

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “जी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘G’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं डॉ. बी आर आर कुमार, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT
&
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA Nos. 2429 to 2432/Del/2012

निर्धारण वर्ष/Assessment Years. 1998-99, 1999-2000, 2001-02 & 2004-05

Mr. S.P.S. Ahluwalia,
C/o Manoj Kumar Mittal & Co.
Chartered Accountants 305,
Dakha Chamber, 2068/38,
Nai Wala, Karol Bagh, New Delhi
PAN-AAGPA5360H

.....अपीलार्थी / Appellant

vs

ACIT, Central Circle-12,
New Delhi

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Piyush Kaushik, Adv.

प्रत्यर्थी की ओर से / Respondent by : Sh. H.K.Choudhary, CIT DR

सुनवाई की तारीख / Date of Hearing : 28.01.2020	घोषणा की तारीख / Date of Pronouncement: 30.01.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

This bunch of four appeals filed by the assessee are against separate orders of the CIT(A), all dated 09.03.2012, relating to assessment years 1998-99, 1999-2000, 2001-02 & 2004-05 passed under section 153A of the Act.

2. This bunch of four appeals relating to the same assessee on similar issues were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee in appeal relating to assessment years 1998-99, 1999-2000 and 2001-02 has raised the preliminary issue vide ground of appeal no. 1, which reads as under:-

“Looking into the facts & circumstances of the case and in law, the Ld. AO has erred in not issuing and serving the notice under section 153(A) on the assessee & hence, the whole assessment is invalid. However, the CIT(A)-XXXI erred in confirming the assessment order on untenable and illegal grounds. Hence the assessment being illegal may be quashed.”

4. The learned AR for the assessee has pointed out that the preliminary issue goes to the root of jurisdiction invoked by the Assessing Officer and needs to be adjudicated first.

5. Briefly in the facts of the case, search and seizure operation were conducted at the premises of the assessee under section 132(1) of the Act on 16.12.2003. The proceedings under section 153A of the Act were initiated against the assessee, as per the assessment order, for which notice dated 7.3.2006 was issued to the assessee.

6. The learned AR for the assessee has produced the aforesaid notice issued to the assessee and pointed out that the said notice was not issued under section 153A of the Act but was issued under section 153A read with section 153C of the Act. The assessee ultimately stressed that the initiation of proceedings against the assessee suffers from infirmity as premises of

the assessee were searched and the proceedings have been initiated under section 153C of the Act and not under section 153A of the Act.

7. The learned DR for the Revenue requested for further time to produce the assessment records in this regard. On the perusal of the order-sheet entries, it was brought to the notice of learned DR for the Revenue that the Bench had requisitioned the learned DR for the Revenue to produce the assessment records as early as on 10.4.2013, thereafter reminder was given on 10.7.2014 and even on 8.5.2017. Hence the request of the learned DR in this regard was not accepted.

8. The learned DR for the Revenue placed reliance on the orders of the authorities below and pointed out that there was a typographical error in issuing notice under section 153 of the Act.

9. We have heard the rival contentions and perused the record. The jurisdictional issue which is raised by the assessee by way of ground of appeal no. 1 goes to the root of the jurisdiction invoked by the AO in the present set of appeals. Admittedly, the premises of the assessee were searched on 16.12.2003. Consequent thereto, the requirement of law is that in case the premises of the persons have been searched, then the proceedings to be initiated are by way of issue of notice under section 153A of the Act. The AO in such facts and circumstances has to issue, the aforesaid notice under section 153A of the Act and requisition the assessee to furnish the return of income for the captioned assessment years. In case any document relating to person other than the person searched were

found, then the notice is to be issued to such other person under section 153A read with section 153C of the Act.

10. In the facts of the present case, the AO for Assessment Years 1998-99, 1999-2000 & 2001-02 had issued notice dated 7.3.2006 under section 153A read with section 153C of the Act. The initiation of the proceedings thus are under section 153C of the Act i.e. in respect of person other than the person searched, which is not the case. The assessee is the person searched and requirement of law is to issue the notice under section 153A of the Act. The copy of the aforesaid notice have been filed on record and have been perused by us. Though in the assessment order, the AO mentions that the notice had been issued under section 153A of the Act on 7.3.2006, but infact the notice which is issued on 7.3.2006 was the notice under section 153A read with section 153C of the Act. The said notices were invalid and the consequent assessment framed under section 153A of the Act suffers from infirmity, because of lack of jurisdiction invoked by the AO under section 153A of the Act. Consequently, the assessment orders framed in the case are bad in law and we hold so. We thus cancel the assessment orders passed in the case against the assessee being bad and invalid in law. The ground of appeal no. 1 stands thus allowed in favour of the assessee.

11. Coming to the appeal relating to assessment year 2004-05 wherein the assessee, at the outset has not pressed grounds of appeal no. 1 to 4 and the same are dismissed as not pressed. However, the ground of appeal nos. 5 and 6 raised by the assessee read as under:-

“5) Looking into the facts and circumstances of the case and in law, the LD AO erred in making an addition of Rs. 35,74,537.00 u/s 68 on untenable and illegal grounds and Honorable CIT(A)- XXXI erred in sustaining the same. Hence, the addition of Rs. 35,74,537.00 may be deleted.

6) Looking into the facts and circumstances of the case and in law, the LD AO erred in making an addition of Rs. 1,47,82,541.00 on account of protective basis u/s 160 and 163(1)0 in respect of NRI brothers and Honorable CIT(A)- XXXI erred in sustaining the same. Hence, the addition of Rs.1, 47,82,541.00 may be deleted.”

12. Both the grounds of appeal nos. 5 and 6 are interconnected and we proceed to decide the same.

13. Briefly in the facts of the case, during the course of search one document was seized which had certain notings in respect of the payment of sale proceeds of house no. 1/1 Shanti Niketan, New Delhi. The said document was Annexure A-7 page-6 and the contents of the same are reproduced on one page earlier to the last page of the assessment order. The seized document had certain notings in respect of the sale proceeds to be received by different family members. The AO was of the view that the entries reflect cash receipt by the assessee which remained unexplained and hence it needs to be added to the income of the assessee under section 68 of the Act as unexplained cash credit.

14. The learned AR for the assessee pointed out that the year of assessment was assessment year 2004-05. He further pointed out that the property in question was sold on 16th June, 2001 i.e. relating to assessment year 2002-03. Our attention was drawn to four sale deed executed in this regard which are placed at pages 23 to 29 of the paper book. The learned AR for the assessee also referred to the permission

received from the Income tax Department and ITC, Form No. 34A, copy of which is placed at page 62 of the paper book. The learned AR for the assessee submitted that where transaction of the sale of property was undertaken in assessment year 2002-03 then cash if any, was to be added in assessment year 2002-03. However, he stressed that the said documents were a dumb document as it talked of “estimated consideration” and no transaction materialized. He also stressed that no cash was found during the course of search except petty amount of Rs.7000/-. He also pointed out that in the absence of any books of accounts, no addition was warranted under section 68 of the Act. Referring to the ground of appeal no. 6, the learned AR for the assessee brought to our notice that same related to protective addition made in the hands of the assessee on account of cash component belonging to the brothers / sisters of the assessee. However, no substantive addition was made in this case in the hands of the said person in the captioned assessment year; hence no addition on protective basis could be made. He also pointed out that no notice was issued under section 163(2) of the Act before making any addition under section 163(1) of the Act.

15. The learned DR for the Revenue placed reliance on the orders of the authorities below.

16. We have heard the rival contentions and perused the record. The issue raised in the present appeal is against the entries on a seized document found during the course of search from the premises of the assessee, i.e. in the year of search and the addition had been made on

account of cash component recorded on piece of paper in respect of sale of house no. 1/1 Shanti Niketan, New Delhi. The assessee has filed the copies of the sale deeds of the aforesaid property which was sold by way of four sale deeds. The first sale deed is placed at page 23 onwards, second sale deed at page 36 onwards, third sale deed at page 51 onwards and fourth sale deed at page 59 onwards. All the sale deeds are registered sale deeds dated 16th June, 2001. In other words, the transaction was completed in assessment year 2002-03. The assessee had also received the permission from the income tax department for the sale of the said property as required in Form No. 34A. Once the transaction had been completed in assessment year 2002-03, it is not discernible how the cash component if any, was to be taxed in the hands of the assessee in assessment year 2004-05. Without going into the merits of the notings of the seized documents, we find no merit in the aforesaid addition made in the hands of the assessee with regard to the cash component of a sale transaction which was completed in assessment year 2002-03, where cash component was added to the income of the assessee in assessment year 2004-05. Following the simile, we find no merit in the protective addition made in the hands of the assessee on account of cash components relating to the resident and non-resident brothers/sisters of assessee under section 160 and 163 of the Act. In any case, the AO had failed to give separate notice under section 163(2) of the Act and in the absence on same, no addition could be made in the hands of the assessee. We also hold that where the assessee was not maintaining any books of accounts, no addition was maintainable under section 68 of the Act. Accordingly, we direct the AO to delete the addition

made on account of cash component of Rs. 35,74,537/- and on account of cash component relating to the brothers / sisters of Rs. 1,47,82,541/-. In any case, second addition of Rs. 147.82.541/- was made on protective basis in the hands of assessee and corresponding substantive addition has not been made for the instant assessment years in the hands of any person. On this ground also there is no merit in the aforesaid addition. The grounds of appeal raised by the assessee are thus allowed.

17. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 30th January 2020.

Sd/-
(B.R.R.KUMAR)
लेखा सदस्य/ACCOUNTANT MEMBER
दिल्ली / दिनांक Dated : 30th January, 2020
SH

Sd/-
(SUSHMA CHOWLA)
उपाध्यक्ष/VICE PRESIDENT

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi