

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
ITA.No.930/Del./2018
Assessment Year 2009-2010

The ACIT, Central Circle-30, Room No.320, 3 rd Floor, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	M/s. Kuber Products Pvt. Ltd., 1/8, West Patel Nagar, New Delhi. PIN 110 008. PAN AABCK6519J
(Appellant)		(Respondent)

For Revenue :	Shri J.K. Mishra, D.R.
For Assessee :	Shri Prakash Yadav, Advocate

Date of Hearing :	29.06.2020
Date of Pronouncement :	30.06.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-30, New Delhi, Dated 29.11.2017, for the A.Y. 2009-2010 on the following ground:

“On the facts and in the circumstances of the case, CIT(A) has erred in holding that A.Y. 2009-10 was not covered in six year period, without appreciating the fact

that of hearing over is replaced for dated of search only for the purpose of abatement of pending proceedings as per 2nd proviso of Section 153A and not for counting the six year period in section 153A(1) of the Act.”

2. Briefly the facts of the case are that original return declaring income of Rs.1,29,56,171/- was filed by assessee on 30.09.2009 which was processed under section 143(1) of the I.T. Act, 1961 on 29.10.2010. A search and seizure action under section 132 of the I.T. Act was conducted on 09.10.2014 on various business and residential premises of M/s. Kuber Group of cases including the premises of Shri Mulchand Malu and Shri Vikas Malu at New Delhi where the documents belonging to M/s. Kuber Product Pvt. Ltd., were found. The case of assessee company was centralized. Accordingly, a satisfaction note was recorded by A.O. of Shri Mulchand Malu and Shri Vikas Malu by giving findings that documents belonging to M/s. Kuber Product Pvt. Ltd., were found at the premises of Shri Mulchand Malu and Shri Vikas Malu at New Delhi and these documents were handed-over to the A.O. of M/s.

Kuber Product Pvt. Ltd., on the basis of which satisfaction note was recorded by A.O. before issuing notice under section 153A read with section 153C of the I.T. Act, 1961. The A.O. issued notice under section 153A r.w.s 153C to the assessee company on 28.09.2016. The assessee filed return of income, declaring income at Rs.1,29,56,171/- in response to such notice. During the search and post-search proceedings, details relating to the companies giving accommodation entries of share money, share premium, share capital and unsecured loan came to light. The A.O. has referred to the statement recorded during the course of search in the assessment order and noted that assessee company has received share capital and share premium from 05 companies mentioned in para 6.2 of the assessment order. The A.O. treated the same as unexplained credit under section 68 of the I.T. Act and made addition of Rs.1,65,00,000/- against the assessee and framed the assessment under section 153A r.w.s 153C of the I.T. Act dated 23.03.2017.

3. The assessee challenged the assumption of jurisdiction under section 153A/153C of the I.T. Act as well as addition on merit before the Ld. CIT(A). The detailed written submissions of the assessee were recorded on which comments of the A.O. were also called for. The Ld. CIT(A) considered the submissions of the assessee, remand report and material on record while deciding the three questions in appeal.

4. The Ld. CIT(A) decided the first question whether impugned assessment order dated 23.03.2017 under section 153A r.w.s. 153C of the I.T. Act was time barred or beyond jurisdiction. The Ld. CIT(A) noted that the date of issue of notice under section 153A/153C from the facts available on record is dated 28.09.2016. The satisfaction note of the persons searched carries date of 02.09.2016. The satisfaction note of the other person which is the assessee carries date as 28.09.2016. As such, on earliest point of time when the seized material was received by the A.O. of the assessee was 02.09.2016. It was after receipt of

the seized material with the A.O. of the other person [which is the appellant-assessee] issued notice under section 153A r.w.s 153C of the Act on 28.09.2016. The assessee has pointed out that for the purpose of Section 153C the date of initiation of search under section 132 of the Act shall be taken as the date of receiving the books of account etc., The Ld. CIT(A) referred to provisions of Section 153C in the Order and further noted that assessee has pointed out that the six assessment years prior to the date of search in the case of the assessee which is September, 2016 being the date on which documents etc., were handed-over to the A.O. should be A.Ys. 2011-2012 to 2016-2017. Therefore, A.O. has no jurisdiction to pass the assessment order under section 153C for A.Y. 2009-2010 at all. The Ld. CIT(A) relied upon Judgment of Hon'ble Delhi High Court in the case of CIT vs., RRJ Securities 346 ITR 177 (Del.) on the same proposition in which it was held that *"the date of satisfaction would be when the A.O. assumes position as that of the A.O. of the other party."* The Ld. CIT(A) also referred to decision of Hon'ble Delhi High Court in the case of Pr. CIT

vs., Sarwar Agency Pvt. Ltd., vide Order Dated 17.08.2017 in which same point have been decided in favour of the assessee. The Ld. CIT(A) following the above decisions of Hon'ble Delhi High Court held that "*no order for the assessment year under appeal i.e., 2009-2010 could be passed at all under section 153C of the I.T. Act.*" Therefore, there is no jurisdiction with the A.O. to pass such assessment order for the assessment year under appeal and the same was held to be without jurisdiction, *void abinitio* and was quashed.

4.1. The Ld. CIT(A) further decided another question whether assessment order passed under section 153A/153C is invalid and bad in Law as satisfaction note does not reveal any incriminating evidence or material found during the course of search. The Ld. CIT(A) reproduced the detailed written submissions of the assessee and found that no incriminating material has been found during the course of search. The A.O. has not noted whether documents found are incriminating material in nature at all. Therefore, issue was found covered in favour of the assessee by Judgment of

Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla 380 ITR 572 (Del.). This issue was decided in favour of the assessee that since no incriminating material was found during the course of search against the assessee, therefore, no assessment could have been framed against the assessee. Therefore, assessment order was held to be invalid and bad in law.

4.2. The Ld. CIT(A) decided the third question whether documents relating to other assessment year can be used for reopening of the assessment for other assessment years. The Ld. CIT(A) referred to decision of the Hon'ble Delhi High Court in the case of ARN Infrastructure India Ltd., vs., ACIT 394 ITR 569 (Del.) and held that "*action of the A.O. is bad in law and his order is not legal being void abinitio.*" The appeal of assessee was accordingly allowed.

5. We have heard the Learned Representatives of both the parties through video conferencing and perused the material available on record.

6. The Ld. D.R. merely relied upon the Order of the A.O.

7. On the other hand, Learned Counsel for the Assessee submitted that the Revenue has challenged the findings of the Ld. CIT(A) with regard to first issue only which is covered against the Revenue by Judgment of Hon'ble Delhi High Court in the case of M/s. RRJ Securities Ltd., (supra). He has further submitted that the Ld. CIT(A) granted relief on other issues also which have not been challenged by the Revenue in the present appeal.

8. We have considered rival submissions and perused the findings of the authorities below. The Ld. CIT(A) considered the first issue of assumption of jurisdiction under section 153C of the I.T Act in detail considering the material on record and in the light of Judgment of Hon'ble Delhi High Court in the case of M/s. RRJ Securities Ltd., (supra). The Ld. CIT(A) examining the issue in the light of provisions of Section 153C of the I.T. Act found that six assessment years prior to the date of search in this case which is September, 2016 being the date on which

documents etc., were handed-over to the A.O. of the assessee should be A.Ys. 2011-2012 to 2016-2017. Thus, there was no jurisdiction with the A.O. to proceed under section 153C for the A.Y. 2009-2010 under appeal. The Ld. D.R. did not dispute that issue is covered in favour of the assessee by Judgment of Hon'ble Delhi High Court in the case of M/s. RRJ Securities Ltd., (supra) in which it was held that *"the date of satisfaction would be when the A.O. assumes position as that of the A.O. of the other person"*. Therefore, Departmental Appeal has no merit and the same is liable to be dismissed. We may also note here that on other two issues, the Ld. CIT(A) has also granted relief to the assessee holding that no incriminating material was found during the course of search so as to make assessment against the assessee. The Revenue has not challenged these findings of the Ld. CIT(A) on these two issues. Therefore, even if the Departmental Appeal may be considered favourably in favour of the Revenue, it would not yield any result as the ultimate result would be that Ld. CIT(A) has correctly allowed the appeal of assessee. Therefore,

considering this aspect also, we find that Departmental Appeal is more or less in academic in nature and as such no further interference is required in the matter. Departmental appeal fails and the same is accordingly dismissed.

9. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/-
 (N.K. BILLAIYA)
 ACCOUNTANT MEMBER

Sd/-
 (BHAVNESH SAINI)
 JUDICIAL MEMBER

Delhi, Dated 30th June, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
 Delhi.