

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "C" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S.PANNU, PRESIDENT &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.6348/Del/2014  
Assessment Year : 2010-11**

Ms. Anshu Gupta, F-2, Vinay Path, Kanti Chand Road, Bani Park, Jaipur. PAN-AJTPG0540M	vs	ACIT, Circle-3, Noida.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. S.L.Poddar, CA	
<b>Respondent by</b>	Sh. Satpal Gulati, CIT DR	
<b>Date of Hearing</b>	08.09.2021	
<b>Date of Pronouncement</b>	30.09.2021	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee pertaining to assessment year 2010-11 is directed against the order of Ld. CIT(A)-33, Noida dated 29.08.2014. The assessee has raised following grounds of appeal:-

1. *“That the order passed by the Learned Assessing Officer u/s 153A/143(3) of the Income Tax Act, 1961 is void ab-initio deserves to be quashed.*
2. *Under the facts and Circumstances of the case the Learned CIT(A) has erred in confirmation the trading addition of Rs. 73,70,671/- on account of difference of stock without bringing any material on record on the basis of statement of third person u/s 132(4) of the Income Tax Act, 1961 which has no evidentiary value.*
3. *Under the facts and Circumstances of the case the Learned CIT(A) has erred in not considering the submission of the assessee that there was*

*no difference in stock and it was only misunderstanding as the books were not complete at the time of search.*

*4. That the assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.”*

2. Ground No.1 raised by the assessee is against the legality of assessment order.

3. Facts giving rise to the present appeal are that the Assessing Officer has recorded that a search and seizure operation was conducted on 15.09.2009. The case was centralized vide order u/s 127 of the Income Tax Act, 1961 (“the Act”) which was passed by Ld.CIT, Jaipur-II, Jaipur dated 02.11.2011. Thereafter, notice u/s 143(2) r.w.s.142(1) of the Act was issued. Further, the Assessing Officer recorded that in response to the questionnaire, the assessee filed replies, the same was placed on record. Further, it was recorded by the Assessing Officer that in the case of the assessee, Sh. Subhash Gupta, father-in-law of the assessee had made statement u/s 132(4) of the Act during the course of search and surrendered Rs.73,70,671/- on account of difference in stock in the hands of M/s Salasar Jewellers under the proprietorship of Ms. Anshu Gupta. Hence, the Assessing Officer made addition of Rs.73,70,671/- in the hands of the assessee, and computed the income at Rs.75,29,130/- against the returned income of Rs.1,58,460/-. Further, the Assessing Officer initiated the penalty proceedings u/s 271AAA of the Act. The Assessing Officer recorded that the impugned assessment order was passed with the prior approval of Ld. Addl. CIT, Central Range, Meerut within the meaning of section

153D of the Act vide F.No.Addl.CIT/CR/MRT/S&S/153D2011-12/681 dated 29.12.2011.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who dismissed the appeal by observing that no objection regarding assessment being framed u/s 153A of the Act was taken at the stage of assessment.

5. Aggrieved against this, the assessee is in appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that the assessment order is *ex facie*, legal and nonest. He submitted that in this case, no search action was carried out. He submitted that the stand of the Revenue is self-contradictory and against the facts that the assessment as framed u/s 143(3) of the Act. He submitted that the entire assessment order speaks about search and provision of sections 153A and 153D of the Act. Even the penalty proceedings are evitable u/s 271AAA of the Act.

7. On the contrary, Ld.CIT DR, Sh. Satpal Gulati vehemently opposed these submissions and submitted that it is a fact that the Assessing Officer has mentioned section 153A of the Act but it is only a mistake. He took us through the Remand Report filed before the Ld.CIT(A) where it has been categorically stated that the assessment for Assessment Year 2011-12 was completed u/s 153A which is beyond the purview of section 153A/153C of the Act as the date of search was 15.09.2009. Accordingly, six previous years from the date of search were to be completed u/s 153A/153C and the current year's assessment for the year under consideration was completed u/s 143(3) of the Act. Ld.CIT DR submitted that section 292B of the Act comes to the rescue of

the Revenue under the facts and circumstances of the present case. He submitted that in view of provision of section 292B of the Act, the assessment order cannot be annulled.

8. In re-joinder, Ld. Counsel for the assessee submitted that section 292B of the Act would not come for the rescue of the revenue as the intent of the assessment order is with regard to framing the assessment u/s 153A of the Act. It is not the assessment framed u/s 143(3) of the Act, as submitted by Ld.CIT DR. He submitted that Ld.CIT(A) has conceded the fact that no search took place in the case of the assessee.

9. We have heard the rival contentions and perused the material available on records and gone through the orders of the authorities below. The dispute is with regard to the legality of the impugned assessment order. Therefore, for the sake of effective adjudication, the relevant contents of impugned assessment order are reproduced as under:-

*“A search & seizure operation was conducted in this case n 15.09.2009. The case was centralized vide order under section 127 of Income Tax Act which was passed by Ld. Commissioner of Income Tax. Jaipur – II, Jaipur dated 02.11.2011. Notice u/s 143(2)/142(1) of Income Tax Act was issued. Return of income was e-filed on 14.10.2010 declaring income of Rs. 1,58,460/-. Notice under section 142(1) along with questionnaire was also issued. In response on behalf of Assessee Shri Subhash Gupta. father in law and holder of power of attorney attended from time to time and filed the details, which are place on record and the case was discussed with him.*

*2. In response to questionnaire, assessee filed reply same is placed on record. During the year assessee has shown income from Shree Salasar*

*Jewellers. Investment made by the assessee during the year, cross-examined and details thereof is placed on record. Assessee claimed deduction under chapter VIA of Income Tax Act. Assessee has also filed audited balanced, P&L A/c, which are placed on record. In the case of assessee, Shri Subhash Gupta, father in law, made statement under section 132(4) of Income Tax Act during the course of search and has surrender amount of Rs. 73,70,671/- on account of difference in stock in the hands of M/s Salasar Jewellers under the proprietorship of assessee i.e. Mrs. Anshu Gupta, addition in this regard for Rs.73,70,671/- is being made in this current year.*

*Addition Rs. 73,70,671/-*

*3. Books of accounts with vouchers and banks statements were produced and test checked on random basis. Assessee has made cash sales for which it was submitted that it is in their trade that generally cash sales are made. The cash sales are prevailing in their region. Assessee also filed a write up from Sarafa Association that cash sales are prevalent in the region and they are doing their business on the basis of cash sales although purchases are made in cheque only. Details thereof are placed on record.*

*4. With these remarks total income of the assessee is computed as under :*

<i>Return income</i>	<i>:</i>	<i>Rs.1,58,460/-</i>
<i>Add: as per para 2</i>	<i>:</i>	<i><u>Rs73,70,671/-</u></i>
<i>Total taxable income</i>	<i>:</i>	<i>Rs.75,29,131/-</i>

*or*

*Rs.75,29,130/-*

*Assessed. Issued demand notice and challan. Give credit to prepaid taxes. Charge interest accordingly. Penalty proceedings under section 271AAA of Income Tax Act is being initiated separately. I am satisfied that this is a fit case for initiation of penalty under section 271AAA of income Tax Act.*

*This order is passed with the prior approval of Addl.CIT, Central Range, Meerut with in the meaning of section 153D of Income Tax Act vide F.No.Addl.CIT/CR/MRT/S&S/153D2011-12/681 dated 29<sup>th</sup> Dec, 2011.”*

10. From the assessment order, it is clear that same has been framed u/s 153A r.w.s 143(3) of the Act. It is also evident from the assessment order that it speaks of search and seizure operation was carried out on 15.09.2009. It further states that the assessment order was passed in the prior approval of Ld. Addl. CIT, Central Range, Meerut within the meaning of section 153D of the Act vide F.No. Addl.CIT/CR/MRT/S&S/153D2011-12/681 dated 29.12.2011. These facts are not disputed by the Revenue. The only submission by Ld.CIT DR is that these are mistakes which would fall within the ambit of section 292B of the Act. For the sake of clarity and for ready-reference, the provision of section 292B of the Act is reproduced hereunder:-

**Return of income, etc., not to be invalid on certain grounds.**

**292B.** *“No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.”*

11. The aforesaid provision speaks about *“No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of*

*any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.”*

12. Looking to the assessment order, the Assessing Officer has consciously made assessment u/s 153A of the Act and on the basis of alleged statement recorded during the search. Therefore, it cannot be construed that recordings of such facts is by mistake. Therefore, the impugned assessment order do not satisfy the test of law, the same deserves to be quashed. We, therefore, hereby quash the impugned assessment order. Thus, Ground No.1 raised by the assessee is allowed.

13. Ground Nos. 2 & 3 raised by the assessee are on merit of the case. Since we have quashed the assessment order, these grounds have become of academic interest only hence, are not being adjudicated.

14. Ground No.4 raised by the assessee is general in nature, needs no separate adjudication.

15. In the result, the appeal of the assessee is partly allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 30<sup>th</sup> September, 2021.

**Sd/-**

**(G.S.PANNU)  
PRESIDENT**

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI