

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

| ITA No. | A.Y. | Appellant | Respondent |
|----------------|-------------|---|--|
| 496/Hyd/17 | 2007-08 | Sri Suryadevara Avinash, HYDERABAD [PAN: BIWPS6977B] | The Dy. Commissioner of Income Tax, Central Circle-2(4), HYDERABAD |
| 497/Hyd/17 | 2008-09 | | |
| 498/Hyd/17 | 2009-10 | | |

For Assessee : Shri K.V. Chalamaiiah, AR
For Revenue : Shri Satya Prashant Pinisetty, DR

Date of Hearing : 01-08-2019
Date of Pronouncement : 09-08-2019

ORDER

PER S. RIFAUR RAHMAN, A.M. :

These appeals filed by the assessee are directed against the orders of the Commissioner of Income Tax (Appeals)-12, Hyderabad, dated 28-10-2016, for the AYs.2007-08, 2008-09 & 2009-10. Since the facts and issues involved in all these appeals are common and identical, all these appeals heard together and are being disposed-of by way of this common order. For the sake of convenience, appeal in ITA No.496/Hyd/2017 (AY.2007-08) is discussed in detail, hereunder.

2. Brief facts of the case are that the assessee, an individual, filed his return of income for the AY.2007-08 on 04-10-2007 admitting income of Rs.1,53,000/-. A search and seizure operation was conducted in M/s. Sri Sai Kamal Construction Group. During the course of search operation, certain incriminating material was found and seized. On analysis of the seized document, the information relating to assessee was found. As per which, assessee has purchased land at Dargah Inmulnarva Village, Kothur Mandal, Mahaboobnagar. The case of the assessee was centralized in Central Circle and notice u/s.148 of the of the Income Tax Act [Act] was issued and served on assessee, based on the information found during the search. Subsequently, the reasons for reopening were also communicated to the assessee based on the request made.

3. Before us, assessee filed additional Grounds of Appeal with a petition to accept the same, considering the fact that it involves legal issue on jurisdiction; for which, he relied on the case of National Thermal Power Co. Ltd., Vs. CIT [229 ITR 383] (SC). Since the assessee is raising a legal ground questioning the legality of the issue, a notice u/s.148 of the Act instead of Section 153C of the Act and assessments were completed not in line as per Section 153B of the Act. Since it is a legal issue, we admit the Additional Ground of Appeal for adjudication.

4. Before us, Ld.AR brought to our notice the assessment order, as per which AO has initiated the proceedings u/s.148 of the Act even though incriminating material found, relating

to the transaction involving assessee in search carried out in the case of M/s. Sri Sai Kamal Construction Group. He submitted that the AO should have initiated proceedings u/s.153C not u/s.148 of the Act and completed the assessment u/s.143(3) r.w.s. 147 of the Act. Therefore, AO does not have jurisdiction in completing the assessment u/s.147 of the Act.

5. On the other hand, Ld.DR submitted that assessee has participated in completion of the assessment proceedings u/s.147 of the Act since this issue was not raised before the AO. Now the assessee cannot raise the issue in appellate proceedings. In this regard, he relied on the decision of the Co-ordinate Bench in the case of Smt.Archana Pandey Vs. ITO (2013) [34 taxmann.com 88] (Agra – Trib.).

6. Considered the rival submissions and material on record. We noticed that AO has issued notice u/s.148 of the Act and initiated proceedings with the information or incriminating material found during the search in the case of M/s. Sri Sai Kamal Construction Group. As per the material found during the search, assessee has purchased 10 acres of land at Dargah Inmulnarva Village, Kothur Mandal, Mahaboobnagar and paid an amount of Rs.1,19,00,000/-. Since the assessment proceedings were initiated mainly on the information found during the search proceedings and it was found that assessee is a party to the transactions and the same material was brought on record to complete the assessment u/s.147 of the Act, however, jurisdiction lies to initiate proceedings u/s.153C

of the Act and not u/s.148 of the Act. Even it is not brought on record whether there is proper satisfaction recorded by the AO of the search party as well as AO of the assessee. The issue in this appeal has already been decided by the Coordinate Bench of this Tribunal in ITA No.1695/Hyd/2017 and others in the case of Batta Yadamma and others, dt.29-11-2018, wherein it was held as under:

“7. Considered the rival submissions and perused the material on record. Similar issue was dealt by the Bengaluru Bench of ITAT in the case of Shri Srinivasa Rao Hostake (supra) wherein the coordinate bench has held as under:

“06. We have heard the rival contentions and perused the record. In our view the scope of Section 153C and 148 are clear from the bare reading of the two provisions inasmuch as Section 153C it starts with 'Notwithstanding nothing containing in Section 139, 147, 148, 149, 151 and 153'. Thus if there is any contradiction between Sections 153C and 148, in that eventuality, Section 148 shall give way to Section 153C. There is a reason for saying so because if a notice u/s.153C is issued to the third party (assessee), then the AO may assess or reassess the income of the assessee for a period of six years whereas this is not the position in case of Section 148. Further u/s.153C of the Act, the assessment / reassessment can only be made based on the satisfaction recorded by the AO or the searched person as well as of the third party and further addition can only be made by the AO in respect of the assessment year for which the incriminating documents were found with the search person belonging to the third party. Therefore in our view the finding of the CIT(A) is in accordance with law, as the proceeding should have been initiated under section 153C of the Act, as it were based on material found during the search from the premises of searched person other than assessee and not under section 148 of the Act. Further we are of the opinion that this issue raised by the parties is no more res integra as the coordinate bench in the matter of G. Koteshwara Rao v. DCIT [(2015) 64 taxmann.com 159] in para 11 to 14 has held as under :

11. A careful study of section 153A to 153C and also the circular issued by the CBDT explaining the procedure of assessment in search cases, it shows that these are separate provisions independent of other provisions relating to reassessment, because of the non obstante clause begins with the said sections. The language used in these sections, i.e.

'notwithstanding anything contained' in section 139, section 147, section 148, section 149, section 151 and section 153 made it clear that provisions of these sections are not made applicable to the assessments covered by the provisions of section 153A. Prior to the introduction of these three sections, there was a separate chapter XIV -B of the Act, by section 158BC to 158BE which governs the search assessments which is popularly known as Block assessment. The earlier provisions provides for single assessment to be made in respect of undisclosed income of Block period consisting of 10 assessment years immediately preceding the assessment year in which search took place and the broken period of up to the date of search was also included in the block period. After the introduction of new sections, i.e. section 153A to 153C, the single block assessment concept was done away with the new scheme of assessment of search cases where the Assessing Officer is to assess or reassess the total income of each of the assessment years falling within the period of six assessment years immediately preceding the assessment year in which the search is conducted. Therefore, under the new scheme, the Assessing Officer is required to exercise the normal assessment powers in respect of the previous year in which the search took place. From these facts, one thing is clearly emerged that both i.e. earlier concept of Block assessment and the new scheme of assessment is separate provisions created for assessment of search cases where the search is conducted u/s 132 or requisition was made u/s 132A of the Act.

12. Under the provisions of section 147, the Assessing Officer is having power to re-open the assessment, if he is of the opinion that the income chargeable to tax has escaped assessment.

Before doing so, the Assessing Officer should satisfy himself that, there is material which suggests that there is an escapement of income. The AO can exercise these powers with a reasonable belief coupled with some material which suggest the escapement of income. Once the conditions precedent for assumption of jurisdiction to commence the reassessment proceedings, he has to cross the hurdles attached with reassessment by way reasons for reopening of assessment, time limit for issue of notice and provision for obtaining sanction of higher authority in certain circumstances. Under the provisions of section 153A to 153C these hurdles are cleared by using the non obstante clause in the said section. In other words, under the new provisions of section 153A, the AO is not required to satisfy these conditions before issue of notice. The only requirement is that there should be a search action u/s 132 or books of account, other documents or any other asset are requisitioned under section 132A. Therefore, we are of the opinion that though, the Assessing Officer from both sections empowered to tax the income escaped from tax, both are works in a different situations,

i.e. section 147 comes in to operation where there is an escapement of income chargeable to tax and section 153A comes in to operation where there is search u/s 132.

13. Under the provisions of section 153A, the Assessing Officer is bound to issue notice to the assessee to furnish the returns of income for each assessment years falling within the six assessment years immediately preceding the assessment year in which search or requisition is made. Another significant feature of this section is that the Assessing Officer is empowered to assess or reassess the total income of the aforesaid period which includes disclosed and undisclosed income. Therefore, the new provisions has given wide powers to the Assessing Officer to assess or reassess the total income of six assessment years falling within the period of those six assessment years immediately preceding the assessment year in which search is conducted. Under the new provisions of section 153A, the statute is provides wide powers to the Assessing Officer in respect of assessments already completed u/s 143(1) or 143(3). If such orders is already in existence prior to the initiation of search, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, found during the course of search. For this purpose, the restrictions imposed on the Assessing Officer by way of sections 148 to 153 to reopen the assessment ITA.1154 & 1155/Bang/2015 Page - 11 u/s 147 has been removed by the non obstante clause used in section 153A.

14. In the present case on hand, admittedly, the Assessing Officer has reopened the assessment based on a search conducted in a third party case. The AO formed the opinion based on the statement recorded from the assessee, consequent to post search proceedings taken up by the DDIT(Inv), which shows undisclosed income which is the very basis of reopening the assessment. The search is conducted on 22-8-2008 which comes under the assessment year 2009-10. The Assessing Officer reopened the assessment year 2008-09, which is falling within those six assessment years immediately preceding the assessment year in which search is conducted. The assessee case falls within the provisions of section 153C, as the incriminating document seized in the case of search in another case. The Assessing Officer, on satisfying the above condition is under obligation to issue notice to the person requiring him to furnish the return for the six assessment years immediately preceding the assessment year in which search is took place. Thereafter, the Assessing Officer has to assess or reassess the total income of those six assessment years. The word "shall" used in section 153A made it clear that the Assessing Officer has no option, but to issue notice and proceed thereafter to assess or reassess the total income. In the instant case, the Assessing Officer issued notice u/s 148 to reopen the assessment.

Therefore, in view of the non-obstante clause begin with section 153A, the Assessing Officer has no jurisdiction to issue notice u/s 148 reopen the assessment of those six assessment year which falls within the exclusive jurisdiction of section 153A. Though, both provisions of the Act empowers the Assessing Officer to assess or reassess the income escaped from assessment, both sections are dealing with different situations. Section 147 comes into operation when, the Assessing Officer believes that there is an escapement of income chargeable to tax, either from the return already filed or through some external material evidence came to his knowledge, which shows the escapement of income. Whereas, section 153A comes into operation when there is search u/s 132 or books of accounts, or any other asset or other documents requisitioned u/s 132A. If Assessing Officer justified in proceeding with section 147 to reopen the assessment, then there would be no relevance to section 153A, which was inserted in to the Act to deal exclusively with search cases. The legislators in their wisdom clearly spelt out the provisions of law applicable to search cases by using the word shall to begin with section 153A, made it mandatory that the Assessing Officer bound to issue notice u/s 153A or 153C, thereafter proceed to assess or reassess the total income, where search is conducted u/s 132 or requisition is made u/s 132A. Therefore, in our opinion, the AO is not justified in reopening the assessment u/s 147 and his order is illegal and arbitrary.

In view of the above and in view of the decision relied upon by the assessee, we do not find any merit in the appeals filed by Revenue.”

07. At this stage we may like to point out that the decision relied upon by the Revenue in the matter of Gudwill Housing Ltd (supra) was a decision on Section 158BD under the old Act. There is a significant difference in the construction, language and content of both the provisions i.e Section 158BD under the old Act and section 153C of new Act of 1961. Section 153C of 1961 Act, starts with a non-obstante clause, whereas this non-obstinate provision was not there in Section 158BD. Therefore in our considered opinion the decision relied upon by the Revenue is not applicable to the facts and circumstances of present case. We hold accordingly.”

In view of the ratio laid down in the said case, we are of the view that the AO wrongly initiated the proceedings u/s 148 and completed the assessment u/s 143(3) rws 147 of the Act, instead of initiating the proceedings u/s 153C of the Act. Therefore, we set aside the order of CIT(A) and quash the assessment made by the AO u/s 143(3) rws 147 of the Act. Since the very assessment is quashed, the additions made in such assessment automatically get cancelled”.

6.1. Respectfully following the said decision of the Co-ordinate Bench, we set aside the order of CIT(A) and quash the assessment made by the AO u/s 143(3) r.w.s. 147 of the Act. Since the very assessment is quashed, the additions made in such assessment automatically get cancelled. Hence, this appeal of assessee is allowed.

7. As far as the appeals for the AYs.2008-09 & 2009-10 are concerned, since the facts and issues involved in these appeals are common and identical to the appeal for the AY.2007-08, as per our discussion herein above, we set aside the orders of CIT(A) in these assessment years also and quash the assessments made by the AO u/s 143(3) r.w.s. 147 of the Act. Since the very assessments are quashed, the additions made in such assessments automatically get cancelled. Hence, the appeals for the AYs.2008-09 & 2009-10 are allowed.

8. To sum-up all the appeals of assessee are allowed.

Order pronounced in the open court on 9th August, 2019

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 9th August, 2019

TNMM

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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