

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'A', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA Nos. 475 & 476/Del/2019
(Assessment Years : 2009-10 & 2010-11)

DCIT Central Circle – 1 Noida PAN : AADCB 3105 H (APPELLANT)	Vs.	Business Bay Corporate Parks Pvt. Ltd. B-12-13, Sector – 4, Noida – 201 301 (RESPONDENT)
---	-----	---

Assessee by	Shri Premjit Singh Kashyap, FCA
Revenue by	Shri J. K. Mishra, CIT(DR)

Date of hearing:	16.02.2022
Date of Pronouncement:	24.02.2022

ORDER

PER ANIL CHATURVEDI, AM:

Both the appeals filed by the Revenue are directed against the consolidated order dated 31.10.2018 of the Commissioner of Income Tax (Appeals)-IV, Kanpur relating to Assessment Years 2009-10 & 2010-11.

2. At the outset, both the parties submitted that the issue involved in both the appeals are identical except for the year and

amounts involved and therefore the submissions made by them for one year would be applicable to the other year also. In view of the aforesaid submissions of the Counsel, we for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2009-10.

3. The relevant facts as culled from the material on records are as under :

4. Assessee is a company which is stated to be engaged in construction of building. A search & seizure operation u/s 132 of the Act was carried out in the case of Maconn's, Meenu and Yadav Singh Group Noida wherein certain incriminating documents relating to assessee was found and seized and accordingly notice u/s 153C of the Act was issued to the assessee. In response to the notice u/s 153C assessee filed return of income declaring Nil income. Thereafter, the assessment was taken up for scrutiny and consequently, assessment was framed u/s 153C r.w.s 143(3) of the Act vide order dated 30.06.2017 and the returned income filed by the assessee for A.Y. 2009-10 was accepted.

5. With respect to A.Y. 2010-11, as against the return loss of Rs.18,600/-, the total income was determined at Rs.1,50,00,000/- in the order passed u/s 153C r.w.s 143(3) of the Act. Aggrieved by the order of AO, assessee carried the matter

before CIT(A) who vide consolidated order for A.Ys. 2009-10 to 2014-15 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds in A.Y. 2009-10:

1. *“Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in applying the decision of the Hon’ble Supreme Court in the case of M/s Singhad Technical Education Society, without appreciating that the same pertained to prior period to 01.04.2005 whereas after 01.04.2005, the 153C notice can be issued when AO is satisfied that seized material has a “bearing on the assessment” of income of other person.*
2. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that after 01.04.2005 the test for issue of notice u/s 153C is availability of ‘seized material which has bearing on assessment of income which has to be only in nature of prima facing belief having live nexus & not in nature of absolute evidence on detailed investigation.*
3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C, without appreciating that in the satisfaction note the AO had brought out all the facts and circumstances, which indicated that the assessee company is engaged in transactions, in the nature of accommodation entries and hence such documents constituted valid material which has bearing on assessment u/s 153C in the context of assessee.*
4. *The order of the CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.*
5. *That the appellant craves leave to add or amend any one or more of ground of appeal as stated above as and when needed for doing so may arise.”*

6. Similar grounds are raised by Revenue in ITA No.476/Del/2019 for A.Y. 2010-11.

7. Before us, Learned DR supported the order of AO.

8. On the other hand Learned AR reiterated the submissions made before the AO and CIT(A) and submitted that the additions made by AO were not based on any incriminating document found as a result of search and in such a situation, CIT(A) for the reasons stated in his order has rightly held that the notice u/s 153C of the Act to be *void-ab-initio*, invalid and legally unsustainable and CIT(A) has therefore quashed the assessment framed on the basis of legal unsustainable notice. He thus supported the order of CIT(A).

9. We have heard the rival submissions and perused the materials available on record. We find that CIT(A) after considering the submissions of the assessee, remand the report from the AO. Assessee's reply to the remand report at para 5.5 of the order has given a finding that in the satisfaction note prepared by the AO, the AO had not mentioned the assessment year to which the satisfaction note belongs, the satisfaction note was undated and it had no mention about the details of the incriminating documents found and seized. He has further given a finding that no document was found and seized during the search which could be said to be belonging/pertaining/relating to

the assessee. He has further given a finding that AO had not recorded the satisfaction in accordance with the provision of Section 153C of the Act and the addition made by AO was not based on any incriminating document found as a result of search. CIT(A) after relying on the decision of Hon'ble Apex Court in the case of **CIT-3, Pune vs. Sinhgad Technical Education Society (2017) 397 IRE 344 (SC)** has held that the notice issued u/s 153C of the Act was *void-ab-initio*, invalid and legally unsustainable and therefore the assessment framed on the basis of legally unsustainable notice was accordingly quashed. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere in the order of CIT(A) and **thus grounds of Revenue are dismissed.**

10. In the result, appeal of the Revenue is dismissed.

11. **As far as ITA No. 476/Del/2019 for A.Y. 2010-11** is concerned, before us, both the parties have submitted that the issue raised in the appeal for A.Y. 2010-11 is identical to that of A.Y. 2009-10. We have hereinabove while deciding the appeal for A.Y. 2009-10 for the reasons stated therein have dismissed the appeal of the Revenue. We for similar reasons also dismiss the appeal of the Revenue for A.Y. 2010-11. Thus **the grounds of the Revenue are dismissed.**

12. In the result, both appeals of the Revenue are dismissed.

Order pronounced in the open court on 24.02.2022

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 24.02.2022

*PY**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI