

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1427/PUN/2011
निर्धारण वर्ष / Assessment Year : 2003-04

Late Shri Babanlal B. Agarwal,
Through L/H Shri Anil B. Agarwal,
84-85, Main Road, Raver,
Jalgaon-425008.

PAN : AABHA7676P

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-2(2),
Jalgaon.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.300/PUN/2014
निर्धारण वर्ष / Assessment Year : 2003-04

Anil Babanlal Agrawal,
84-85, Main Road, Raver,
Jalgaon-425508.

PAN : AGOPA0351Q

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-2(2),
Jalgaon.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo
Revenue by : Shri Vishwas Munde

सुनवाई की तारीख / Date of Hearing : 08.07.2019

घोषणा की तारीख / Date of Pronouncement : 05.09.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are two appeals under consideration filed by two different assesseees involving same assessment year 2003-04. The appeal in ITA No.1427/PUN/2011 pertains to Late Shri Babanlal B. Agarwal (Shri Anil

B. Agarwal is a legal heir) filed against the order of CIT(A)-II, Nashik dated 28.09.2011 for the Assessment Year 2003-04. Further, the appeal in ITA No.300/PUN/2014 pertains to Anil Babanlal Agrawal (Individual) and it is filed against the order of CIT(A)-II, Nashik dated 03.01.2014 for the Assessment Year 2003-04.

2. Before us, at the outset, ld. Counsel for the assessee submitted that in these two appeals, the facts are identical and the legal issues involved are common. Mentioning the facts of these two appeals, the ld. Counsel submitted that a search action u/s 132 of the Act was conducted in the case of Chhoriya group on 22.08.2008. The said search action resulted the seizure of incriminating material by way of a diary containing various entries. Such entries relate to both the two assessees. Otherwise, there is no dispute on the fact that the diary belongs to the Chhoriya group where the provisions of section 153A of the Act were invoked. The common issue arises in these two appeals for the same assessment year 2003-04 relates to whether the provisions of section 153C of the Act or the provisions of section 147/148 of the Act are relevant for making the assessments and also for making the additions based on the related seizure entries from the seized materials in Chhoriya group of cases. In the light of the above specific facts, ld. Counsel for the assessee brought our attention to the assessment orders in these two cases and submitted that the reassessments were erroneously made u/s 144 r.w.s. 148 of the Act and not u/s 153C of the Act. In this regard, ld. Counsel raised the legal ground by way of additional grounds/concise grounds in these two appeals. The

additional grounds as well as the concise grounds raised by assessee in both the appeals are extracted hereunder :-

“ITA No.1427/PUN/2011 – Additional grounds :

1. Since the opportunity to cross examine the author of the seized diaries and related persons from Chhoriya Group forming the basis of addition of Rs.18,52,000.00 made u/s 69 of the I.T. Act 1961 by the learned Assessing Officer which addition was further enhanced to Rs.32,13,100.00 by the learned C.I.T.[A], was denied to the appellant by both the lower authorities, the impugned addition is bad in law, penalty illegal, void ab initio and devoid of merits and being without jurisdiction the same may please be deleted.
2. In the facts and circumstances of the case and in law, since the learned Assessing Officer has failed to issue the notice u/s 153C of the I.T. Act 1961 and has **failed to frame the impugned assessment order u/s 153A r.w.s. 153C r.w.s. 143(3) of the I.T. Act 1961**, the impugned assessment order framed by the learned Assessing Officer u/s 143(3) r.w.s. 147 of the I.T. Act 1961 **is bad in law, without jurisdiction** and patently illegal and hence the same may please be annulled.”

“ITA No.300/PUN/2014 – Concise grounds :

1. In the facts and circumstances of the case and in law, in the absence of conditions precedent for assumption of jurisdiction u/ s 148 of the I.T. Act 1961, the impugned reassessment proceedings are bad in law, null and void ab initio and without jurisdiction and hence the impugned reassessment order and the impugned appellate order may please be annulled.
2. Without prejudice to other grounds of appeal and by way of an alternate submission it is submitted that, the learned Assessing Officer ought to have framed the assessment order u/s 153C of the I.T. Act 1961 and having failed to do so, the impugned reassessment order is bad in law, null and void ab initio and without jurisdiction and hence the impugned assessment order and the impugned appellate order may please be annulled.
3. Since the impugned reassessment order is passed in utter disregard and violation of the principles of natural justice the same is bad in law and null and void and the learned C.I.T.[A] ought to have annulled the same. It is requested that the impugned assessment order may please be annulled.
4. The learned C.I.T.[A] has grossly erred in confirming the various additions made by the learned Assessing Officer on the basis of documents seized from Chhoriya Group of cases during search and seizure action, having complete disregard to the assessments framed in Chhoriya Group of cases and the treatment given to the contents of the seized papers in the assessments of the said group. The impugned order passed by the learned C.I.T.[A] being patently illegal, bad in law, arbitrary, perverse and devoid of merits the same may please be annulled.

5. *The appellant denies his liability to pay any interest u/s 234 B of the I. T. Act 1961 and hence the impugned interest levied may please be deleted.*

6. *The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.*

The appellant submits his sincere apologies for inconvenience caused to the Hon. Members and the Respondent revenue in the matter.”

3. Referring to the above extracted additional grounds as well as concise grounds in both the appeals on the common legal issue, ld. Counsel for the assessee submitted that this issue is now settled by the Pune Bench of the Tribunal in the case of **Jayant Hemraj Choudhari** vs. ITO vide ITA No.672/PUN/2018 for the **assessment year 2014-15** dated 14.06.2019. Copy of the said decision of the Tribunal (supra) is placed on record. Further, ld. Counsel for the assessee submitted that the undersigned (Accountant Member) has already made an order in favour of the assessee upholding the legal proposition laid down by the Tribunal of this Bench in the case of **Shri V.L. Khandge** vs. ITO vide ITA No.1971/PUN/2014 for the assessment **year 2006-07** dated 24.04.2018. Referring to para 7 to 10 of the said order of the Tribunal in the case of Shri V.L. Khandge (supra), ld. Counsel submitted that in this decision the Tribunal held that when the seized material belongs to the person searched by the Department and when the entries only related to the said searched person, the **relevant provisions for making the assessment is u/s 153C of the Act and not u/s 147/148 of the Act.** Further, referring to the said Division Bench order of the Tribunal (supra) in the case of Shri V.L. Khandge (supra), ld. Counsel submitted that the said decision is relevant for the above referred legal proposition.

4. We heard both the sides on this legal issue and perused the orders of the revenue authorities along with the orders of the Tribunal in the cases of (i) Jayant Hemraj Choudhari (supra) and (ii) Shri V.L. Khandge (supra). For the sake of completeness, the contents of para 7 to 10 of the order of the Tribunal in the case of Jayant Hemraj Choudhari (supra) are extracted hereunder :-

“7. Before me, at the outset, ld. Counsel for the assessee brought my attention to the above extracted additional ground no.1 and submitted that this a case of issuing notice u/s 153C of the Act as the information relating to the assessee was found from the documents seized belonging to Sinhagad Technical Education Society (STES). Further, bringing my attention to the amended provisions of section 153C by the Finance Act, 2015 w.r.e.f. 01.06.2003 (A.Y. 2004-05), ld. Counsel submitted that the amended provisions are in existence at the time of issue of notice u/s 148 of the Act dated 21.04.2016 whereby the law makers have widen scope of provisions of section 153C of the Act for taxing such income of Rs.15 lakhs in this case. The ld. Counsel submitted that this is a clear case of information **“pertaining”** to the assessee emanating from the documents **“belonging”** to Sinhagad Technical Education Society (STES). Both these expressions fall in the scope of the amended section 153C of the Act. Therefore, the Assessing Officer erroneously assumed jurisdiction u/s 147 of the Act with reference to the provisions of section 153C of the Act. Consequently, the order made by the Assessing Officer u/s 147 r.w.s. 143(3) of the Act is unsustainable in law. For this proposition, ld. Counsel relied on the various decisions including the decision of the Pune Bench of the Tribunal in the case of Shri V. L. Khandge vs. ITO in ITA No.1971/PUN/2014 for the assessment year 2006-07 dated 24.04.2018 and submitted that this appeal also pertains to the period post-assessment year 2004-05 and the provisions of section 153C of the Act are applicable to the said case. On these facts, **the Tribunal did not approve the Assessing Officer action in resorting to section 147 of the Act in reference to the provisions of section 153C of the Act.** He also mentioned that the contents of para 7 to 11 of the said order of the Tribunal (supra) are relevant in this regard.

8. The ld. DR for the Revenue, on the other hand, relied heavily on the orders of the Assessing Officer and the CIT(A).

9. On hearing both the sides on this issue, I find the contents of para 7 to 11 of the order of the Tribunal (supra) are relevant to extract. For the sake of completeness of this order, the said para 7 to 11 of the order of the Tribunal (supra) are extracted hereunder :-

“7. Briefly, in the facts of the case, the assessee had furnished return of income in time which was processed under section 143(1) of the Act. The Assessing Officer in the case, had received information from the Office of the Deputy Director of Income Tax (Inv), Unit – II(1), Pune vide letter dated 30.03.2013. Based on the above said information, the Assessing Officer made proposal for

initiating proceedings under section 147 of the Act. Information in this regard was received from the Addl.CIT, Range-8, Pune vide letter dated 30.03.2013. The Assessing Officer thereafter, issued notice under section 148 of the Act, dated 30.03.2013. The reasons recorded by the Assessing Officer for issue of notice under section 148 of the Act are reproduced at pages 2 to 8 of the assessment order. The said reasons clearly note that search and seizure action under section 132 of the Act and survey action under section 133A of the Act were carried out at the residential premises of Shri Ganesh Khandge on 12.02.2013. During the course of search proceedings, it was found that Shri Vasant Laxman Khandge i.e. assessee before us, father of Shri Ganesh Khandge, along with his brother Shri Dattatreya Laxman Khandge had sold land situated at Talegaon to Namrata Developers. The transaction related to assessment year 2006-07. The Assessing Officer while recording reasons for reopening the assessment mentioned that the assessee had declared income from long term capital gains on the sale of said land in the return of income. Secondly, from the evidences seized / impounded, it was observed that the assessee and his brother had entered into Joint Venture Agreement with Namrata Developers to evade tax on sale of land, since on the said land Namrata Developers developed 80IB(10) project and claimed deduction on the entire project. Thereafter, the Assessing Officer has raised various issues in respect of suppression and short computation of long term capital gains by increasing cost of acquisition and / or suppression the sale consideration. Reference is also made to the statement of Shri Ganesh Khandge, the person searched, which was recorded under section 131 of the Act on 12.02.2013. The Assessing Officer thus, held that there was reason to believe that income chargeable to tax had escaped assessment and notice under section 148 of the Act was issued to the assessee. The assessee in reply, submitted that return of income earlier filed may be treated as filed under section 148 of the Act and raised objections to the notice issued under section 148 of the Act.

8. *The issue which arises before us is whether in such facts and circumstances of the case, where the basis of making investigation and assessment thereafter in the hands of assessee is on the basis of information unearthed during the course of search action on the premises of Shri Ganesh Khandge on 12.02.2013, then whether proceedings are to be initiated under section 148 or under section 153C of the Act. The perusal of provisions of section 153C of the Act reflects that in case any document relating to any other person is found during the course of search on a person, then the said document is to be forwarded to the Assessing Officer in-charge of the person other than the person searched. The proceedings have to be initiated against such person on the basis of such document found and impounded. Section 153C of the Act very clearly provided that where the conditions as mentioned in the said section prevail, then provisions of said section have to be applied notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153 of the Act. The requirement of section 153C of the Act is the first satisfaction of Assessing Officer that any money, bullion, jewellery or other valuable article or thing or books of account or documents or assets belongs to a person other than the person referred in section 153A of the Act, then the books of account or documents or assets seized or requisitioned, shall be handed over*

to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue notice of assessment or re-assessment of the income of other person in accordance with provisions of section 153A of the Act. The Assessing Officer has to record satisfaction that books of account or assets seized or requisitioned, have a bearing on determination of the total income of such other person. The said provisions are notwithstanding anything contained in sections as mentioned above including sections 147 / 148 of the Act. In other words, where the provisions of section 153C of the Act are attracted in given set of facts and the documents impounded during the course of search, then the proceedings have to be initiated under section 153C of the Act as per prescribed procedure and no proceedings can be initiated under section 147 / 148 of the Act. The said proposition has been held by the Pune Bench of Tribunal in the case of Joshi Wadewale Hadapsar Vs. DCIT in ITA Nos.105 & 106/PUN/2016, relating to assessment years 2009-10 & 2010-11 with lead order in the case of Mrs. Vasundhara Shailesh Joshi Vs. DCIT in ITA Nos.95 & 96/PUN/2016, relating to assessment years 2009-10 & 2010-11, vide consolidated order dated 27.03.2018. The relevant findings of the Tribunal are as under:-

“28. The first issue which arises is whether the assessment in such circumstances was to be made under section 153C or 148 of the Act and connected issue is whether such an issue of assessment being completed under a particular section was valid or not, can be raised while deciding the issue of levy of penalty under section 271(1)(c) of the Act against the income assessed in the hands of assessee. In this regard, the learned Authorized Representative for the assessee has pointed out that the issue stands covered by the ratio laid down in ITO Vs. Shri Shailendra B. Agrawal (supra) and in bunch of appeals with lead order in ACIT Vs. Shamsundar Laxman Jagtap (supra). The relevant provisions of the Act to which reference is being made is section 153C of the Act which provides as under:-

“153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A:

Provided *that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A 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.*

.....

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before 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, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.”

29. *Section 153C of the Act very clearly lays down that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153 of the Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, such books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and the Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of other person in accordance with provisions of section 153A of the Act. Section thus, very clearly lays down the procedure to be followed when during the course of search on a person any money, bullion, jewellery or valuable article or thing, or any books of account or documents or any information contained therein pertains to or relate / relates to other than the person searched; then first, all the said assets or information is to be handed over to the Assessing Officer, who is incharge of the person other than the person searched and then the Assessing Officer has to proceed and determine the income of the other person in accordance with provisions of section 153C of the Act. The said section very clearly also lays down that the provisions of section 153C of the Act are to be applied notwithstanding anything contained in sections 139, 147, 148, 151 and 153 of the Act. Applying the said provisions to the facts of the present case, wherein certain documents were found during the course of search at the residence of partners of assessee firm on the basis of which, additional income was to be assessed in the hands of partnership firm i.e. one of the assessee before us, then for making aforesaid addition, recourse which was open to the Assessing Officer was to initiate proceedings under section 153C of the Act. Where the provisions of said section are to be applied, then*

no proceedings can be initiated under section 147, 148, 151 and 153 of the Act. Accordingly, we hold that when during the course of search under section 132 of the Act at the residence of Mrs. Vasundhara S. Joshi and Shri Shailesh Joshi, loose paper bundle Nos.6, 7, 8 and 9 were found, which depicted the receipts and expenditure relating to different outlets being run under the partnership firms and the additional income was also offered by the persons searched on behalf of partnership firms, in which he was partner, on the basis of such documents found during the course of search, then for making addition in the hands of partners, provisions of section 153C of the Act are attracted. Once the said provisions are so attracted, then there is no question of initiating any proceedings under section 147 / 148 of the Act. Accordingly, we hold that proceedings initiated under section 147 / 148 of the Act are thus, not correctly initiated.”

9. *The issue raised in the present appeal is squarely covered by the issue before the Tribunal in Joshi Wadewale Hadapsar Vs. DCIT (supra) and following the same parity of reasoning, we hold that re-assessment proceedings initiated against the assessee under section 147 / 148 of the Act are not warranted. The Assessing Officer after receipt of information belonging to the assessee should have invoked provisions of section 153C of the Act and not section 147 / 148 of the Act. Accordingly, we hold so. Consequently, **re-assessment order passed under section 148 of the Act does not stand.** The Assessing Officer is thus, directed to cancel the same. Consequently, the additional ground of appeal raised by the assessee is allowed and we hold that assessment framed by the Assessing Officer is null and void. Consequently, the issue raised on merits by the assessee and the Revenue becomes academic in nature and the same are dismissed.*

10. *The facts and issues in ITA Nos.1972/PUN/2014 & 2056/PUN/2014 are identical to the facts and issues in ITA Nos.1971/PUN/2014 & 2057/PUN/2014 and our decision in ITA Nos.1971/PUN/2014 & 2057/PUN/2014 shall apply mutatis mutandis to ITA Nos.1972/PUN/2014 & 2056/PUN/2014.*

11. *In the result, appeals of assessee are allowed and appeals of Revenue are dismissed.”*

10. *From the above, it is evident that the above decision of the Tribunal (supra) is squarely applicable to the facts of the present case. Therefore, the additional ground no.1 has to be allowed.”*

5. The amended provisions of section 153C of the Act w.r.e. from 2013, apply to the year under consideration. Considering the above settled legal proposition on this issue (common in both the appeals), we do not find force in the order of the CIT(A). Accordingly, we set-aside the order of the CIT(A) and quash the reassessment orders made by the

Assessing Officer. Thus, the relevant additional grounds/concise grounds raised by the assessee on the legal issue, common in the both appeals, are allowed.

6. Considering the relief granted to the assessee on legal issue in both the appeals, the adjudication of other grounds or concise grounds raised by the assessee in both the appeals become an academic exercise only. Thus, the relevant regular grounds raised by the assessee in both the appeals are dismissed as academic.

7. In the result, both the appeals of the assessee are partly allowed.

Order pronounced on 05th day of September, 2019.

Sd/- (विकास अवस्थी / VIKAS AWASTHY) न्यायिक सदस्य/ JUDICIAL MEMBER	Sd/- (डी. करुणाकरा राव/ D. KARUNAKARA RAO) लेखा सदस्य/ ACCOUNTANT MEMBER
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पुणे / Pune; दिनांक / Dated : 05th September, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-II, Nashik.
4. The CIT-II, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.