

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.2005/Del/2018
Assessment Year: 2007-08**

K.S. Nutrition and Food Pvt. Ltd., vs. Income-tax Officer,
E-8/768, Ground Floor, Gali No. 4, Ward 14(1), New Delhi.
Near Barat Ghar, Ali Vihar,
Sarita Vihar, South Delhi,
New Delhi.

PAN : AABCK7807K

(Appellant)

(Respondent)

Appellant by : Sh. Pratap Gupta, C.A.

Respondent by: Sh. J.S. Minhas, CIT/DR

Date of hearing: 19.04.2022

Date of order : 21.04.2022

ORDER

PER C.M. GARG, J.M.

This is an appeal filed by the assessee against the order dated 24.05.2017 passed by Id. CIT(A)-5, Delhi for the assessment year 2007-08.

2. Brief facts of the case are that a search and seizure operation u/s. 132 of the Income-tax Act, 1961 was carried out PNC group of Agra including the official and residential premises of Sh. Ashok

Kumar Jain and Smt. Meena Jain, Directors in M/s. Oracle Credit Ltd., Shiv Kamal Impex Ltd and Move Traders and Credit P. Ltd. During the course of search operation, ledger accounts of the assessee marked as page No. 111 and 112 of Annexure A-2 and page No. 137 in the books of Shiv Kamal Impex Ltd and page No. 110 in the books of M/s. Move Traders & Credits Pvt. Ltd. were found. Based on these seized documents, a satisfaction note pertaining to the assessee was recorded by the Assessing Officer of the searched persons and was received by the Assessing Officer of the assessee on 05.01.2015. Accordingly, the Assessing Officer initiated proceedings u/s. 153C of the Act in the present case and observed that as per seized documents, the loan of Rs.10,00,000/- received from Anil Jain could not be verified from the books of assessee and no reply to summons issued to Shri Anil Jain u/s. 131 was furnished. Assessing Officer, accordingly, made an addition of Rs.10,00,000/- to the returned income of the assessee u/s. 68 of the Act, which stood confirmed in appeal before the Id. First Appellate Authority.

3. During the course of hearing, the Id. AR of the assessee, inter alia, submitted that the Assessing Officer was not justified in assuming jurisdiction u/s. 153C of the Act in the present case, as the assessment year under consideration does not come within the compass of the block of six assessment years, if it is reckoned from the date of satisfaction note as per law. Learned CIT(A) too has not

considered this aspect of the case while affirming the assessment order.

4. Learned DR, on the other hand, relied on the orders of the authorities below and submitted that the impugned order does not call for any interference.

5. We have heard both the parties and gone through the material available on record. As per para 2 of the assessment order dated 30.03.2015 passed u/s. 143(3)/153C of the Act, satisfaction note was received by the Assessing Officer on 05.01.2015. Thus, assessment years 2009-10 to 2014-15 comes within the period six block years. The year under consideration is assessment year 2007-08, which is clearly barred by limitation as held by co-ordinate Bench of Tribunal in the case of DSL Properties (P) Ltd. vs. DCIT – order dated 22.03.2013 for A.Y. 2004-05 in ITA No. 1344/Del/2012, wherein it was held thus :

“18. The learned counsel for the assessee has also argued that the issue of notice under Section 153C is barred by limitation as per proviso to Section 153C. He stated that as per the Revenue, the satisfaction for initiating proceedings under Section 153C was recorded on 21st June, 2010 and notice under Section 153C was also issued on 21st June, 2010. Thus, obviously, the seized paper was handed over to the Assessing Officer of such other person on 21st June, 2010. Now, as per proviso to Section 153C, the date of search is to be substituted by the date of receiving the books of account or documents or assets seized. Accordingly, the assessment can be reopened of the preceding six years than 21st June, 2010. They would be AY 2005-06 to 2010-11. The Revenue has reopened assessment for AY 2004-05 which is clearly barred by limitation. The learned DR has contended that since in this case the Assessing Officer of the person searched and the Assessing Officer of such other person was the same, there is no question of handing over

and taking over of the document, therefore, for the purpose of limitation, the date of search would be relevant and not the date of initiation of proceedings under Section 153C.

19. We have carefully considered the rival submissions. Proviso to Section 153C reads as under:-

“Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to [sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:.”

20. The above proviso refers to second proviso to sub-section (1) of Section 153A. That Section 153A(1) and its first and second provisos read as under:-

“153A. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall –

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:.”

21. From the above, it is evident that as per clause (b) of sub-section (1) of Section 153A and second proviso, the Assessing Officer can be issue notice for assessment or reassessment of total six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted. As per proviso to Section 153C, the date of search is to be substituted by the date of receiving the books of account or documents or assets seized by the Assessing Officer having jurisdiction over such other person. Learned DR has stated that since the Assessing Officer of the person searched and the Assessing Officer of such other person was the same, no handing over or taking over of the document was required. That Section 153C(1) and its proviso have to be read together in a harmonious manner. While interpreting Section 153C, we have already held that for initiating valid jurisdiction under Section 153C, even if the Assessing Officer of the person searched and the Assessing Officer of such other person is the same, he has to first record the satisfaction in the file of the person searched and thereafter, such note alongwith the seized document/books of account is to be placed in the file of such other person. The date on which this exercise is done would be considered as the date of receiving the books of account or document by the Assessing Officer having jurisdiction over such other person. Though while examining the facts of the assessee's case we have arrived at the conclusion that no such exercise has been properly carried out and

therefore initiation of proceedings under Section 153C itself is invalid, however, since both the parties have argued the issue of period of limitation also, we deem it proper to adjudicate the same. Since in this case satisfaction is recorded on 21st June, 2010 and notice under Section 153C is also issued on the same date, then only conclusion that can be drawn is that the Assessing Officer of such other person has taken over the possession of seized document on 21st June, 2010. Accordingly, as per Section 153(1), the Assessing Officer can issue the notice for the previous year in which search is conducted (for the purpose of Section 153C the document is handed over) and six assessment years preceding such assessment year. Now, in this case, the previous year in which the document is handed over is 1st April, 2010 to 31st March, 2011. The assessment year would be AY 2011-12. Six preceding previous years and relevant assessment year would be as under:-

<u>Previous Year</u>	<u>Assessment Year</u>
1.4.2009 to 31.3.2010	2010-11
1.4.2008 to 31.3.2009	2009-10
1.4.2007 to 31.3.2008	2008-09
1.4.2006 to 31.3.2007	2007-08
1.4.2005 to 31.3.2006	2006-07
1.4.2004 to 31.3.2005	2005-06

22. The Assessing Officer has issued notice under Section 153C for AY 2004-05 which is clearly barred by limitation. Therefore, issue of notice under Section 153C issued by the Revenue cannot be sustained on both the above counts, i.e., it is legally not valid as conditions laid down under Section 153C has not been fulfilled and it is barred by limitation. In view of the above, we quash the notice issued under Section 153C and consequently, the assessment completed in pursuance to such notice, is also quashed."

6. Therefore, the Assessing Officer in the present case did not assume valid jurisdiction to issue notice u/s. 153C of the Act for the assessment year 2007-08 on the basis of satisfaction recorded on 05.01.2015. Accordingly, the order of the Assessing Officer is liable to

be quashed and the impugned order of Id. CIT(A) is not maintainable. The appeal of the assessee, thus, deserves to be allowed on this legal aspect.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 21/04/2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 21/04/2022

'aks'

Sd/-

(C.M. GARG)
JUDICIAL MEMBER