

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No. 930/DEL/2015
[Assessment Year: 2005-06]

Image Promoters Pvt. Ltd
515, Tolstoy House
Tolstoy Marg, New Delhi

Vs.

The D.C.I.T
Central Circle - 14
New Delhi

PAN : AAACI 5106 J

[Appellant]

[Respondent]

Date of Hearing : 20.03.2019
Date of Pronouncement : 29.03.2019

Assessee by : Shri Ashwani Taneja, Adv.
Ms. Geetanjali Mahata, CA

Revenue by : Smt. Sushma Singh, CIT-DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
Commissioner of Income Tax [Appeals] - 30, New Delhi dated
28.11.2014 pertaining to assessment year 2005-06.

2. The grievances of the assessee read as under:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned assessment order framed by Ld. AO which is beyond jurisdiction, illegal and void ab initio and Ld. CIT(A) ought to have annulled the assessment being bad in law

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding that assessment order was valid u/s 147 whereas factually the impugned assessment order has been framed by Ld. AO u/s 153C and Ld. CIT(A) erred in observing that assessment is valid u/s 147 whereas the impugned order is illegal in all respect i.e. 147 as well as u/s 153C of the Act and in any case it has not been passed u/s 147.

3. That in any case and in any view of the matter and having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned assessment order framed by Ld. AO and that too without recoding valid reasons and without obtaining valid approval as per law and without complying with mandatory condition of section 147 to 151 as envisaged under the law.

4. That in any case and in any view of the matter and having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the assessment order passed u/s 1530/143(3) as the same was passed without recording requisite and valid satisfaction as envisaged under the law by the AO of searched person and by the AO of the assessee

and without assuming jurisdiction as per law and without obtaining requisite approval as per law and without complying with the other mandatory condition as envisaged under the Act, more so when no incriminating material has been found as a result of search.

5. That impugned assessment was reopened u/s 147 read with 148 and thus resultant assessment order could have been passed only under section 147 alone and since no assessment order has been passed u/s 147 and thus reopened proceedings came to an end and impugned assessment order passed u/s 153C is nullity and void ab initio in the eyes of law and no valid jurisdiction was assumed as per law and Ld. CIT(A) ought to have quashed this null and void assessment order.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.40,00,000/- on account of sale of shares u/s 68 of Income Tax Act, 1961 and that too without considering the submissions/evidences of the assessee.

7. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.40,00,000/- on account of sale of shares u/s 68 is beyond jurisdiction, illegal, bad in law and against the facts and circumstances of the case and in any case impugned addition is beyond the scope and jurisdiction of the impugned assessment order.

8. That impugned assessment order and addition made therein are not sustainable on various legal and factual grounds and impugned assessment order has been passed by recording incorrect facts and findings and without confronting adverse material and without providing opportunity of cross examination and the same has been passed in violation of principles of natural justice.

9. That having regard to the facts and circumstances of the case, the Id. CIT(A) has erred in law and on facts in not reversing the action of AO in charging interest u/s 234A and 234B of the Income Tax Act, 1961."

3. Briefly stated, the facts of the case are that assessment order dated 28.03.2013 is framed u/s 153C/143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act']. It would be pertinent to refer to the grounds taken before the CIT(A) by the assessee against the impugned assessment order which read as under:

"1. In law and in the facts and circumstances of the appellant's case, the Ld. Assessing Officer has erred in initiating proceedings u/s. 153C, when the provisions of section 153C are not applicable in the appellant's case.

2. In law and in the facts and circumstances of the appellant's case, the order passed u/s. 153C of the Assessing Officer is void and needs to be quashed.

3. In law and in the facts and circumstances of the appellant's case, the AO has erred in invoking the provisions of section 68, when the amounts for which the addition is made represent the realization of sale consideration of shares and not cash credit.

4. Without prejudice to the above, in law and in the facts and circumstances of the appellant's case, the AO has erred in making addition of Rs. 40,00,000/- u/s by holding that the same represent accommodation entries without any evidences, when the amounts are receipts against genuine transactions.

5. In law and in the facts and circumstances of the appellant's case, the AO has erred in giving direction to charge interest u/s. 234B & 234C of the Act and also charging interest of Rs. 12,34,917/- u/s. 234B of the Act, when no such interest is chargeable in the appellant's case.

6. In law and in the facts and circumstances of the appellant's case, the AO has erred in charging interest u/s. 234A amounting to Rs. 29,0561- of the Act, when the AO

himself not ordered the charging of nay interest u/s. 234A of the Act in the assessment order and when no such interest is chargeable in the appellant's case.

7. In law and in the facts and circumstances of the appellant's case, the AO has erred in initiating penalty proceedings u/s. 271 (l)(c) of the Act."

4. In the light of the aforementioned grounds taken before the first appellate authority, the findings of the CIT(A) read as under:

"I have considered the assessment order, written submission and oral arguments of Ld.AR.

Main arguments of Ld. AR are against assuming jurisdiction u/s 153C well as 147. In present case, notice u/s 148 was issued on 27.03.2012 for assuming jurisdiction u/s 147 prior to issuance of notice u/s 153C. I have perused the reason recorded by the assessing officer & reproduced in the written submission. The assessing officer has relied on the findings of survey operation u/s 133A on conducted in the case of Sh. S.K. Gupta who found as entry operator by receiving cash and giving cheques. The appellant has received such cheques from M/s Vasudeva Firms for Rs. 15 lacs, one of

the concern of Sh. S.K. Gupta. On the basis of this information and after applying his mind, the assessing officer has recorded reason for opening the case u/s 147. The reason recorded by the assessing officer is based on the evidences gathered during survey operation in the case of Sh. S.K. Gupta & correlatable with the affairs of the assessee. Therefore, I am convinced that reason for escaping income has been properly recorded. The judicial pronouncement relied by Ld. AR are misplaced on facts as the reason recorded by the assessing officer is based on appreciation of facts of receiving money by the appellant from M/s Vasudeva firms run by an entry operator Sh. S.K. Gupta. Accordingly, I uphold the validity of issuance of notice u/s 148 & proceedin-u/s-147.

Next argument of Ld, AR is the irregular jurisdiction assumed u/s 153C by not recording reason in the case of the person searched. I have perused this argument. As I have held the jurisdiction assumed u/s 147 by issuing notice u/s 148 and correctly the order is passed within time available. Subsequent, irregularly if any for assuming / jurisdiction u/s 153C will not effect the earlier assumption of jurisdiction for assessment u/s 147.

On the satisfaction part, the assessing officer has mentioned the assessment is made u/s 153C but in the body of order, he has elaborately discussed the proceedings u/s 147. Therefore, assessment is valid u/s 147. Accordingly, jurisdictional grounds are hereby dismissed."

5. Since the revenue is not in appeal before us, such findings of the CIT(A) have attained finality in so far as the revenue is concerned.

6. Before us, ld. AR filed a written synopsis and the same read as under:

(I) The impugned assessment order dated 28.03.2013 has been framed u/s 153C/143(3) of the Act. In para 4 of assessment order it has been mentioned that notice u/s 153C was issued on 03.01.2013. Copy of satisfaction note u/s 153C is also enclosed at **PB 34-35**. In appeal before CIT(A) while examining the jurisdictional validity of impugned assessment order, it has been held by Ld. CIT(A) that impugned assessment order is valid only u/s 147 vide para 3.3 at page 8-9 of his order. Thus, action of Ld. AO in framing the order u/s 153C has not been approved by the Ld. CIT(A). It may be noted that action of CIT(A) has not been challenged by the department since, department was not aggrieved by the action of CIT(A).

Under these circumstances, the impugned assessment order becomes invalid in law and without jurisdiction and therefore it deserves to be quashed on this ground itself.

(II) Without prejudice to above, proceeds u/s 153C are also bad in law in view of following points:

- (i) **PB 34** is copy of satisfaction note u/s 153C dated 03.01.2013 recorded by the DCIT, CC-14, New Delhi. Perusal of same will show that there is no reference to any incriminating material and much less any incriminating material 'belonging' to the assessee.
- (ii) Profit & Loss account and Balance Sheet pages can neither be said to be incriminating material nor can be said to belonging to assessee. Reliance is placed on the following judgments:
- PCIT vs. Meeta Gutgutia (2017) 395 ITR 0526 (Delhi HC)
 - Index Securities Pvt Ltd. [2017] 86 taxmann.com 84 (Delhi HC)

Section 153C of the Income-tax Act, 1961 - Search and seizure - Assessment of any other person (Condition precedent - Position prior to 1-6-2015) - Assessment years 2007-08, 2008-09 and 2010-11 - Whether essential jurisdictional requirement for assumption of jurisdiction under section 153C (prior to its amendment with effect from 1-6-2015) qua 'other person' is that seized documents forming basis of satisfaction note must not merely 'pertain' to other person but must belong to 'other person' - Held, yes - Whether in order to justify assumption of jurisdiction under section 153C, documents seized must be incriminating and

must relate to each of assessment years whose assessments are sought to be reopened - Held, yes - During course of assessment proceedings in case of a company, a number of documents were found and seized which contained trial balance and balance sheet of assessee company for period 1-4-2010 to 13-9-2010 - Though seized documents might pertain to assessee, same was not proved to belong to assessee - Further, said documents did not relate to relevant assessment years and secondly, they could not be said to be incriminating - Whether since, both essential requirements for assumption of jurisdiction under section 153C were not met, issuance of notice was unjustified - Held, yes [Paras 30 & 32] [In favour of assessee]

(iii) The above said satisfaction has been recorded by Ld. AO of assessee. There is no satisfaction from the AO of searched person recorded in the file of searched person namely M/s Amtek Auto Ltd. Under such circumstances assumption of jurisdiction is bad. Reliance is placed on the following judgments

- PCIT vs. M/s N S Software (Firm), Delhi High Court ITA No. 791/2017, Date of Order 18.04.2018
- CIT vs. RRJ Securities Ltd. (2016) 380 ITR 0612 (Delhi HC)
- PCIT vs. Nikki Drugs & Chemical Pvt. Ltd. (2016) 129 DTR 0393 (Delhi HC)(CLC 1 11)

III Without prejudice to above, though vehemently denied but if the impugned assessment order is tested with respect to assumption of jurisdiction u/s 147, even then it is bad in law on account of following grounds:

(i) **PB 37** is copy of reasons recorded showing that it has been recorded by ITO Ward 11(3) whereas, assessment order has been passed by Ld. DCIT, CC-14. Thus, it is not established that how ITO Ward 11(3) was the jurisdictional AO and how Ld. DCIT, CC-14 assumes jurisdiction to frame assessment order,

(III) Further, satisfaction of Addl CIT, Range-11, New Delhi based upon his independent application of mind is missing and thus rendered the assessment proceedings in nullity.

(IV) In the impugned reasons Id. AO has alleged that unexplained credit received in the form of Share Application Money /Share Capital/ Unsecured loans whereas assessee has received cheque of Rs. 15 Lac on account of sale of shares as elaborated vide reply dated 18.03.2013 (PB 39).”

7. We have given a thoughtful consideration to the orders of the authorities below and have gone through the written synopsis furnished by the Id. AR. A perusal of the grounds taken before the first appellate authority clearly shows that the assessee has challenged the initiation of proceedings u/s 153C of the Act on the alleged ground that the said provisions are not applicable on the facts of the case. However, the findings of the CIT(A) is based upon as if the assessment is framed u/s 148 r.w.s 143C of the Act. In our

considered opinion, the first appellate authority has not adjudicated the grounds taken before him by the assessee. In such circumstances, we are left with no choice but to remit the matter to the file of the CIT(A). The CIT(A) is directed to decide the issues specifically on the grounds raised before him afresh after considering the submissions of the assessee on the point of law as well as on merits of the case.

8. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

The order is pronounced in the open court on 29.03.2019.

Sd/-

**[K.N. CHARY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 29th March, 2019.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. 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	