

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI L. P. SAHU, ACCOUNTANT MEMBER**

I.T.A. No.2550/DEL/2015
Assessment Year: 2012-13

DCIT, Central Circle-1, Faridabad.	vs.	Vinod Kumar, H. No.267, Ist Floor, Chhatarpur Enclave, Mehrauli, New Delhi.
TAN/PAN: AALPK 7391K (Appellant)		(Respondent)

CO No.146/DEL/2018
Assessment Year: 2012-13

Vinod Kumar, H. No.267, Ist Floor, Chhatarpur Enclave, Mehrauli, New Delhi.	vs.	DCIT, Central Circle-1, Faridabad.
TAN/PAN: AALPK 7391K (Appellant)		(Respondent)

Appellant by:	Shri S.S. Rana, CIT-DR		
Respondent by:	Shri P.C. Yadav, Adv.		
Date of hearing:	22	05	2019
Date of pronouncement:	09	08	2019

ORDER

PER AMIT SHUKLA, JUDICIAL MEMBER:

The aforesaid appeal has been filed by the Revenue and Cross Objection by the assessee against the impugned order dated 24.02.2015 passed by Pr. CIT (OSD), Gurgaon u/s.153B(1)/143(3) for the Assessment Year 2012-13.

2. Though, the Revenue has challenged the addition of Rs.38,61,24,029/- made on account of Short Term Capital Gain, whereas in the Cross Objection the assessee has challenged the very validity of assessment framed u/s.153B(1)/143(3) on the following grounds:

“1. The order of AO as sustained by the CIT (A) is bad in law.

2. On the facts and under the circumstances of the case the Assessment order passed under section 153B(1)(b)/143(3), considering the impugned year as year of search, ignoring the date of receipt of material from the AO of searched person, is bad in law in terms of the Ist proviso of section 153C of the Act.

a) The AO has erred in assuming and assessing the impugned year- as year of search, ignoring that the year of search for the present assessee would be AY 2014-15, as the documents pertaining to present assessee were received on 29.08.2013, as is evident from the assessment order.

b) On the facts and under the circumstances of the case the assessment of the impugned year without following the mandatory provisions of law applicable for cases covered under section 153C is bad in law

3. Without prejudice to the above, On the facts and under the circumstances of the case, the jurisdiction of the AO under section 153C is bad in law as no satisfaction in the file searched person has ever been recorded for assuming the jurisdiction of assessee's case for the present AY.”

3. Since the validity and the jurisdiction of the Assessing Officer for passing the order u/s.153B(1)/143(3) has been challenged by the assessee in his cross objection, therefore, this issue is being taken up. The brief facts qua the said legal issue are that assessee

is an individual deriving income from salary, house property and other sources. Return of income for the Assessment Year 2012-13 was filed on 06.10.2012, declaring total income of Rs.1,12,01,410/-. A search and seizure action was conducted by the Investigation Wing, Chandigarh at Krrish Group on 09.11.2011. Thereafter, a survey action u/s.133A was also carried out on 05.11.2011 at the business premises of the assessee and his company M/s. Ambawata Buildwell Pvt. Ltd. As culled out from the assessment order, the assignment of jurisdiction over the assessee was transferred to CIT, Central Gurgaon, vide order dated 12.08.2013, who transferred the case to Assessing Officer of Central Circle-1, Faridabad and the seized documents were received in the same Central Circle on 29.08.2013. Thereafter, the Assessing Officer in paragraph 2 had taken note of the fact that in the present year the provision of Section 153A(1)(a) r.w.s. 153C of the Act are applicable, treating it to be the year of search. Accordingly, a notice were issued to the assessee u/s.142(1) requiring him to file his return of income in respect of Assessment Year 2012-13, i.e., assessment year pertaining to year in which survey was conducted. In response, assessee has stated that he has already filed his return of income on 16.10.2012. Thereafter, assessee has filed revised return on 29.11.2013 declaring income of Rs.4,62,24,040/-. In pursuance to such revised return notice u/s.143(2) and 142(1) were issued to the assessee. The Assessing Officer in the assessment order has made addition of Rs.38,61,24,029/- after detailed discussion based on seized material and finally concluded as under:

“13. The total consideration for 2737 equity shares at the rate of Rs.1,57,517/- per share as calculated above comes to

Rs.43,11,24,029/- . However, the assessee has taken the sale consideration for 2737 equity shares as Rs.4,50,00,000/- which is not acceptable. Hence, the difference of the sale consideration which comes to Rs.38,61,24,029/- is added to the returned income of the assessee.

Hence, an addition of Rs.38,61,24,029/- is made to the returned income of the assessee for the year.”

4. Though, validity of assessment was not challenged before the ld. CIT(A), however, in Cross Objection, assessee has raised this issue and has also filed application under Rule 27 of the ITAT Rules.

5. Before us, ld. counsel for the assessee had submitted following dates and sequence of events with reference to assessment order: -

<i>DATE</i>	<i>Sequence of event</i>	<i>Page no of PB</i>
09.11.2011	<i>Search and seizure action occurred in the case of Krrish Group. It is alleged that some documents belonging to assessee were found from Krrish Reality Nirman Pvt Ltd located at 406 Tower, Elegance Tower, Jasola Distt. Centre Sarita-Vihar New-Delhi</i>	<i>Admitted fact- see Asst Order- Pg-2</i>
16.10.2012	<i>Return of Income filed by assessee declaring Income of Rs 1,12,01,410/-</i>	<i>Admitted fact- See Asst Order- Pg -2</i>
12.08.2013	<i>Jurisdiction of assessee has been transferred from Gurgaon to Faridabad.</i>	<i>See Asst Order First Page</i>
29.08.2013	<i>The documents pertaining to assessee had been transferred to the AO of central circle.</i>	<i>Admitted fact - See Asst Order- Pg -1</i>

16.10.2013	Detailed questionnaire has been issued	Asst order Pg-2
27.12.2013	Effective hearing vis-a-vis the issue involved has taken place	Para I at Page NO-3 of the assessment order
03.02.2014	AR of the assessee appeared and filed reply	
05.02.2014	Order of assessment has been passed.	

6. Based on the aforesaid events, he submitted that documents pertaining to assessee were handed over to the Assessing Officer after 29.08.2013. Accordingly, in terms of *proviso* to Section 153C the date of search in the case of the present assessee would be reckoned from 29.08.2013, which date falls under Assessment Year 2013-14. He further pointed out that by virtue of *1st proviso* to Section 153C, the date of handing over the document would become the date of search in the case of other person and previous six years would have to be reckoned from this date which means the relevant assessment year of search in this case would be Assessment year 2013-14, (i.e., from 29.08.2013) and six previous assessment years would start from Assessment Years 2007-08 to 2012-13. Thus, the present assessment framed by the Assessing Officer under provision of the Act is *void ab initio* as the same has been passed without following the mandatory provision of Section 153C. In support, he strongly relied upon the judgment of Hon'ble Jurisdictional High Court in the case **CIT vs. RRJ Securities Ltd. (2016) 380 ITR 612** and **Pr. CIT vs. Sarwar Agencies Pvt. Ltd., 340 ITR 400**. He pointed out that the same principle has been followed by the co-ordinate Benches including group cases and relied upon the following three judgments.

- (i) *M/s. Ambawatta Build well Pvt. Ltd., ITA No.2592/Del/2015,*
- (ii) *M/s. BNB Investment & Properties Ltd., ITA No.504/Del/2015*
- (iii) *M/s. Commitment Mortality Vision Education Society, 3980 & 3981/Del/2017*

7. He further pointed out that in the case of BNB Investment (supra) the same too was in pursuance of same search of Krrish Group and Assessing Officer was also the same, and in that case the Tribunal for the same Assessment Year 2012-13 has held the assessment *void ab initio* and without jurisdiction.

8. On the other hand, ld. CIT-DR submitted that assessment has been framed u/s.153A(1)(b) which provides that Assessing Officer has to assess or re-assess the total in all the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted. Nowhere the section contains the words 'the date of initiation of search' which are referred in the *1st proviso* to Section 153C. The *1st proviso* to Section 153C is only referring to the abatement of existing proceedings as mentioned in the *2nd proviso* to Section 153A(1). *1st proviso* further clarifies this point by usage of words 'the date of initiation of search' which are nowhere mentioned else in Section 153A(1). This point has been now clarified by amendment brought in the statute of Finance Act, 2017 in Section 153A for decreasing the time limit of completion of

assessment and also increasing the period from 6 to 10 years in relevant cases. He also quoted the amended *proviso* of Section 153C. He further submitted even after this amendment, the *first proviso* stands as it is and the statute makes it further clear that the *first proviso* to section 153C always meant to refer to the abatement of the proceedings as mentioned in the second proviso to section 153A (1). Otherwise the current section 153C will have major incongruity as to whether six years would be reckoned from date of search as mentioned in amended 153C (1) or from the date of handing over of the documents as mentioned in the first proviso of 153C which remained unamended. The Decision of RRJ securities (supra) was rendered with respect to, whether the initial assessment year would be time barred or not. Here it is not a dispute of time barring or limitation. Further the amended 153C(1) was not available for the guidance of the Hon'ble Court and hence proper appreciation of law was not done.

9. He further referred to the judgment of Hon'ble Delhi High Court in the case of **Ganpati Fincap Services P. Ltd. vs. CIT (2017) 82 taxmann.com 408 (Delhi)** wherein their Lordships have summarized the legal position as under:

“41. To summarise the legal position:

(i) No search under Section 132(1) of the Act can be initiated without a satisfaction note being recorded by the AO of such searched person. This is followed by issuance of a notice to such searched person under Section 153A of the Act. At that stage the AO

does not have to record another satisfaction note qua the searched person.

(ii) Where proceedings are proposed to be initiated under Section 153C of the Act against the 'other person', it has to be preceded by a satisfaction note by the AO of the searched person. He will record in this satisfaction note that the seized document belongs to the other person. Depending on the nature and contents of the document he may be required to give some reasons for such conclusion.

(iii) Where the AO of the searched person is different from the AO of the other person, the AO will simultaneous with transmitting the documents along with his satisfaction note to the AO of the other person, make a note in the file of the searched person that he has done so. But this is for administrative convenience. The failure by the AO of the searched person, after preparing and despatching the satisfaction note and documents to the AO of the other person, to make a noting to that effect in the file of the searched person will not vitiate the proceedings under Section 153C against the other person.

(iv) Where the AO of the searched person and the other person is the same, such a satisfaction note qua the other person has to be recorded by the AO of the searched person prior to the initiation of the proceedings against the other person. This is a sine qua non for triggering the proceedings against the other person under Section 153C of the Act.

(v) There do not have to be two separate satisfaction notes prepared by the AO of the searched person even where he is also the AO of the other person. In such event, the AO need make only one satisfaction note. That satisfaction note is qua the other person. Further it is sufficient that such satisfaction note is placed in the file of the other person by the AO in his capacity as the AO of such other person.”

10. We have heard the rival submissions and also perused the relevant finding given in the impugned order as well as relevant dates and events on the issue of validity of the assessment as challenged by the assessee in the Cross Objection. The Assessing Officer has framed the assessment order by treating the Assessment Year 2012-13 as the year of search on the premise that search and seizure operation was carried on 09.11.2011 in the case of Krrish Group of cases and also consequential survey u/s.133A carried on in the case of the assessee on 15.11.2011. It is an admitted fact that jurisdiction of the assessee has been transferred from Gurgaon to Faridabad on 12.08.2012 and document relating to the assessee has been transferred to the present Assessing Officer of Central Circle-1, Faridabad. *1st proviso* to Section 153C reads as under:

“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:.”

The *2nd proviso* to Section 153A (1) reads as under:

“Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.”

12. The controversy, whether in the wake of 2nd proviso to Section 153C the date of initiation of search u/s.132 should be from the date of receiving of books of account or documents etc. by the Assessing Officer having jurisdiction over such person had come up before the Hon'ble Jurisdictional High Court in the case of **R.R. Securities (supra)**. This judgment has been again reiterated and followed by the Hon'ble Jurisdictional High Court in the case of **Pr. CIT vs. Sarwar Agencies (supra)** wherein their Lordships have explained the said provisions considering the amendment in section 153C by the Finance Act, 2017 with effect from April 1, 2017, in the following manner:

“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(l) "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(l)(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. The second proviso to sub-section (1) of section 153A of the Act states that assessment or reassessment relating to any assessment year falling within the period of six

assessment years referred to in the said sub-section pending on the date of initiation of the search under section 132, would abate. In CIT v. RRJ Securities Ltd. [2016] 380 ITR 612 (Delhi), the court held that in the context of proceedings under section 153C of the Act, the reference to the date of initiation of the search in the second proviso to section 153A has to be construed as the date on which the Assessing Officer receives the documents or assets from the Assessing Officer of the searched person, proceedings, by virtue of section 153(1) of the have to be in accordance with section 153A of 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 or 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 or documents to the Assessing Officer of the assessee.

The amendment in section 153C of the Act by the Finance Act, 2017 with effect from April 1, 2017 to the effect that the Block Period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment years immediately preceding the year of search is prospective.

*A search under section 132 of the Income-tax Act, 1961 took place on November 11, 2010 in the T group of cases. The documents pertaining to the assessee were forwarded along with a satisfaction note by the Assessing Officer of the party in respect of which the search was conducted to the Assessing Officer of the*assessee on January 3, 2013. The Assessing*

Officer of the assessee issued notice to the assessee under section 153C of the Act on January 4,2013 for the assessment year 2006-07. The Tribunal held that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07, was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision under section 153C of the Act. On appeal:

Held accordingly, dismissing the appeal, that the Tribunal was justified in holding that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07 was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision.”

13. The ratio of the judgments of Hon’ble Jurisdictional High Court has been applied in a similar group matters pertaining to the same search for the Assessment Year 2012-13 in the case of BNB Investment (supra), wherein the Tribunal after referring to the Hon’ble Jurisdictional High Court judgment and also catena of other Tribunal decision, finally observed and held as under:

“It is not in dispute that search was conducted on Krrish Group of cases on 09.11.2011. The impounded documents have been received by the A.O. on 29.08.2013. The satisfaction under section 153C have been recorded on 03.10.2013. The A.O. passed the assessment order under section 153B(l)(b) of the I.T. Act, considering the assessment year under appeal i.e., A.Y. 2012-2013 to be the year of search. However, the First Proviso to Section 153C of the I.T. Act provides that the 06 assessment years for which

assessments or re-assessments could be made under section 153C of the I.T. Act, would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee. Therefore, the 06 assessment years under section 153C of I.T. Act in the case of assessee would be A.Y. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not issued any notice under section 153C of the I.T. Act before initiating the proceedings against the assessee which is also admitted by the A.O. in reply to the assessee under RTI Act. The Amendment in Section 153C of the I.T. Act by the Finance Act, 2017, w.e.f. 01.04.2017 to the effect that block period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment year immediately preceding the year of search is prospective in nature. The issue have been dealt in detail by the HonT)le jurisdictional Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (supra) and by ITAT, Delhi, B-Bench, in the case of Empire Casting Pvt. Ltd., New Delhi vs. ACIT, C.C.2, New Delhi and Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra). The A.O, therefore, should have framed the assessment under section 153C of the I.T. Act in the case of the assessee and at the time of initiating the proceeding against the assessee, should have issued notice under section 153C of the I.T. Act which have not been done in this case. The issue of notice under section 153C is mandatory and a condition precedent for taking action against the assessee under section 153C of the I.T. Act. The assessment order, therefore, vitiate, void, illegal and bad in law and

cannot be sustained. The contention of the Ld. D.R. have already taken care in the above judgments.”

14. The aforesaid findings and the observation of the Tribunal will apply *mutatis mutandis* in this case also, as the facts and circumstances are *pari materia* and even the sequence of events. Accordingly following the aforesaid precedent, we hold that the impugned Assessment Year 2012-13 cannot be treated as year of search, and therefore, assessment could not have been framed u/s.143(3) r.w.s. 153B(1) and accordingly, assessment order passed by the Assessing Officer is declared null and void and consequently the Cross Objection of the assessee is allowed.

15. Since, we have already held that assessment order is not in accordance with law, therefore, the issue raised on merits by the Department has become purely infructuous and same is dismissed.

16. In the result, the appeal of the Revenue is dismissed and Cross Objection of the assessee is allowed.

Order pronounced in the open Court on 9th August, 2019.

Sd/-
[L.P. SAHU]
ACCOUNTANT MEMBER
DATED: 9th August, 2019

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER