

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील स / ITA Nos.1719 and 1720/PUN/2014

निर्धारण वर्ष / Assessment year : 2005-06

Smt. Yogita Badgujar,
204, Pashupatinath C-02, B Wing,
Mahadev Sankalp Complex,
Gandhare Village, Near Khadakpada
Chowk, Kalyan (West), Thane – 421 301.

..... अपीलार्थी /
Appellant

PAN : ANKPB5184H.

बनाम v/s

The Income Tax Officer,
Central – 1, Nashik.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Pramod Shingte.

Revenue by : Shri Sudhandu Das.

सुनवाई की तारीख / Date of Hearing : 11.01.2019	घोषणा की तारीख / Date of Pronouncement: 10.04.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These two appeals filed by the assessee are emanating out of separate orders of Commissioner of Income Tax (A) – 1, Nashik dt.22.08.2014 for the assessment year 2005-06. ITA No.1719/PUN/2014 is against the assessment order framed u/s 143(3) r.w.s. 153C and ITA No.1720/PUN/2014 is against the levy of penalty u/s 271(1)(c) of the Act.

2. We first take up assessee's appeal in ITA No.1719/PUN/2014 for A.Y. 2005-06.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual stated to be re-seller of cloths on retail basis. Assessee filed her original return of income for A.Y. 2005-06 on 19.11.2007 declaring total income of Rs.99,350/-. A search and seizure action u/s 132 of the Act was conducted in Suyojit Group of cases on 17.09.2010 and the residential premises of Shri Anant Keshav Rajegaonkar was also searched u/s 132 of the Act. During the course of search action, certain incriminating documents belonging to the assessee were seized from the searched premises. Accordingly, provisions of Sec.132 of the Act were invoked in the case of assessee and notice u/s 153C of the Act was issued on 30.07.2012 and served on the assessee. In response to notice u/s 153C of the Act, assessee filed her return of income on 17.12.2012 declaring total income of Rs.2,17,963/- which included additional income of Rs.1,18,613/- on account of bank interest and interest on securities. The case was taken up for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s. 153C of the Act vide order dt.28.03.2013 and the total income was determined at Rs.77,17,960/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.22.08.2014 (in appeal No.Nsk/CIT(A)-I/648/2013-14) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. On the Facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) - 1, Nashik erred in passing the Appellate Order without giving proper opportunity of being heard to the Appellant.

The appellant therefore prays that the Appellant Order be quashed and the file to be restored back to the Ld.CIT(A) for deciding the matter afresh.

2. On the Facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) - 1, Nashik erred in not providing an opportunity to the Appellant to cross examine the persons whose statements are used against the Appellant.

The Appellant therefore prays that the Appellant Order be quashed and the file to be restored back to the CIT(A) for deciding the matter afresh.

3. On the Facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) - 1, Nashik has erred in sustaining addition of Rs. 75,00,000/-.

The Appellant therefore prays to delete the addition of Rs. 75,00,000/-.

4. On the Facts and in the circumstances of the case and in law, the Learned Assessing Officer erred in not transferring the file from Nashik to Kalyan even though the Assessment proceeding in the case of the Appellant was completed.

Hence the Appellate Order is bad in law and needs to be quashed and a fresh hearing from proper jurisdiction may be given.”

4. Subsequently, assessee vide letter dt.25.09.2017 has raised additional ground of appeal which reads as under :

“On the facts and in the circumstances of the case and in law, lower authorities have erred in initiating provision u/s 153C of the Income Tax Act, 1961 in view of the fact that the alleged incriminating material do not belong to assessee and also proceedings are time barred.”

5. With respect to the additional ground, it is assessee's submission that it is a legal ground which goes to the root of the issue and the same be admitted in view of the decision of Hon'ble Apex Court in the case of National Thermal Power Limited Vs. CIT reported in 229 ITR 383. Ld.D.R. did not seriously object to the additional ground raised by the assessee.

6. We have heard the rival submissions on the issue of admission of additional ground. The additional ground raised by the assessee being legal in nature and in view of the ratio laid down by the Hon'ble Apex

Court in the case of National Thermal Power Ltd., (supra), we admit the additional ground of appeal filed by the assessee for adjudication.

7. Since the additional ground raised by the assessee is with respect to the challenging the assessment framed u/s 153C of the Act, we first proceed to dispose of the additional ground.

8. Before us, Ld.A.R. submitted that the search at the residential premises of Shri Anant Keshav Rajegaonkar u/s 132 of the Act took place on 17.09.2010 wherein it was alleged that certain incriminating documents belonging to the assessee were seized from searched premises. He pointing to the copy of order sheet dt.30.07.2012 which was recorded by the AO for recording the satisfaction for issuance of notice u/s 153C of the Act and which is placed at Pages 1 to 4 of the Paper Book pointing to the aforesaid document, he submitted that AO recorded satisfaction that the seized documents belonged to assessee i.e., other than the person referred to in Sec.153A of the Act and accordingly the relevant documents were handedover to the AO having jurisdiction over the assessee on 30.07.2012 i.e., in A.Y. 2013-14. He submitted that as per the provisions of Sec.153A of the Act, the AO is empowered to assess or reassess the total income in respect of each assessment year within such six assessment years. He submitted that in the case of assessee since receipt of information was in A.Y. 2013-14 and therefore the period of six assessment years would be from A.Y. 2007-08 to 2012-13. In such a situation, the AO could not have resorted to the framing of assessment u/s 143(3) r.w.s 153C of the Act for A.Y. 2006-07 which is beyond the period of six years. He further placed reliance on the decision of Hon'ble Delhi High Court in the case

of PCIT Vs. Sarwar Agency Pvt. Ltd., reported in (2017) 397 ITR 400 and the decision of the Co-ordinate Bench of the Tribunal in the case of Kewal Kumar Jain Vs. ACIT (ITA Nos1381 to 1383/PUN/2016 order dt.30.08.2016). He also placed on record the copy of the aforesaid decision. Ld.A.R. further submitted that while deciding the issue, the Co-ordinate Bench of the Tribunal has also considered the decision of Hon'ble Delhi High Court in the case of PCIT Vs. Sarwar Agency Pvt. Ltd., (supra). He therefore submitted that the order passed by the AO is liable to be set aside as it is beyond the period specified u/s 153C of the Act.

9. Ld.D.R. on the other hand, supported the order of AO and Ld.CIT(A). Ld.D.R. further submitted that in this case, the Ld.CIT in view of the powers conferred u/s 127 of the Act had passed order u/s 127 of the Act on 25.03.2011. He therefore submitted that since the order u/s 127 of the Act has been passed in A.Y. 2011-12, the order passed by the AO for A.Y. 2005-06 is within the time limit and is not barred by limitation. He further submitted that the provision of Sec.153C of the Act does not stipulate the recording of satisfaction. He therefore submitted that the order passed by the AO is within the time limit.

10. Ld.A.R. in the rejoinder submitted that provisions of Sec.153C(1) of the Act requires the recording of satisfaction of the AO of the searched person and the procedure mentioned in Sec.153C of the Act is specific. He further submitted that in the order passed by Ld.CIT u/s 127 of the Act, there is no reference of the search in the case of Anant Keshav Rajegaonkar and that the provisions of Sec.127 of the

Act relates to power to transfer cases and in the absence of any mention about Sec.127 of the Act in Sec.153C, the same cannot be considered under the provisions of Sec.153C of the Act.

11. We have heard the rival submissions and perused the material on record. In the present ground the assessee has challenged the validity of the assessment framed u/s 143(3) r.w.s 153C of the Act. The fact that the search u/s 132 of the Act was carried out at the premises of Anant Rajegaokar on 17.09.2010 wherein certain incriminating material belonging to the Assessee was found is not in dispute. It is also not in dispute that the AO of the searched person handed over the relevant documents of the assessee, the other person, to the AO of the Assessee on 30.07.2012 i.e. in A.Y 2013-14.

12. The ingredients to be satisfied to attract section 153C of the Income-tax Act, 1961 are : (a) the satisfaction note has to be prepared by the Assessing Officer of the person in respect of whom the search was conducted, (b) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, should belong to or should have belonged to a person other than the person in respect of whom the search was conducted, (c) the books of account or documents or assets, seized or requisitioned should be handed over to the Assessing Officer having jurisdiction over such other person. For the purpose of section 153C, a satisfaction note is sine qua non and must be prepared by the Assessing Officer before he transmits the records to the Assessing Officer who has jurisdiction over such other person. Sub-section (1) of section 153C of the Income-tax Act, 1961 provides that the assessment or reassessment of the income of the "other

person” would be in accordance with the provisions of section 153A. The first proviso to sub-section (1) of section 153C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to section 153A(1) “shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person”. In terms of section 153A(1)(b) of the Act, the Assessing Officer shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted. When the facts of the present case are seen in the light of the statutory provisions discussed above, it is seen that the impugned assessment year i.e., A.Y. 2006-07 falls beyond the period of six assessment years from the period from which the documents were handed over to the AO of the assessee and therefore the assessment was outside the scope of Sec.153C of the Act and the AO had no jurisdiction to frame the assessment of assessee’s income for that year.

13. We find that identical issue arose before Hon’ble Delhi High court in the case of CIT vs. RRJ Securities Ltd (2016) 380 ITR 0612 (Delhi) wherein the Hon’ble High Court has held that In terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. The relevant observations of the High Court are as under:

“24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee’s income for that year.”

14. As far as reliance by Ld DR on the provisions of Sec.127 of the Act is concerned, we find force in the argument of Ld.A.R. that provisions of Sec.127 are with reference to power to transfer the cases and in the absence of mention about Sec.127 in Sec.153A/153C, the same cannot be considered. Before us, Revenue has not placed any judicial precedent to support its contention. In such a situation, we

are of the view that since the impugned assessment year was beyond the period available under the proviso to Sec.153C read with proviso to Sec.153A and hence the AO had no jurisdiction to take up the proceedings for the captioned assessment year. We thus set aside the order passed by the AO. We thus allow the additional ground raised by the Assessee. Since we have set aside the assessment order itself the other grounds raised by the assessee on merits have been rendered academic and therefore require no adjudication.

15. In the result, the appeal of assessee in ITA No.1719/PUN/2014 is allowed.

16. Now we take up assessee's appeal in ITA No 1720/PUN/2014 for A.Y 2005-06.

16.1. The grounds raised in the present appeal are with respect to confirming of levy of penalty u/s 271(1)(c) on the additions made in A.Y 2005-06.

17. Since we hereinabove while deciding the quantum appeal in ITA No.1719/PUN/2014 for A.Y. 2005-06 have set aside the assessment framed u/s 143(3) r.w.s 153C of the Act, the levy of penalty on such additions do not survive. We therefore delete the levy of penalty. **Thus, the grounds of assessee are allowed.**

18. In the result, the appeal of assessee in ITA No.1720/PUN.2014 is allowed.

19. **To sum up, both the appeals of assessee are allowed.**

Order pronounced on 10th day of April, 2019.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 10th April, 2019.

Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(Appeals)-1, Nashik.
4. The CIT, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.