

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ITA No.3032/Chny/2017  
(निर्धारण वर्ष / Assessment Year: 2008-09)

&

आयकर अपील सं./ITA No.2841/Chny/2017  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>D B Prakash Chand</b> C/o. Prakash Gold Palace, 144, Puraswakkam High Road, Kellys, Chennai – 600 010.	<b>बनाम/ Vs.</b>	<b>DCIT</b> Central Circle 3(4), Chennai.
<b>स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAIPP-3249-G</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri T. Banusekar (CA) – Ld. AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri T. Vasanthan (CIT) –Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	29-03-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	08-06-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2008-09 & 2012-13 arises out of separate orders of learned first appellate authority. First, we take up appeal for AY 2008-09 which arises out of order of learned Commissioner of Income Tax (Appeals)-19, Chennai

[CIT(A)] dated 27.09.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.153C r.w.s. 153A of the Act on 24.03.2015.

2. The Ld. AR, at the outset, drawing attention to Ground No.2 & 5 submitted that the assessment for this year is bad-in-law. The Ld. AR referred to the provisions of Sec.153C to support the arguments and submitted that there was no incriminating material that belonged to the assessee. Further, there was no satisfaction note in this regard. Ground No.2 read as under: -

2. For that the learned Commissioner of Income tax (Appeals) erred in rejecting the fact that the proceedings-initiated u/s 153C r.w.s. 153A was without jurisdiction under the facts and circumstances of the case.

5.For that the Learned Commissioner of Income tax (Appeals) erred in rejecting that the Assessing Officer has erred in not providing "Satisfaction Note" as per provisions of section 153C r.w.s 153A.

The Ld. CIT-DR, on the other hand justified the assessment proceedings.

3. Upon perusal of assessment order, it could be gathered that the assessee had certain transactions with Challani Group of Companies who was searched u/s 132 on 19.04.2012. Accordingly, the assessee's case was found assessable u/s 153C and the case was centralized to Circle 3(4). Notice u/s 153C was issued on 20.10.2014 in response to which the assessee offered original return of income. The Ld. AO disallowed interest payment of Rs.1.71 Lacs and finalized the assessment. The disallowance, upon confirmation by Ld. CIT(A), is in further appeal before us.

4. We find that the assessee filed an RTI application on 16.05.2019 before appropriate authority, inter-alia, seeking following information: -

3. Date on which relevant documents found during the search operations relating to me came into the possession of this authority.

As per order u/s 7 of the RTI Act, the reply to the same has been given as '20/10/2014'. Thus, it could be seen that the documents as found during the course of search operations relating the assessee has come into the possession of jurisdictional officer on 20/10/2014 which fall in AY 2015-16.

5. We find that as per the provisions of Sec.153C, where AO is satisfied that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of Section 153A, if that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. However, the proviso further provide 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. Therefore, applying the same to facts of the present case, Ld. AO would have jurisdiction to assess the income u/s 153C from AYs 2009-10 onwards and not before that since the relevant AY in the present case is 2015-16 as noted by us in preceding para-4. Therefore, we have no hesitation to hold that the assessment was bad-in-law and the same would have no legs to stand. We order so. Another factor to be noted is that the additions are not based on any incriminating material and therefore, this being non-abated year, the additions are necessarily to be based on certain incriminating material found by the search team that belong to the assessee. However, we find that the sole addition as made in assessment order is not based on any incriminating material. Therefore, the addition would not be sustainable. Resultantly, aforesaid grounds stand allowed which render other grounds mere academic in nature. The appeal stand partly allowed in terms of our above order.

**Assessee's Appeal for AY 2012-13.**

6. This appeal arises out of order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 26.09.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 153C r.w.s. 153A of the Act on 24.03.2015. The only grounds urged before us is with respect to confirmation of addition of Rs.14.90 Lacs. This addition stem from the fact that assessee was found to have introduced cash of Rs.91 Lacs with M/s Ultratech Housing Ltd. Out of the same Rs.76.10 Lacs was admitted. Regarding balance Rs.14.90 Lacs, it was submitted that it was out of cash balance available with the assessee. However, requisite evidences could not be produced by the assessee as a result of which the addition thereof was made in the hands of the assessee.

7. During appellate proceedings, the assessee submitted cash flow statement wherein cash of Rs.16.90 Lacs was stated to be received on sale of jewellery. This sale transaction was also declared in the return of income filed by the assessee on 30.03.2014. However, since search took place on M/s Ultra Tech Housing Ltd. on 19.04.2012, the claim of cash receipt after the said date was held to be self-serving and mere after-thought. Therefore, the said transaction was not to be accepted as a legitimate explanation of cash receipt. Accordingly, the addition was confirmed against which the assessee is in further appeal before us.

8. We find that impugned order take note of the fact that sale of jewellery was reflected in the return of income and the assessee had submitted cash flow statement which has been extracted in the impugned order. The sale transaction has not been disturbed by the revenue and the explanation has been rejected on mere allegation that the transaction was after-thought and self-serving. However, the said allegation has no basis and no evidence has been brought on record to disprove the transaction of the assessee. In such a case, the assessee's explanation of cash receipt was to be accepted. By deleting the impugned addition of Rs.14.90 Lacs, we allow the grounds thus raised by the assessee. In the result, the appeal stands partly allowed.

9. Both the appeal stands partly allowed in terms of our above order.

Order pronounced on 08<sup>th</sup> June, 2022.

Sd/-

(MAHAVIR SINGH)

उपाध्यक्ष / VICE PRESIDENT

चेन्नई/ Chennai; दिनांक/ Dated : 08-06-2022

JPV

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF