

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

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.4015/Del/2016  
Assessment Year: 2008-09

Countrywide Promoters Pvt. Ltd. M-11, Middle Circle, Connaught Circus, New Delhi-110 001. <b>PAN : AAACC5280H</b>	Vs	ACIT Central Circle – 23 New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**AND**

ITA No.4130/Del/2014  
Assessment Year: 2008-09

ACIT Central Circle – 23 New Delhi	Vs	Countrywide Promoters Pvt. Ltd. M-11, Middle Circle, Connaught Circus, New Delhi-110 001. <b>PAN : AAACC5280H</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Ajay Bhagwani, CA
Respondent by	Ms. Nidhi Srivastava, CIT DR

Date of hearing:	<b>14/11/2019</b>
Date of Pronouncement:	<b>14/02/2020</b>

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

ITA. No. 4015/Del/2016 Assessment Year 2008-09 by assessee is filed by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-33, New Delhi, dated 27.02.2014 for assessment year 2008-09. Learned Assessing Officer has filed ITA. No. 4130/Del/2014 against the same order for the impugned assessment year.

2. The brief facts of the case show that search and seizure operation was carried out on 15.11.2007 on BPTP Ltd. and its group companies. During the search certain material was seized and it was noted that it belonged to the assessee company and, therefore, proceedings under Section 153C of the Income Tax Act, 1961 (the Act) were initiated on 16.07.2009 for assessment years 2002-03 to 2007-08. For this assessment year, assessee filed its return of income on 25.09.2008 showing income of Rs.25,35,840/-. The learned Assessing Officer noted that assessee is one of the group company in which land has been purchased in Faridabad. It was noted that only part payment is made at the time of execution of the sale deed and the balance consideration was paid through post-dated cheques which were encashed after several months from the date of sale deed. Therefore, the learned Assessing Officer made the addition of Rs.7,39,727/- on account of additional payments. Assessing Officer further disallowed a sum of Rs.3,45,033/- under Section 40A(3) of the Act being 20% of Rs.17,25,165/-. Further addition of Rs.44,06,110/- was made on account of seized documents on account of payment made to Mr. Rajiv Ranjan Kumar. Addition of Rs.1,00,000/- was made on account of amount paid to Mr. Ram Singh as interest. Further several additions were made on account of seized documents and total taxable income of the assessee was remained at Rs.3,19,222/-. Assessment

under Section 143(3) of the Act was passed on 31.12.2009 at Rs.5,03,19,222/-. The assessee preferred appeal before the learned CIT (Appeals) wherein the appeal of the assessee was partly allowed. Therefore, the assessee is in appeal before us.

2.1 The Revenue is also in appeal before us as per ITA. No. 4130 (Del) of 2014 on the relief granted to the assessee. Therefore, these are the cross appeals filed by both the parties.

2.2 Referring to the additional ground of appeal, ld. Authorized Representative submitted that search took place on 15.11.2007 case of assessee was taken up under Section 153C of the Act by recording satisfaction on 16.07.2009. Therefore, in case of persons 'other than search person' i.e. assessee, date of recording satisfaction is the date of search so the impugned assessment year i.e. Assessment Year 2008-09 falls in the block of six previous years and hence should have been passed under Section 153C of the Act. It is passed under Section 143(3) of the Act. Therefore, it is invalid. He referred to several identical precedents for this proposition. He, therefore, submitted that additional ground goes to the root of the matter and challenges jurisdiction.

2.3 He further stated that the facts are already on record for deciding the additional ground and is purely a legal ground. He also referred his application in detail praying for admission of the above ground.

2.4 The learned Departmental Representative vehemently objected to the additional ground and submitted that same cannot be admitted at this stage and the assessee has not raised this ground before the lower authorities.

3. We have carefully considered the contentions of the assessee and the learned Departmental Representative. The assessee has raised the following

additional ground of appeal vide application dated 25.03.2017. The additional ground raised is as under:

*“That on the facts and circumstances of the case and in law, the impugned assessment order dated 31.12.2009 passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 is bad in law and void ab initio inasmuch as it ought to have been passed under Section 153C of the Act, 1961.”*

3.1 We find that the assessee has challenged the basic jurisdiction of the Assessing Officer as the above ground raised is purely legal which can be taken for the first time as also by the Hon'ble Supreme Court in NTPC Vs. DCIT 229 ITR 383. The facts are already available on record and omission of the impugned additional ground is neither willful nor unreasonable as it goes to the root of the matter, we admit the same and proceed to decide the issue.

3.2 As the additional ground is a jurisdictional one, we proceed to decide the same.

3.3 The learned Authorized Representative submitted that in case of the assessment of pressing other than the search pressing the date of search would be the date of recording the satisfaction. He referred to page No. 17 of his paper book wherein the satisfaction note for initiating 153C proceedings in the case of the assessee relied recorded on 16.07.2009. He further referred to the decision of Hon'ble Delhi High Court in CIT Vs. RRJ Securities Ltd. Dated 30.10.2015 (380 ITR 612). He further referred to para No. 24 of that order wherein it has been held that in case of person other than search this assessment year for which assessment / re-assessment could be made under Section 153C of the Act would have to be construed with reference to the date of handing over of the assessment / documents sent to the Assessing Officer of the assessee. As the date of satisfaction is 16.07.2009 he submitted that the date of search is 16.07.2009 and the impugned assessment order should

have been passed under Section 153C of the Act. He further referred to the decision of the Hon'ble Delhi High Court in Pr. CIT Vs. Sarwar Agency Pvt. Ltd. In ITA. 422/2017 Dated 17.08.2017. He, therefore, submitted that the whole assessment order passed is invalid.

3.4 The learned Departmental Representative vehemently objected and submitted that in the present case the order has been passed by the Assessing Officer under Section 153A/143(3) of the Act. Therefore, according to the learned Departmental Representative the order is proper and valid.

3.5 The learned Authorized Representative submitted that the above order is passed with the prior approval of the Addl. CIT and held this order passed under Section 143(3) of the Act there is no need of taking such approval.

3.6 In the present case assessee is not a 'searched person', but 'a person other than searched person'. The satisfaction note placed at page Nos. 17/21 of the paper book clearly shows that satisfaction note is dated 16.07.2009. The search and seizure action took place on Business Park Town Planners on 15.11.2007 as on the date of recording satisfaction i.e. 16.07.2009 the above assessment year 2008-09 should have been passed under Section 153C of the Act. The provisions of Section 153C(i) provides that assessment or re-assessment of the other person would be in accordance with the provisions of Section 153A of the Act. It further states that the reference to the date of initiation of search shall be construed as to the date of receiving the books of accounts by the Assessing Officer having jurisdiction over such person. It further provides that according to Section 153A of the Act assessment or re-assessment relating to any assessment year falling within the period of 6 assessment year pending on the date of initiation of the search under Section 132 would abate. Apparently in this case the date of search is 16.07.2009 and this year's period would be assessment year 2004-05 to assessment year

2009-10. Therefore, it is apparent that the assessee for assessment year 2008-09 should have been made under Section 153C of the Act and not under Section 143(3) of the Act as has been done. The Hon'ble Delhi High Court in the case of Pr. CIT Vs. Sarwar Agency Pvt. Ltd. (supra) clearly covers the issue in favour of the assessee. Further the amendment made in 153C of the Act by the Finance Act applies from 1<sup>st</sup> April, 1970 which covers the issue that hence-forth the period of the search pressing as well as the other person would be the same sixth assessment years immediately proceeding the year of search. However, the above amendment does not apply to the assessment year 2008-09 as the impugned assessment order has been passed under Section 143(3) of the Act same is not sustainable in law. Further on reading the first para of the assessment order the learned Assessing Officer has also mentioned that such search had been initiated against the assessee company on 16.07.2009 the notice under Section 153C of the Act has been issued for assessment year 2002-03 to assessment year 2007-08. The Assessing Officer himself has not considered the assessment year 2008-09 as covered under Section 153C of the Act. The assessing Officer has issued notice in the impugned assessment year under section 143(2) of the Act and thus passed the assessment order under Section 143(3) of the Act. The above assessment order passed was not in pursuance of any notice issued under Section 153C of the Act. In view of the above facts we found that the impugned assessment order passed under Section 143(3) of the Act is invalid as such assessment order should have been passed under Section 153C of the Act. Our view is in view of the decision of the Hon'ble Delhi High Court in the case of CIT Vs. RRJ Securities Ltd. (supra) and Pr. CIT Vs. Sarwar Agency Pvt. Ltd. (supra). In view of this we quash the assessment order passed by the Assessing Officer. The appeal of the assessee, in ITA. No. 4015/Del/2016 is allowed on the additional ground.

3.7 In view of this all the other grounds on the merits remain unadjudicated.

4. As we have quashed the assessment order passed by the Assessing Officer in ITA. No. 4130 (Del) of 2014 preferred by the Assessing Officer for the same assessment year also does not survive and hence the same is dismissed.

5. In the result, appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced in the open court on: 14.02.2020.

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

\*MEHTA\*

Date : 14.02.2020.

Copy forwarded to:

1. Appellants
2. Respondents
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI