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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER**
**AND**
**SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.4065/Del/2014
Assessment Year: 2006-07

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| ACIT,<br>Central Circle-19,<br>New Delhi | **Vs.** | M/s. NY Dox Services Ltd.,<br>506, Hemkunt Tower, 98,<br>Nehru Place,<br>New Delhi |
| | | **PAN :AAACN9378D** |
| **(Appellant)** | | **(Respondent)** |

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| Appellant by | Ms. Pramita M. Biswas, CIT(DR) |
| Respondent by | None |

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| Date of hearing | 14.01.2020 |
| Date of pronouncement | 21.01.2020 |

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the Revenue is directed against order dated 30/04/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-XII, New Delhi [in short 'the Ld. CIT(A)'] raising following grounds:

1. *On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,84,92,000/- made by the A.O. u/s 68 of the it Act, 1961,.*
2. *On the facts and in the circumstances of the case, the CIT(A) has erred in holding that no addition can be made in the search assessment under the provisions of Section 153C/153A when no incrimination material relating to the issue is found.*
3. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*

*4. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

**2.** At the outset, we may like to mention that the assessee was notified by registered post for date of hearing on 28/04/2017; 14/06/2017; 23/08/2017; 02/11/2017; 05/04/2018; 25/09/2018; 17/12/2018; 23/09/2019; 21/11/2019. The hearing dated 14/01/2020 was also informed in the open court. Despite repeatedly notifying the date of hearing, neither anyone appeared on behalf of the assessee, nor any adjournment application was filed. In view of the facts and circumstances, we were of the opinion that the assessee is not interested in prosecuting/responding the appeal filed by the Revenue. Accordingly, we heard the appeal ex-parte qua the assessee after hearing arguments of the ld. Department Representative.

**3.** Briefly stated facts of the case are that that in view of the certain documents belonging to the assessee seized during the course of search action under section 132 of the Income-tax Act, 1961 (in short 'the Act') at the premises of the third-party, action under section 153C read with section 153A of the Act was initiated in the case of the assessee and assessment was completed at total income of Rs.1,84,92,000/-. On further appeal, the ld. CIT(A) after considering detailed submission of the assessee held that in absence of incriminating material no addition could have been made in the case of the assessee under section 153C proceedings. The ld. CIT(A) also deleted the addition on the merit.

**3.1** Aggrieved the Revenue, is in appeal before the Tribunal raising the grounds as reproduced.

**4.** The ld. DR supported the order of the Assessing Officer and relied on the various decisions filed on 24/12/2017. A List of the decisions relied upon by the learned DR is reproduced as under:

1. *Commissioner of Income-Tax Vs Precision Finance (P) ltd. 208 ITR 465 (Cal)*
2. *Commissioner of Income-Tax Vs United Commercial & Industries Co. (P) Ltd. 187 ITR 596 (Cal)*
3. *Commissioner of Income-Tax Vs Nipun Builders & Developers (P) Ltd. 350 ITR 407 (Delhi)*
4. *Commissioner of Income-Tax Vs Nova Promoters & Finlease (P) Ltd. 342 ITR 169 (Delhi)*
5. *Mukesh Shaw Vs Income-Tax Officer 204 Taxman 615 (Jharkhand)*
6. *Commissioner of Income-Tax Vs N.R. Portfolio (P) Ltd. 29 Taxmann.com 291 (Delhi)*
7. *Commissioner of Income-Tax Vs Empire Buildtech (P) Ltd. 366 ITR 110 (Delhi)*
8. *Commissioner of Income-Tax Vs Focus Exports (P) Ltd. 228 Taxman 88 (Delhi)*
9. *Bhagirath Aggarwal Vs Commissioner of Income-Tax 351 ITR 143 (Delhi)*
10. *Dy. Commissioner of Income-Tax Vs Apoorva Extrusion Pvt. Ltd. ITA No 3308/Del/2010 Dated 09.10.2014*

**5.** We have heard the submission of the Ld. Department Representative and perused the relevant material on record. Before the Ld. CIT(A), the assessee relied on the decision of the Pune bench of the Tribunal in the case of Sinhgad Technical Education Society Vs. ACIT, 140 TTJ 223 to support the contention that no settled assessment can be disturbed without any incriminating information. The relevant finding of the Tribunal is reproduced as under:

> *"11. In this regard, we have perused various legal propositions. First, we have perused the decision of this Tribunal in the case of Kumar Company for the AY 2000-01 (supra) and para 26 of the M/s. Kumar and Company vide ITA No. 463/PN/08 for the A.Y 2000-01 and the same reads as follows:-*

*25. Thus, we find that the seized documents belong to the assessee by way of limited ownership and they are not dumb documents as advocated by the Ld Counsel for the reason mentioned above. However, they are not found to be incriminating documents for the AY 2000-01. The document may not be a dumb document and therefore a speaking one, but they must be the document with prima facie incriminating information too. Such incriminating nature of the seized document is an essential factor for switching on the preceding u/s 153C. In other words, the document seized must not only be a 'speaking one' but also be prima facie 'incriminating one' for igniting the proceeindgs u/s 153C. Unlike other AYs, there is nothing made out by the AO what is called incriminating for the current AY under consideration. When the impugned documents merely contains the notings of entries, which are already found place in the books of accounts or subjected to scrutiny of the AO in the past in regular assessment u/s 143(3) of the Act, such document cannot be said to be containing the incriminating information. What is the point in disturbing the settled assessment when the revenue does not have incriminating information for an AY and the information what is available is only routine one and when the AO merely makes an addition in the assessment u/s 153C based on change of opinion and when such additions are likely to be deleted in view of the settled nature of the issues? Income Tax provisions are not merely for the issue of notice u/s 153C but it is essentially for taxing the income of the person. What is point in issuing notice u/s 153C on flimsy grounds and finally tax nothing? Such proceedings only creates avoidable nuisance both to the over-burdened taxman and the much hazzled taxpayers. In the instant case, provisions of section 153C are invoked merely to apply the provisions of section 45(4) in this year, the issue which was already examined and concluded as inapplicable to the facts of the case. Such issue of notice is unwarranted and such reopening of the assessment for the AY 2000-01 is uncalled for.*

*26.Therefore, the proceedings initiated u/s 153C is not valid in view of the decision in the case of LMJ International (supra). Under these circumstances, we are of the opinion, the AO has invalidly issued the notice u/s 153C for the AY 2000-01 on the wrong presumption that AO can assume jurisdictional in respect all the six AYs automatically even without any incriminating documents in respect of the concluded issues too. Accordingly, the relevant grounds of the assessee are allowed.*

*12. From the above, it is our finding that the reasons recorded by the AO as extracted above do not contain anything incriminating for the*

*AYs upto 2003-04. It is the settled position of the law based on the decision of the Tribunal in the case of LMJ International (supra) that the issue of notice under the provisions of the first proviso to section 153A(1) of the Act is not automatic and there is need for AY-Specific Incriminating Information (ASII) in the possession of the AO to be the fountain head for springing satisfaction to him that there exists some income or asset to be assessed in the hands of any other person, who are referred to in section 153C of the Act. Reason for this kind of interpretation was already given in para 25 and 26 of our order in the case of Kumar Company for the AY 2000- 01. In this regard, we posed question to ourselves if it is fair to reopen the assessment which is already concluded without any reason or logic thereby encroach on the rights of the tax payers? Should the AO be given unfettered or arbitrary powers to issue notice for the six AYs specified in the first proviso to section 153A(1) of the Act when the impugned assessments for the said six AYs are otherwise reached finality after due process of law. In our opinion, the answer is negative and it is in favour of the assessee. " (emphasis supplied)."*

**5.1** The Ld. CIT(A) held that addition was outside the scope of proceeding under section 153C of the Act observing as under:

*"1.1 I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*

*1.2 Thus the position that emerges, is that where assessment or reassessment proceedings are pending completion when the search is initiated or requisition is made, they will abate making way for the Assessing Officer to determine the total income of the assessee in which the undisclosed income would also be included.*

*1.3 However in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders are subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending.*

*1.4 In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made and determine the total income of the assessee. Such determination in the orders passed under Section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and undisclosed income, if any, unearthed during the search are clubbed together and assessed as the total income.*

*1.5 As far as completed assessments are concerned, the issues already examined by the Assessing Officer in such completed assessment would be difficult for re-examining in assessments u/s.153A unless some material is found in the course of search action.*

*1.6 Applying the aforesaid legal position, addition has been made without reference to any material having been found during the course of search and therefore is clearly outside the scope of proceedings under section 153C of the Act."*

**5.2** Before us, the learned DR relied on various decisions mentioned above, however, could not controvert that no assessment was pending in the case of the assessee on the date of the search at third party and no incriminating material belonging to the assessee was found during that search. We also note that in the case of Sinhgad Technical Education Society, Hon'ble Supreme Court, in 397 ITR 0344 has upheld the finding of the Tribunal observing as under:

*"18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued*

*that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred."*

**5.3** In view of the decision of the Hon'ble Supreme Court in the case of Sinhgad Technical Education Society (supra), we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The grounds of appeal of the Revenue are accordingly dismissed. Since we have already upheld in the case of the assessee that no addition could have been made under section 153C of the Act. Thus, we are not adjudicating the grounds challenging the merit of addition deleted by the ld. CIT(A).

**6.** In the result, the appeal of the Revenue is dismissed.

***Order is pronounced in the open court on 21st January, 2020.***

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| ***Sd/-*** | ***sd/-*** |
| **(BHAVNESH SAINI)** | **(O.P. KANT)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated: 21st January, 2020.
RK/-(D.T.D.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi