

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR “SMC” BENCH, JABALPUR
[Through Virtual Hearing]**

BEFORE SHRI NRS GANESAN, JUDICIAL MEMBER

ITA No.172/JAB/2018
Assessment year: 2010-11

Shri Rajesh Kumar Manchhani, Prop. M/s. Amar Das Polymers, Karmeta, Katangi Road, Jabalpur (MP) (PAN – AHJPM 8020G) (Appellant)	vs.	Income Tax Officer, Ward 1(1), Jabalpur (M.P.) (Respondent)
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Appellant by	Shri H.S. Modh, Adv
Respondent by	Shri I. B. Khandel, DR
Date of hearing	18/11/2020
Date of pronouncement	18/11/2020

ORDER

Per NRS Ganesan, JM:

1. This appeal of the assessee is directed against the order of CIT(A)-1, Jabalpur dated 04.07.2018 and pertains to AY 2010-11.
2. Shri H.S. Modh, Id. counsel for the assessee submitted that the original assessment u/s. 143(3) was completed by an order dated 18.03.2013. Subsequently, the Assessing Officer issued notice u/s. 153C on 25.3.2013 and passed an order on 28.2.2014. Since the Assessing Officer passed an order u/s. 153C on 28.02.2013, the order passed under 143(3) on 18.3.2013 cannot stand in the eyes of law. Therefore, it is not non est in the eyes of law.
3. On the contrary, the Id. Departmental Representative submitted that a small addition was made in the assessment u/s. 143(3) and the same was confirmed by the CIT(A). Therefore, he is placing his reliance on the

observation made by the Id. CIT(A) on the impugned order. On a query from the Bench regarding the date of receipt of the search document by the assessing officer, the Id. DR submitted that the said information was not available on record, therefore, this Tribunal directed the AO to join the video conference meeting today i.e. 18.11.2020. Accordingly, Mr. Mahesh Shukla, the assessing officer joined the video conference and he clarified that presently the search material was not available on record and on a further query from the Bench that when the search material is not available on record how the notice u/s. 153C was issued, he could not explain the reasons for issuing notice u/s. 153C, properly. The Assessing Officer further clarified that due to bifurcation of the Department, the search material, which was received from the other officer was not traceable in spite of his best effort, therefore, the search material is not available on record. The Assessing Officer as well as the Departmental Representative could not clarify the date of receipt of the search material from the AO of the searched person.

4. Having heard the Id. counsel for the assessee, Departmental Representative and the Assessing Officer, this Tribunal is of the considered opinion that on the date of search, if the assessment proceedings are pending, that will abate and the Assessing Officer has to pass a consolidated assessment order in respect of the return filed prior to date of search and also on the basis of material found during the course of search operation. In case the assessment proceedings are not pending on the date of search, then two orders can be passed, one in respect of return filed u/s. 139(1) and another order relating to material found during the course of search operation. In respect of the person other than the searched person the date of receipt of search material from the other officer would be the relevant date. In other words, the date on which the Assessing Officer received the document i.e. the material unearthed during the course of search from the searched person, the assessment proceedings are pending, then that will abate, the Assessing Officer has to pass single and composite order under 153C. However, on the date of receipt of the search material, the assessment proceedings are not pending and completed, then the Assessing Officer has the option of passing another order u/s. 153C with reference to material found during the course of search operation. In that case the order already passed under section 143(3)

would also stand as it is. In this case, the Assessing Officer admittedly passed order u/s. 143(3) on 18.03.2013. The Assessing Officer has also issued notice u/s. 153C on 25.3.2013. Therefore, it is obvious that the Assessing Officer ought to have received the searched material from the Investigating Wing of the Department or from the AO of the searched person 15 to 20 days back before issuing notice u/s. 153C. Now the Department is withholding the best available document on the ground that it is not traceable due to bifurcation of the department. This kind of attitude of the Department cannot be encouraged at all. When the proceedings are pending and the assessee is challenging the assessment order before the CIT(A) and before this Tribunal, it is the duty of the Department to protect all the documents. Therefore, this Tribunal has no option except to draw adverse inference for withholding the best available document with the Department. In other words, the presumption is that the searched material and the appraisal report from the Investigating Wing of the Department ought to have been received by the Assessing Officer before 18.03.2013 and before passing the order u/s. 143(3) of the Act. Consequently, the assessment proceedings are pending on the date of receipt of search material from the other Officer and the same would abate, hence, the Assessing Officer has no authority to pass an order u/s. 143(3). Therefore, this Tribunal is of the considered opinion that the order passed u/s. 143(3) on 18.03.2013 cannot stand in the eye of law. Accordingly, the orders of both the authorities below are set aside and appeal of the assessee stands allowed.

5. In the result, appeal of the assessee stands allowed.

Order pronounced in the open court on 18th November 2020.

Sd/-
(N.R.S.Ganesan)
Judicial Member

Dated: 18/11/2020
Aks(P)

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