

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 5154/DEL/2016
[A.Y 2010-11]**

The A.C.I.T
Circle - 24(1)
New Delhi

Vs.

MA Ganga Builders & Construction
Pvt Ltd, 4th Floor, The Plaza
IFFCO Chowk, M.G. Road, Gurgaon

PAN: AAACM 9063 A

[Appellant]

[Respondent]

Date of Hearing : 01.11.2021

Date of Pronouncement : 08.11.2021

Assessee by : Dr. Rakesh Gupta, Adv
Shri Somil Agarwal, Adv

Revenue by : Shri Amitabh Kumar Sinha, CIT DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the
Commissioner of Income Tax [Appeals] - 23, New Delhi dated
21.07.2016 pertaining to Assessment Year 2010-11.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in deleting the addition of Rs. 1,99,65,000/- on account of forfeited amount of customers.

3. Briefly stated, the facts of the case are that a search and seizure operation u/s 132 of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] was carried out at S.S. Group of cases on 08.02.2013 at the office premises at 4th Floor, The Plaza, M.G. Road, Gurgaon in which the assessee is also an entity.

4. During the course of search, documents belonging to the assessee were found and seized. After recording satisfaction u/s 153C of the Act, the case of the assessee was taken up for assessment, and accordingly, notice u/s 153C of the Act was issued to the assessee on 05.02.2015.

5. During the course of scrutiny assessment proceedings, the assessee was asked to furnish details of all the parties in respect of which booking money was received and subsequently cancelled. The assessee was also asked to furnish complete details regarding

cancelled bookings i.e., whether the amount was forfeited or refunded to the allottees.

6. The assessee filed detailed reply with names of the persons from whom booking money was received and later on, booking was cancelled.

7. The reply of the assessee is as under:

"With reference to your questionnaire, we herewith submitting following details :

1. Name and address of parties in respect of booking money received which were later on cancelled as the parties were unable to complete the formalities and make balance payment demanded by the company. The said booking money is refundable, however, the company¹ is insisting the buyers to take bookings in the other projects of the company so that revenue can be generated."

Ma Ganga Builders & Constructions Pvt Ltd						
Details of Advance from Customers -Cancelled Bookings						
S.N.	Flat No.	Name and Address of Party	Total Amount	Date of Advance	Amount	Date of Cancellation
1	A-74SF	Yoginder R/ o Post office Tigaoti, Distt Faridabad, Haryana	28,95,500	1-May-08	2,75,000	25-Jul-09
				10-Sep-08	1,90,000	
				19-Dec-08	1,90,500	
				12-May-	3,95,000	
				12-May-	8,95,000	
				12-May-	9,50,000	
2	A-19 GF	Avtar Singh R/o Post Office Tigaoti, Distt Faridabad, Haryana	7,15,000	5-May-08	1,85,000	25-Apr-09
				10-Sep-0	1,90,000	
				5-Jan-09	3,40,000	
3	D-24FF	Ramesh KrR/o Village Beblpa, Gurgaon	8,45,000	1-Jun-08	4,35,000	10-Apr-09
				1-Nov-08	4,10,000	
4	D-18SF	Jitender R/ o Post Office Tigaon, Distt Faridabad, Haryana	18,90,000	3-Jun-08	1,41,000	25-Jun-09
				3-Nov-08	3,39,000	
				1-Jul-09	7,10,000	
				1-Jul-09	7,00,000	
5	D-18GF	Anil Kumar R/ o G-20/52, Sector 7 Rohini, Delhi	5,90,000	3-Jun-08	1,45,000	31-Aug-09
				5-Nov-08	3,90,000	
				11-Sep-	55,000	
6	D-20SF	Pooja Thakur R/ o Plot No 100, pkt 2 Sector	4,85,000	6-Jun-08	2,30,000	31-Aug-09
				9-Nov-08	2,55,000	
7	D-21SF	Sonu Kumar R/ o Village jonapur,	5,70,000	10-Jun-08	1,72,000	31-Aug-09

				15-Jul-08	1,60,000	
				13-Nov-08	2,38,000	
8	D-22GF	Virender Singh R/ o Village Kot, Distt.	8,45,500	12 Jun-08	1,75,500	25 Jul-09
				16-Sep-08	1,95,000	
				31 Jan-09	4,75,000	
9	D-23SF	Jitender Singh R/ o Village Kusbak, Tebsil	10,75,000	17 Jun-08	2,05,500	25Jul-09
				20-Nov-08	2,19,500	
				15-Feb-09	1,50,000	
				28-Feb-09	5,00,000	
10	A-74FF	Pawan Kumar R/ o Village Behlpa, Gurqaon	7,40,000	2-Aug-08	2,50,000	25 Jul-09
				10-Sep-08	1,90,000	
				31-Jan-09	3,00,000	
11	A-109SF	Subhash Singh R/ o Gram Nangal Soda, Post	15,70,000	10-Sep-08	1,90,000	31-Jul-09
				20-Dec-08	3,40,000	
				5-Apr-09	2,70,000	
				5-Apr-09	7,70,700	

12	B-51 SF	Raj Kumar R/ o Village Dumoli Kburd,	7,20,000	10-Sep-08	1,90,000	25-Apr-09
				5-Oct-08	2,40,000	
				22-Dec-08	2,90,000	
13	B-58 SF	Sunil Kumar R/ o G- 20/52, Sector 7 Robini,	5,20,000	10-Sep-08	1,90,000	25-Apr-09
				22-Dec-08	3,30,000	
14	B-60 SF	Rakesh Kumar R/ o Village Behlpa, Gurgaon	5,30,000	10-Sep-08	1,90,000	25-Apr-09
				23-Dec-08	3,40,000	
				15-Jul-08	1,60,000	
				13-Nov-08	2,38,000	

15	D-11 SF	Sub bash Singh R/ o Gram Nangal Soda, Post Thanwas, Tehsil Narnaul Distt. Mahender Garh Haryana	5,60,000	10-Sep-0 8	1,90,000	25-Apr-09
				24-Dec-	3,70,000	
16	D-12 GF	Sarrant Ram R/ o Village Gothra, Kherti Nagar, Rajasthan	13,15,000	10-Sep- 08	1,90,000	31-May-0 9
				24-Dec-	3,30,000	
				1-Jun-09	7,95,000	
17	D-12 SF	Sarrant Ram R/o Village Gothra, Kherti Nagar, Rajasthan	11,75,000	1-Aug- 08	2,50,000	31-Mar-09
				10-Sep-0	1,90,000	
				7-Jun-09	7,35,000	
18	D-13 SF	Surender R/ o Village Rehla, Gurgaon haryana	7,70,000	10-Sep-08	1,90,000	25-Apr-09
				27-Dec-	3,90,000	
				13-Jan-	1,90,000	
19	D-17	Sanjay R/ o Village	7,35,000	10-Sep-	1,90,000	25-Apr-09
				29-Sep-	2,10,000	
				1-Jan-09	3,35,000	
20	D-15 SF	Ram Kishan R/o Village Gothra, Kherti Nagar, Rajasthan	6,49,000	10-Sep-08	1,90,000	25-Apr-09
				21-Sep-08	1,54,000	
				28-Dec-	3,05,000	
21	D-19 SF	Avtar Singh R/o Post Office Tigaon, Distt	7,70,000	10-Sep-0 8	1,90,000	31-May-09
				5-Oct-08	2,20,000	
				15-Jan-	3,60,000	
TOTAL			1,99,65,000			

8. The aforementioned reply of the assessee did not find any favour with the Assessing Officer who was of the opinion that neither during the course of search/post search proceedings the assessee has furnished any documentary evidences to show that it has not forfeited the above amount upon cancellation. The Assessing Officer was of the opinion that the cancelled booking amount is the amount forfeited by the assessee and hence is the income of the assessee during the year under consideration and accordingly, made addition of Rs. 1,99,65,000/-.

9. The assessee strongly agitated the addition before the ld. CIT(A). The first contention before the ld. CIT(A) was that the Assessing Officer has passed the impugned assessment order u/s 153C r.w.s 143(3) of the Act by assuming jurisdiction u/s 153C of the Act though jurisdictional conditions were not satisfied in this case and hence jurisdiction assumed u/s 153C of the Act is bad in law.

10. After considering the facts and submissions and referring to various judicial decisions, the ld. CIT(A) held as under:

"4.1.5 In this case the return of income was originally filed on 15.10.2010 u/s 139 of the Act and the notice u/s 153C was issued

on 05.02.2015 in response to which the appellant vide letter dt. 16.02.2015 stated that the return filed u/s 139 be treated as return filed in response to notice u/s 153C of the Act. Since notice u/s 143(2) could be issued in response to the original return of income by 30.09.2011, as on 05.02.2015 the original assessment stood "completed" in terms of the judgment of the Hon'ble Delhi High Court in the above cases and in CIT Central-III vs. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi), 234 Taxman 300, CIT (Central)-I Vs Jakson Engineers Ltd. 2015 TIOL 2789 HC DEL IT order dated 07.12.2015 in ITA Nos.910 to 913/2015, CIT vs Continental Warehousing Corporation (374 ITR 645) (2015), (2015) 58 taxmann.com 78 (Bom) **and** All Cargo Global Logistics Ltd. vs DCIT in ITA No. 1969 of 2013_etc. This stand has been accepted by the CBDT as clarified in the Circular No. 24/2015 dt. 31.12.2015 wherein following the judgment of the Hon'ble Supreme Court in M/s Calcutta Knitwears in Civil Appeal No.3958 of 2014 dt. 12.03.2014 it has laid down that the judgment of the Hon'ble Supreme Court would apply to proceedings u/s 153C of the Act as well for the purpose of reassessment of the person other than the searched person and that even if the AO of the searched person and the "other person" is one and the same he is required to record his satisfaction in the case of the "other person". As mentioned herein above, in the case of the appellant no satisfaction was recorded. Therefore, in terms of the above mentioned decisions of the H'ble Delhi High Court, the notices u/s 153C of the Act could not have been issued for the assessment year under consideration, and therefore, the notice u/s 153C of the Act issued cannot be held to be legally valid and the reassessment u/s 153C of the Act in

this assessment year is ab initio void and therefore the assessment is liable to be quashed._I hold accordingly."

11. As regards merits of the addition, the findings of the ld. CIT(A) read as under:

"4.2 As regards merits of the addition, for the reasons discussed herein above at para-4.1 the reassessment order has been quashed and there is no need for specific consideration of the merits of the addition. However, it needs to be noted that on perusal of para-1 to 3 of the satisfaction note dated 05.02.2015 it is observed that the satisfaction drawn by the Assessing Officer is completely on a different tangent wherein the Assessing Officer has 'assumed' that the appellant "would have" received "on money" in cash in respect of flats/space sold at rates lower than the highest rate of sale of flat/space on that floor though he has not referred to any seized or any other material evidence indicating receipt "on money". Even the document SCO-3 referred at para-4 of the satisfaction itself suggest that certain amount was received in cash against bookings which were later cancelled but no such seized or any other material evidence has been referred to which could be suggestive of the "assumption" that the said amount was not refundable, or not refunded, and therefore formed income of the appellant. On perusal of the assessment order it is observed that the AO, vide order sheet dt. 09.03.2015, asked the appellant to furnish details of all the parties in respect of which booking money

received was subsequently cancelled which was provided by the appellant with its reply dt. 13.03.2015 as reproduced at para-5 of the assessment order. The AO, observing that "the bookings were cancelled" as the parties were unable to complete the formalities and make balance payments, held that "the said amount not refunded thus stand forfeited" though the reply of the assessee quoted in the assessment order states that "the said amount was refundable" and the appellant had offered those persons space/flats in other projects, and while the AO has stated that "neither during search/post-search proceedings nor assessment proceedings the assessee has furnished any documentary evidence to show that it has not forfeited the above amount upon cancellation" he has not brought on record in the assessment order any adverse material found during the search which could suggest that the said booking amounts in respect of cancelled flats had been forfeited by the appellant. Thus, even otherwise the addition is based on assumptions and not on seized or any other material evidence which could be termed incriminating and suggestive of unaccounted transactions or concealment of income, and therefore the additions could not have been made in the reassessment u/s 153C of the Act in terms of judgments considered herein above."

12. Before us, the ld. DR strongly contended that the ld. CIT(A) himself has accepted that the document SCO-3 referred to at Para 4 of the satisfaction itself suggests that certain amount was received in cash against bookings which were later on cancelled. It is the say of

the ld. DR that this document itself proves that it was incriminating material and, therefore, the findings of the ld. CIT(A) deserve to be reversed.

13. Referring to the list of 21 persons, the ld. DR pointed out that between the date of booking and the date of cancellation, there is a substantial gap and the assessee has not furnished any evidence to justify its claim that the bookings cancelled in this project have been used in some other project.

14. The ld. DR strongly supported the findings of the Assessing Officer.

15. Per contra, the ld. counsel for the assessee vehemently stated that assessment u/s 153C of the Act could be made only in respect of the issue in respect of which incriminating material was found. Strong reliance was placed on the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla 380 ITR 573 and Meeta Gutgutia 395 ITR 526. It is the say of the ld. counsel for the assessee that the impugned addition was not based on the basis of any material, much less

incriminating material found as a result of search which is evident from the plain reading of the assessment order.

16. Referring to the Document SCO-3 referred to by the ld. DR, the ld. counsel for the assessee stated that it only mentions that certain amount was received in cash against bookings which were later on cancelled. It is the say of the ld. counsel for the assessee that the assessee has never denied that it has cancelled bookings and in fact, it is the assessee who furnished the list of 21 allottees whose bookings were cancelled subsequently. The ld. counsel for the assessee concluded by stating that there is no error or infirmity in the findings of the ld. CIT(A) and the order of the ld. CIT(A) deserves to be upheld.

17. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that return u/s 139 of the Act was filed on 15.10.2010 and notice u/s 153C of the Act was issued on 05.02.2015. This means that the assessment for A.Y 2010-11, which is the year under consideration, has attained finality and did not abate.

18. The ratio laid down by the Hon'ble Jurisdictional High Court of Delhi in the cases of Kabul Chawla and Meeta Gutgutia [supra] squarely apply which means that the addition could be made only in respect of the issue in respect of which incriminating material was found.

19. Even if we consider the list of allottees whose bookings were cancelled as mentioned elsewhere, the date of advance received mentioned therein do not pertain to the A.Y under consideration. We are of the considered view that the decision of the Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 343 also apply on the facts of the case wherein it has been held that if there is no incriminating material relating to a particular year, assessment of that year could not be reopened.

20. This view has been reiterated by the Hon'ble Jurisdictional High Court in the case of PCIT Vs. SMC Power Generation Ltd in ITA No. 406/2019 order dated 23.07.2019.

21. Assuming that there is a substantial time gap between the date of advance received and date of cancellation of the bookings, this fact may raise a strong presumption on cessation of liability, but even this

presumption cannot justify the assessment u/s 153C of the Act which has to be based upon incriminating material found at the time of search as per the ration laid down by the Hon'ble Supreme Court and the Hon'ble Jurisdiction High Court of Delhi [supra]. We, therefore, do not find any error or infirmity to interfere with the findings of the Id. CIT(A). Ground raised by the Revenue stand dismissed.

22. In the result, the appeal filed by the Revenue in ITA No. 5154/DEL/2016 is dismissed.

The order is pronounced in the open court on 08.11.2021.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 08th November, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	