

आयकर अपीलिय अधिकरण

मुंबई पीठ “ एफ”

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “F”, MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष एवं

श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER.

आअसं. 1560/मुं/2018 (नि.व.2008-09)

ITA NO. 1560/MUM/2018 (A.Y.2008-09)

आअसं. 1558/मुं/2018 (नि.व.2009-10)

ITA NO. 1558/MUM/2018 (A.Y.2009-10)

आअसं. 1564/मुं/2018 (नि.व.2010-11)

ITA NO. 1564/MUM/2018 (A.Y.2010-11)

Dy.Commissioner of Income-tax,
Central Circle 1(4),
902, 9th Floor, Pratishtha Bhavan,
Old CGO Bldg.(Annexe),
M.K.Road, Mumbai 400 020

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

M/s. Ultratech Cement Ltd.,
Ahura Centre, B-Wing, Mahakali Caves Road,
Andheri (East), Mumbai 400 093
PAN: AAACL6442L

: प्रत्यर्थी/ Respondent

Assessee by : Shri Nitesh Joshi

Revenue by : Shri A. Mohan

सुनवाई की तारीख/
Date of Hearing : 19/11/2020

घोषणा की तारीख /
Date of Pronouncement : 08/02/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These three appeals by the Revenue are for assessment years 2008-09,2009-10 and 2010-11 assailing the findings of Commissioner of Income Tax (Appeals)-47, Mumbai (in short ‘the CIT(A)’) for the respective assessment years . All the three

impugned orders are of even date i.e. 20/12/2017 Since all these appeals germinate from same set of facts, these are taken up together for adjudication and are decided by this common order.

2. Shri Nitesh Joshi, appearing on behalf of the assessee submitted that a search operation was conducted at the premises of M/s. Aditya Birla Management Corporation Pvt. Ltd. on 16/10/2013. The assessee is one of the Group Companies, however, no search in the case of assessee was carried out. During the search on M/s. Aditya Birla Management Corporation Pvt. Ltd. no incriminating material was found qua the assessee. The Id.Authorized Representative of the assessee submitted that the appeals of the Revenue are liable to be dismissed on the short ground that on the date of search the assessment in all the three impugned assessment years was completed. In other words, assessments were not pending at the time of search, consequently, in the impugned assessment years the assessment had not abated. Hence, without there being any incriminating material no addition could have been made in assessment proceedings under section 153C of the Act. In support of his contentions the Id.Authorized Representative of the assessee placed reliance on the decision of CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. reported as 374 ITR 645(Bom).

The Id. Authorized Representative for the assessee pointed that the facts in all the three impugned assessment years are identical. The assessment under section 153C in all the three impugned assessment years were made consequent to search operation in the case of M/s. Aditya Birla Management Corporation Pvt.Ltd. on 16/10/2013.

3. On the other hand, Shri A. Mohan, representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A). The

Id. Departmental Representative submitted that CIT(A) has erred in holding that the assessment made under section 153C of the Income Tax Act, 1961 (in short 'the Act')in the case of assessee are not sustainable in the absence of any incriminating material.

4. We have heard the submissions made by rival sides and have perused the orders of authorities below. The Revenue in appeal has assailed the findings of CIT(A) on the legal issue of validity of assessments completed under section 153C of the Act as well as assailing the deletion of additions on merits. Before proceeding further to decide the issue of validity of assessment under section 153C of the Act sans any incriminating material, it would be necessary to refer to the chronology of events.

Assessment Year 2008-09.	
Date	Events.
29/09/2008	Return of income filed by the assessee under section 139 of the Act
29/03/2010	Revised return of income filed.
28/02/2011	Assessment completed under section 143(3) of the Act
21/12/2011	First appeal decided by CIT(A)
16/10/2013	Date of search in the case of Group Company
26/11/2014	Notice issued under section 153C r.w.s. 153C of the Act
29/03/2016	Assessment u/s .153C r.w.s. 143(3) made.

As is evident from the chronology of events tabulated above, on the date of search the assessment for assessment year 2008-09 had completed. In search proceedings under section 132 of the Act no incriminating documents was found against the assessee. It is no more resintegra that in the absence of any incriminating material no assessment under section 153C can be made where assessment has not abated, i.e. there is no pending assessment.

5. In the case of CIT vs. Murli Agro Products reported as 49 taxmann.com 172(Bom) the Hon'ble High Court held:

"9. What Section 153A contemplates is that, notwithstanding the regular provisions for assessment/reassessment contained in the IT Act, where search is conducted under Section 132 or requisition is made under Section 132A on or after 31/5/2003 in the case of any person, the Assessing Officer shall issue notice to such person requiring him to furnish return of income within the time stipulated therein, in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made and thereafter assess or reassess the total income for those assessment years. The second proviso to Section 153A provides for abatement of assessment/reassessment proceedings which are pending on the date of search/requisition. Section 153A(2) provides that when the assessment made under Section 153(A)(1) is annulled, the assessment or reassessment that stood abated shall stand revived.

10. Thus on a plain reading of Section 153A of the Income-tax Act, it becomes clear that on initiation of proceedings under Section 153A, it is only the assessment/reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under Section 132A of the Act stand abated and not the assessments/reassessments already finalised for those assessment years covered under Section 153A of the Act. By a circular No. 8 of 2003 dated 18-9-2003 (See 263 ITR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under Section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalised assessment/reassessment shall not abate. It is only because, the finalised assessments/reassessments do not abate, the appeal, revision or rectification pending against finalised assessments/reassessments would not abate. Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalised for the assessment years covered under Section 153A of the Income-tax Act stand abated cannot be accepted. Similarly on annulment of assessment made under Section 153A (1) what stands revived is the pending assessment/reassessment proceedings which stood abated as per section 153A(1).

11. In the present case, as contended by Shri Mani, learned counsel for the assessee, the assessment for the assessment year 1998-99 was finalised on 29-12-2000 and search was conducted thereafter on 3-12-2003. Therefore, in the facts of the present case, initiation of proceedings under Section 153A would not affect the assessment finalised on 29-12-2000.

12. Once it is held that the assessment finalized on 29.12.2000 has attained finality, then the deduction allowed under section 80 HHC of the Income-tax Act as well as the loss computed under the assessment dated 29-12-2000 would attain finality. In such a case, the A.O. while passing the independent assessment order under Section 153A read with Section 143(3) of the IT. Act could not have disturbed the assessment/ reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under Section 153A of the Income-tax Act establish that the reliefs granted under the finalised assessment/reassessment were contrary to the facts unearthed during the course of 153A proceedings.

13. In the present case, there is nothing on record to suggest that any material was unearthed during the search or during the 153A proceedings which would show that the relief under Section 80HHC was erroneous. In such a case, the A.O. while passing the assessment order under Section 153A read with Section 143(3) could not have disturbed the assessment order finalised on 29.12.2000 relating to Section 80HHC deduction and consequently the C.I.T. could not have invoked jurisdiction under Section 263 of the Act.”

5.1 Similar view was expressed by Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, 380 ITR 573(Del). The Hon'ble High Court held that completed assessment can be interfered with by the Assessing Officer while making assessment under section 153A only on the basis of some incriminating material unearthed during the course of search that was not produced or not already disclosed or made known in the course of original assessment.

5.2 The Hon'ble Jurisdictional High Court in the case of CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra) following the decision rendered in the case of Murli Agro Products (supra) held that no addition can be made in respect of assessment that has become final, if no incriminating material is found during search.

Apart from the judgments cited above, there are several other judgments by Hon'ble High Courts and decisions of the Tribunal supporting similar view

6. In the present case, the Id. Departmental Representative has failed to show from records any incriminating material found during the search that could have resulted in addition in the hands of assessee in the impugned assessment year. It is an undisputed fact that on the date of search assessment for assessment year 2008-09 was not pending. We concur with the findings of CIT(A) that in the absence of any incriminating material no addition or disallowance can be made in the assessment proceedings under section 153C of the Act, in the case of non-abated assessments.

7. After examining the assessment order we observe that the Assessing Officer has made addition/disallowances on following counts:

- (i) Sales Tax subsidy.
- (ii) Disallowance u/s.80IA(4)(i) of the Act
- (iii) Disallowance u/s . 14A of the Act
- (iv) Deduction on account of Emission of Carbon Credits.
- (v) Additional depreciation u/s.32(1)(iia) of the Act .

All these additions/disallowances were considered by the Assessing Officer in original assessment proceedings under section 143(3) of the Act. In the absence of any incriminating material during the course of search no fresh addition/disallowance was made. Once the assessment made under section 143(3) has become final, the assessment made under section 153A r.w.s.143(3) dealing with same set of disallowance/addition without there being any incriminating material is unsustainable in law. The Assessing Officer cannot reframe the assessment under section 153A of the Act sans fresh incriminating material. The appeal of the Revenue is devoid of any merit, hence, dismissed.

ITA NO.1558 & 1564/Mum/2018 – A.Ys 2009-10 & 2010-11:

8. In both these assessment years the facts are similar to assessment year 2008-09. The assessment under section 153A r.w.s. 143(3) of the Act was made without there being any incriminating material found during the search operation under section 132 of the Act in the case of Group Company. The original assessment made under section 143(3) in both the impugned assessment years were undisputedly completed before the date of search. The chronology of events in assessment year 2009-10 and 2010-11 are tabulated herein under:

Date		Events.
A.Y.2009-10	A.Y.2010-11	
29/09/2009	29/09/2010	Return of income filed by the assessee under section 139 of the Act
30/03/2011	15/03/2012	Revised return of income filed.
31/12/2012	18/12/2013	Assessment completed under section 143(3) of the Act
30/05/2014	30/05/2014	First appeal decided by CIT(A)
16/10/2013	16/10/2013	Date of search in the case of Group Company
26/11/2014	26/11/2014	Notice issued under section 153C r.w.s. 153C of the Act
29/03/2016	29/03/2016	Assessment u/s .153C r.w.s. 143(3) made.

From above table, it is evident that on the date of search the assessment for impugned assessment years were not pending. Thus, it is a case of unabated assessment. Since, the facts germane to the present appeals are pari-materia to assessment year 2008-09, the findings given by us while adjudicating the appeal of the Revenue in 2008-09 would *mutatis mutandis* apply to the present appeals as well. Consequently, both these appeals by the Revenue are dismissed.

9. To sum up, appeals by the Revenue for assessment year 2008-09,2009-10 and 2010-11 are dismissed.

Order pronounced in the open Court on Monday, the 8th day of February, 2021.

Sd/-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: /02/2021

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