

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Ms. Sushma Chowla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 292/Del./2017 : Asstt. Year : 2007-08

ITA No. 293/Del./2017 : Asstt. Year : 2010-11

ITA No. 294/Del./2017 : Asstt. Year : 2011-12

ITA No. 295/Del./2017 : Asstt. Year : 2012-13

DLF Universal Ltd., 3 rd Floor, Shopping Mall, Arjun Marg, DLF City, Phase-1, Gurgaon (Haryana)	Vs	DCIT, Circle-1(1), Gurgaon (Haryana)
(APPELLANT)		(RESPONDENT)
PAN No. AAACJ1655P		

Assessee by : Sh. R. S. Singhvi, CA

Revenue by : Ms. Nidhi Srivastava, CIT DR

Date of Hearing: 30.09.2019

Date of Pronouncement: 07.10.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of the Id. CIT(A)-1, Gurgaon dated 07.11.2016.

2. Since, the issues involved in all these appeals are common, they were heard together and are being disposed off by common order.

3. In ITA No. 292/Del/2017, following grounds have been raised by the assessee:

"1. In law and in the facts and circumstances of the Appellant's case, the learned CIT(A) has grossly

erred in dismissing the grounds of appeal by passing order dated 07.11.2016, by not giving any findings on the grounds raised by the appellant challenging the validity of the assessment order and even not considering the submissions made by the appellant during the course of appellate proceedings.

2.1 In the facts and circumstances of appellant's case, the learned CIT(A) has erred in upholding the validity of the assessment order passed u/s 153A on the erroneous assumption that the appellant had been subjected to search under Section 132 which itself was challenged by the appellant as:

- a. the assessee was merely joint owner of the searched lockers namely, 733 and 852 of Corporation Bank and was not intimated about search, even no copy of Panchnama was served on completion of the search,*
- b. no inquiry of any nature, during the period from 30.01.2013 (date of search) to 10.03.2015 (service of notice u/s 153A), has been carried out either by the Investigating Division or by the Assessing Officer, till the initiation of proceedings u/s 153A of the Act.*

2.2 That on the facts and in the circumstances of the case the learned CIT(A) has erred by confirming the impugned assessment order dated 30.03.2015 u/s 153A/143(3) passed of the Assessing Officer, which is void-ab-initio, as no incriminating material of any nature pertaining to assessee has been found and seized from the searched premises."

4. Facts of the case are that a search & seizure action was carried out in the case of M/s Orris Infrastructure Pvt. Ltd. group of cases on 16.01.2013 by Investigation Wing. During the course of search, a warrant of authorization was issued on 30.01.2013 u/s 132(1) of the Income Tax Act, 1961, in respect of Locker No. 852, Corporation Bank, DLF Phase-I, Gurgaon held

jointly by M/s Orris Infrastructure Pvt. Ltd. and the assessee. Since, a warrant has been issued, the revenue has taken up subsequent proceedings u/s 153A of the Act and issued notices to the assessee for which the assessee has duly complied. The assessment proceedings u/s 153A of the Act culminated in accepting the returned income of the assessee.

5. Aggrieved with the issue of notice u/s 153A of the Act by the revenue and upholding of the validity of the assessment order passed u/s 153A of the Act, the assessee filed appeal before us. During the hearing, the Id. AR argued that in the absence of any seized material belonging to the assessee, no assessment u/s 153A of the Act ought to have been conducted. The Id. DR relied on the orders of the authorities below.

6. Heard the arguments of both the parties and perused the material available on record. It is an admitted fact on record that the warrant of authorization dated 30.01.2013 was issued in the name of the assessee alongwith M/s Orris Infrastructure Pvt. Ltd. The provisions of Section 153A of the Act are as under:

"153A. Assessment in case of search or requisition.— Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and

verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

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 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.

Explanation.—For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.”

7. In these circumstances, the Assessing Officer's action of issuance of notice to the assessee requiring him to furnish the return of income for the respective years as enshrined in the Act cannot be said to be incorrect. In the instant case, the returned income filed by the assessee originally under provisions of Section 139(1) of the Act has been deemed to be the

return filed in response to the notice issued u/s 153A of the Act has been accepted in *toto* at the conclusion of the proceeding. No prejudice or grievance was caused to the assessee which requires to be considered. Hence, we hereby decline to interfere with the order of the Id. CIT (A).

8. In the result, all the appeals of the assessee are dismissed.

Order Pronounced in the Open Court on 07/10/2019

Sd/-

(Sushma Chowla)
Judicial Member

Dated: 07/10/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR