

आयकर अपीलिय अधिकरण

मुंबई पीठ "डी"

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "D", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री राजेशकुमार, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आअसं. 5618/मुं/2016 (नि. व.2010-11)

ITA NO. 5618/MUM/2016 (A.Y.2010-11)

Diwakar N. Shetty,
51A, Room No.12, Dhanalaxmi
Apartments, Mahakali Caves Road,
Andheri (E), Mumbai 400 093
PAN: AAIPS 6919E

..... अपीलार्थी /Appellant

बनाम Vs.

Dy. CIT, Central Circle – 6(1),
Room No.104, 1st Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vasudev Ginde

प्रतिवादी द्वारा/Respondent by : Shri Purushottam Tripure

सुनवाई की तिथि/ Date of hearing : 29/09/2020

घोषणा की तिथि/ Date of pronouncement : 30/09/2020

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-52, Mumbai (in short 'the CIT (A)') dated 08/06/2016 for the assessment year 2010-11.

2. Shri Vasudev Ginde, appearing on behalf of the assessee submitted at the outset that the assessee has raised additional ground of appeal challenging validity of the assessment order passed u/s 144 of the Income Tax Act, 1961 (herein after referred to as 'the Act'). In case the additional ground of appeal is allowed, the grounds raised in the appeal would become academic.

2.1. Narrating the facts, the Id. Authorized Representative for the assessee submitted that a search and seizure action u/s 132 of the Act was carried out in the case of M/s. Om Sai Motors Pvt. Ltd., a company belong to Gangadhar Shetty group on 20/08/2009. In search action certain documents pertaining to the assessee were also seized. Consequently, notice u/s 153C of the Act was issued to the assessee on 21/12/2010. The Assessing Officer made block assessment for Assessment Years 2004-05 to 2009-10 and for the impugned Assessment Year i.e. 2010-11, the Assessing Officer considered it as year of search and made assessment under regular provisions. The Id. Authorized Representative for the assessee submitted that the 'relevant date' for assuming jurisdiction U/ 152A r.w.s 153C in case of the person other than the searched person (in this case the appellant/assessee) would not be the date of search, but the date of handing over of the material etc. belonging to that other person to his Assessing Officer by the Assessing Officer having jurisdiction over the searched person. In the present case the Assessing Officer of searched person and the other person (i.e. the assessee) is the same. Since, satisfaction for initiating proceedings u/s 153C was recorded on 21/12/2010 i.e. in financial year 2010-11, relevant to assessment year 2011-12, the year of search would be assessment year 2011-12 and not 2010-11.

2.2. The Id. Authorized Representative for the assessee submitted that the assessee approached the Tribunal in ITA No.7309/Mum/2014 for assessment year 2004-05 assailing inclusion of assessment year 2004-05 in the period of block assessment raising similar arguments. It was submitted that since satisfaction U/s 153C was recorded in Financial Year 2010-11, the said financial year would be the year of search. Consequently, the block of six assessment years would be Assessment Year 2005-06 to Assessment Year 2010-11. The Id. Authorized Representative for the assessee pointed that the Tribunal vide order dated 07/4/2017 accepted the arguments of the assessee and restored the issue to Assessing Officer for the limited purpose to verify the facts. The Assessing Officer while giving effect to the order of Tribunal admitted that assessment year 2004-05 does not fall within the block period of six years and the year of search would be FY 2010-11 relevant to AY 2011-12. The Id. Authorized Representative for the assessee furnished the copy of Tribunal order in ITA No. 7309/Mum/2014 and Order Giving Effect for assessment year 2004-05 dated 06/04/2018. The Id. Authorised Representative asserted that in view of the position admitted by the Assessing Officer, the assessment year under appeal i.e. 2010-11 would fall within the block period wherein the assessment should have been made under section 153C of the Act.

2.3. The Id. Authorized Representative for the assessee in support of his contentions has placed reliance on the following decisions:-

- (1) CIT vs. Jasjit Singh, Income Tax Appeal No. 337 of 2015 for AY 2009-10, decided on 02/01/2018 by the Hon'ble Delhi High Court;
- (2) EON Auto Industries Pvt. Ltd. Vs. DCIT, ITA No.3179/Del/2013, A.Y.2008-09, decided on 28/11/2017.;

(3) Ridge View Development Pvt. Ltd. vs. DCIT, ITA No.6084/Del/2012 for AY 2009-10 decided on 02/01/2018.

3. On the other hand, Shri Purushottam Tripure, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

4. We have heard the submissions made by rival sides and have examined the material available on record. The assessee has raised additional ground challenging the validity of assessment order. The additional ground of appeal reads as under:-

“On the facts and in the circumstances of the case, and in law, the assessment order dated 30/12/2011 passed under section 144 of the Income Tax Act, 1961 (“Act”) for the A.Y 2010-11 is bad in law inasmuch as the said assessment year falls within the block of six assessment years referred to in section 153C of the Act, and therefore, assessment ought to have been made only u/s.153C of the Act, and not as regular assessment u/s. 143(3)/144 of the Act. Your appellant, therefore, prays that the impugned assessment order, being bad in law, be quashed.”

The Id. Authorized Representative for the assessee at this stage has confined his arguments only to the legal issue raised in the additional ground of appeal. Since in additional ground, the assessee has raised a jurisdictional issue for which all the relevant material is already on record and no fresh evidence is required to be adduced, the additional ground of appeal is, admitted for adjudication.

5. The only issue as of now for our consideration is: Whether the assessment for assessment year 2010-11 was required to be framed u/s. 153C of the Act being part of block assessment period or the assessment has been

rightly made under regular provisions considering impugned assessment year relevant to the year of search.

6. Undisputedly, the Assessing Officer recorded satisfaction for assuming jurisdiction u/s.153C of the Act in the case of the assessee on 21/12/2010 and the notice u/s.153C was issued on the same day asking the assessee to furnish the return of income u/s.153A r.w.s. 153C for assessment year 2004-05 to 2009-10. The assessment order for the aforesaid block period of six years was passed u/s 144 r.w.s. 153C on 30/12/2011. The assessee challenged the invoking of section 153C jurisdiction for assessment year 2004-05 before the Tribunal in ITA No.7309/Mum/2014 (supra). After examining the facts, the Tribunal held that assessment year 2004-05 is outside the purview of block assessment period as the documents relating to the assessee found at the place of searched person were handed over to the Assessing Officer of the assessee in financial year 2010-11 relevant to assessment year 2011-12. If that be so, the Assessing Officer would have no jurisdiction for issuing notice u/s 153A r.w.s. 153C of the Act for AY 2004-05. However, for the limited purpose of verification of facts, the Tribunal restored the issue back to the Assessing Officer. For the sake of completeness relevant extract of the Tribunal order is reproduced herein below:-

“6.Thus in the backdrop of the aforesaid settled position of law, we are of the considered view that now in the case of the present assessee as the “reasons recorded for issue of notice under Section 153C for A.Y. 2004-05 to 2009-10” are dated 21.12.2010, therefore though it can safely be presumed that the A.O of the searched person, viz. M/s Om Sai Motors Pvt. Ltd. (supra) must have handed over the ‘seized material’ relating to the assessee, to the A.O having jurisdiction over the latter’s case in the Financial year 2010-11 relevant to A.Y. 2011-12, and if that be so,

then the A.O would had no jurisdiction for issuing notice under Section 153A r.w Sec. 153C for the said year, viz. A.Y. 2004-05, to the assessee, and as a fall out of the same the assessment framed in the hands of the assessee under Section 144 r.w.s. 153C, dated 30.12.2011, being devoid of any force of law, would be rendered non est. We therein find that the Id. D.R had neither placed on record any 'material' to controvert and dislodge the claim of the Id. A.R that the handing over of the assets/documents relatable to the assessee by the Assessing officer of the searched person, to the Assessing officer of the assessee had taken place in F.Y. 2010- 11 relevant to A.Y. 2011-12, but then we being not oblivious of the fact that as the exact date of actual handing over of the material by the A.O of the searched person, viz. M/s Om Sai Motors Pvt. Ltd. (supra) cannot be deciphered from either the orders of the lower authorities, or the record before us, therefore in all fairness for the said limited purpose of verifying the said factual position, therein set aside the matter to the file of the A.O. That in case if it emerges from the records that the 'material' relatable to the assessee had been handed over by the Assessing officer of the searched person, viz. M/s Om Sai Motors Pvt. Ltd. (supra) to the Assessing officer of the assessee in the financial year 2010-11, then in light of our aforesaid observations, the assumption of jurisdiction by the A.O. under Section 153C in the case of the assessee for A.Y. 2004-05, as observed by us hereinabove, would be devoid of any force and the entire proceedings following therein being non-est in the eyes of law, would thus stand vitiated. We thus in terms of our aforesaid view, therein remand the matter to the file of the A.O for carrying out the necessary verifications by strictly confining himself to our aforesaid clear observations. The Additional Ground of appeal No. 1 raised by the assessee before us is thus allowed for statistical purpose in term of our aforesaid observations."

7. Thereafter, the Assessing Officer passed Order Giving Effect to the Tribunal order dated 07/4/2017, wherein the Assessing Officer admitted that assessment year 2004-05 does not fall within the block assessment period as

the relevant material was handed over in the period relevant to AY 2011-12. The relevant extract of the order reads as under:-

“3. As per the directions given by the Tribunal, the available case records are carefully verified by me to ascertain the exact date of handing over the seized material by the A.O of M/s. Om Sai Motors Pvt. Ltd. To the A.O of the assessee. The A.O of both the assessee being common there seems to be no occasion to physically hand over any seized material to the A.O of the assessee. Perusal of the case records however show that the relevant Satisfaction Note was recorded in case of the assessee on 21/12/2010 and notices u/s 153C based on the same date. It is therefore, safe to presume that the relevant seized material must have been handed over in the Financial Year 2010-11 relevant to A.Y 2011-12.

4. In view of above, and the specific observations made by the Tribunal extract above, the notice issued u/s 153C of I.T. Act, 1961 on 21.12.2010 to the assessee for A.Y 2004-05 is rendered without jurisdiction. In the result, the assessment order u/s 144 r.w.s. 153C dated 30.12.2011 is hereby cancelled.”

8. Since, the Revenue has itself admitted the fact that the year of search would be Financial Year 2010-11 relevant to AY 2011-12, the block period of six years for search assessment u/s.153C of the Act would comprise of assessment years 2005-06 to 2010-11. Under these facts, the assessment for AY 2010-11 being part of block assessment period should have been u/s 153A r.w.s. 153C of the Act. We find merit in the additional ground of appeal raised by the assessee.

9. The Hon’ble Delhi High Court in the case of CIT vs. Jasjit Singh (supra) has held that the date of initiation of search u/s. 132 of the Act or requisition u/s.132A of the Act in the case of other person shall be the date of receiving the books of account or documents or assets seized or requisition by the

Assessing Officer having jurisdiction over such other person. In the instant case, although the Assessing Officer of the searched person and the other person(the assessee) was the same, satisfaction was recorded by the Assessing Officer for invoking the provisions of section 153C of the Act on 21/12/2010, the said date would be deemed to be the date of receiving documents by the Assessing Officer. Thus, the year of search would be FY 2010-11 relevant to AY 2011-12.

10. The Delhi Bench of the Tribunal in the case of EON Auto Industries (P) Ltd. vs. DCIT (supra) in somewhat similar facts of the case after placing reliance on the judgement rendered by in the case of CIT vs. RRJ Securities Ltd. reported as 380 ITR 612 (Delhi) held:

“12. If the ratio of the Hon'ble jurisdictional High Court in the aforesaid case is to be applied on the facts of the present case, then, firstly, reference date has to be reckoned as date of recording of 'satisfaction' under section 153C which is 20/11/2009; and secondly, if such a date is taken as date of initiation of the search or requisition for the purpose of second proviso to section 153A(1), that is, for the purpose of abatement of pending assessment proceedings; then the year of search in terms of clause (b) of section 153A(1) would be assessment year 2010-11; and 2008-09 would fall within the category of six assessment years prior to the year of search. In such a situation, assessment for assessment year 2008-09 should have been completed in terms of section 153C read with 153A and not as a regular assessment under section 143(3). The reason being entire concept of abated; unabated as laid down in 2nd proviso to section 153A(1) and other issue of limitation as contained section 153 B has to be seen with reference to such reference date which has different consequences. Like for instance in section 153 B the period of limitation for completion of regular assessment for the year of search and for the assessment falling in each of the six assessment years are different. Thus, in our humble opinion, assessment for assessment year 2008-09 should have been completed under section

153A read with 153C and not as regular assessment under section 143(3), by treating the A.Y. 2008-09 as year of search.”

Thus, for the purpose of determining six assessment years prior to the date of search, relevant date for the purpose of invoking provisions of Section 153C of the Act in the case of a person other than the person searched would be the date of recording satisfaction under section 153C of the Act.

11. The Assessing Officer in the impugned assessment year has made assessment under regular provisions. Since, the impugned assessment year forms part of the block of six assessment year prior to the date of search, the assessment should have been made u/s. 153C of the Act. Therefore, in our considered view, the assessment order for the impugned year suffers from legal infirmity and hence, is liable to be quashed. We hold and direct accordingly. The assessee succeeds on legal issue raised in additional ground of appeal.

12. Since jurisdictional issue is decided in favour of the assessee, the grounds raised in the appeal assailing additions on merit have become academic and hence, are not deliberated upon.

13. **In the result, appeal of the assessee is allowed.**

Order pronounced on Wednesday the 30th day of September, 2020.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 30/09/2020

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai