reported in HarsingarGutkha p. Ltd.vs CIT, 336 ITR 90 of the Hon'ble Allahabad High Court and CIT Bangalore vs M/s Pai Vaibhav Hotels P. Ltd. dated 5.4.2010 by the Hon'ble Karnataka High Court for this proposition.

25. Learned DR placed reliance on the orders of the authorities below in so far as this aspect is concerned who submitted that in the statement of oath u/s 132(4), the assessee claimed that the jewellery found during search was recorded in wealth tax returns filed by the assessee claimed to have been filed on 15.1.2013 but the verification of the record by the department falsifies the same. He placed reliance on the decisions reported in the case of CIT vs. Sonal Construction, 2012-TIOL-851-HC-Del; CIT vs Naresh Kumar Aggarwala (2011) 331 ITR 510(Del); and Bhagheeratha Engineering Ltd. vs ACIT (2017) 379 ITR 244 (Kerala) for the proposition that when the assessee had not discharged the burden as regards source from which the investment was made, the investment in property was an unexplained investment and adding the same to the income of the assessee is not improper.

26. We have gone through the record. There is no dispute as to the submission of the assessee that the assessee filed the return of income for the Asst. Year 2013-14 on 27.7.2013 declaring a total income of Rs.13,17,298/-. Assessment order does not reveal that any notice u/s 143(2) was issued prior to the 29.10.14 whereas the due date for issuance of notice was 30.9.2014.

27. Section 143(2) of the Act reads as follows:

> *" Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:*
>
> ***Provided** that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished."*]

28. It is, therefore, clear that in this matter, the notice u/s 143(2) of the Act is issued beyond the period allowed for such purpose and was issued on 29.10.2014 as against the due date for issuance of notice. It is, therefore, clear that such notice was issued beyond the period of limitation. Hon'ble Allahabad High Court in the case of CIT vs. HarsingarGutkha(P) LTD. (2011) 336 ITR 90 while placing reliance on the decisions in the case of CIT vs. M. Chellappan (2006) 281 ITR 444 (Mad), Vipan Khanna vs. CIT (2002) 255 ITR 220 (P&H), CIT vs. Bhan Textiles (P) Ltd. (2006) 287 ITR 370 (Del), CIT vs. Lunar Diamonds Ltd. (2006) 281 ITR 1 (Del), and Dy. CIT vs. Mahi Valley Hotels & Resorts (2006) 287 ITR 360 (Guj), held that perusal of the provisions of s. 143(2) of the Act shows that the service of the notice on the assessee within the period provided under the proviso is mandatory. In the absence of the notice being served within the stipulated period under s. 143(2) of the Act, the assessment proceeding comes to an end and is deemed to have become final.

29. The Hon'ble Karnatka High Court in the case of M/s s Pai Vaibhav Hotels P. Ltd. Ltd. (supra)had held in paras 5 to 7 as under:

"5. During the course of arguments, the learned counsel for the respondent has raised the question of limitation by drawing our attention to proviso to section 143(2) of the Income Tax Act by contending that the notice issued u/s 143(2) of the Act, in the instant case was beyond the prescribed period mentioned in the said proviso. In the instant case the date of filing of the return was on 4.5.1999 and that the notice was issued on 9.8.2002 which is beyond one year from the end of the financial year in which the return was filed. Relying on a decision of the Apex Court in the case of Asst. CIT &Anr. Vs. Hotel Blue Moon reported in (2010) 35 DTR(SC, he submits that the entire proceedings was vitiated and, therefore, in view of the notice itself being beyond the prescribed period of limitation under the Act, subsequent proceedings also would not stand the test of law.

6. Learned counsel for the appellant has however drawn our attention to the assessment order wherein it has been stated that the notice was issued under Sec. 143(2) on 9.8.2002 and the Assessing Officer was justified in issuing the said notice on the said date and that the order passed by the Tribunal will have to be set aside based on the substantial questions of law raised in this appeal.

7. Having heard the counsel on both sides and on perusal of the material on record, it is not in dispute that in the instant case, notice was issued under sec. 143(2) pursuant to a search conducted on 6.7.1998 in the premises of the respondent-assessee and it was with regard to the block period of 198889 to 1998-99 and the said notice though originally issued under sec. 158BC of the Act and the assessment order was completed and the same became a subject of remand. We find that subsequently the notice issued on 9.8.2002 is beyond the prescribed period of limitation. Keeping in mind the proviso to section 143(2) of the Act as it then stood, where the limitation period was one year, since the date of filing of the return in the instant case is 4.5.1999 keeping in mind the ratio of the decision of the Apex Court in the case of Hotel Blue Moon, wherein it has been stated that if the Assessing Officer for any reason repudiates the return

filed by the assessee in response to a notice u/s 158BC(a) then he must necessarily issue a notice u/s 143(2) within the time prescribed in the proviso to section 143(2) of the Act. If there is a omission on the part of the Assessing Authority to issue notice u/s 143(2), then it is not a mere procedural irregularity and the same is not curable."

30. It is, therefore, clear that the notice u/s 143(2) issued in this case is beyond the prescribe time and the assessment made in violation of the statutory provision is without jurisdiction. On this ground, we find that the assessee succeeds. We, therefore, do not propose to dwell deeper into the merits of the case since the assessee gets the relief on the question of law of limitation. Accordingly, ITA No.1611/Del/ filed by the assessee is allowed.

31. In the result, whereas ITA Nos.1608, 1609 and 1611 are allowed, ITA No.1610 is dismissed.

Order pronounced in the Open Court on 28th March, 2019.

Sd/-	**sd/-**
(PRASHANT MAHARISHI)	**(K.NARASIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated:28th **March, 2019/**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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