

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.853 & 854/Chny/2019
निर्धारण वर्ष /Assessment Years: 2014-15 & 2015-16

M/s. Monica Surgicals,
No.40, Ground Floor,
Krishnarayar Tank Street,
Simmakkal, Madurai – 625001.

[PAN: AAYFM 1300M]

(अपीलार्थी/Appellant)

The Dy. Commissioner of
Vs. Income Tax,
Central Circle-1,
Madurai .

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri T. Vasudevan, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing

: 20.07.2022

घोषणा की तारीख /Date of Pronouncement

: 20.07.2022

आदेश / ORDER

Per Mahavir Singh, Vice President :

These two appeals by the assessee are arising out of common order of Commissioner of Income Tax (Appeals)-19, Chennai, in ITA Nos.383 & 384/17-18 dated 28.01.2019. The Assessments were framed by Asst. Commissioner of Income Tax, Central Circle-1, Madurai for the relevant Assessment Years 2014-15 & 2015-16 vide his orders of even dated 30.12.2017 u/s. 143(3) r/w s. 153C of the Income Tax Act, 1961 (hereinafter 'the Act').

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2. The only common issue involved in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of A.O in framing the assessment u/s. 143(3) r/w s. 153C of the Act as the assessments are barred by limitation and needs to be adjudicated. The facts and circumstances are exactly identical in both the years and grounds raised are exactly identical and hence, we will take the facts from ITA No.853/Chny/2019 for Assessment Year 2014-15 and will decide the issue. The relevant grounds raised by the assessee for Assessment Year 2014-15 reads as under:

"1. The order of the Commissioner of Income Tax(Appeals) dismissing the appeal as not maintainable is contrary to law, erroneous and unsustainable on the facts of the case.

2. The CIT(A) failed to appreciate that the assessment framed under sc.143(3) r.w.s.153C is barred by limitation and needs to be annulled.

3. The CIT(A) further failed to appreciate that as per sec.153B of the Act, an assessment has to be made within 21 months from the date of search and since the order is passed beyond this statutory time, he ought to have held the order as non-est in law.

4. The CIT(A) further failed to appreciate that the search in the case of Mr.Gurushankar was on 26.11.14 and the 21 months period expired on 31.12.16 and as per sec.153B, no assessment order could be passed after that date and therefore the order passed on 30.12.17 is to be struck down as not in accordance with provisions of the Act.

5. The CIT(A) was wholly wrong in his conclusion that "Nor any issue of time limitation arises" and ought to have addressed this vital issue that goes to the root of the matter and invalidates the assessment order passed by the officer.

6. The CIT(A), in any event, ought to have considered the contentions of assessee in the proper perspective and cancelled the assessment as abinitio void and non-est in law and thus allowed the appeal."

3. The brief facts of the case are that a search and seizure operation was conducted by the Income Tax Department u/s. 132 of the Act in the case of Dr. S. Gurushankar, Madurai and during the

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course of search of Dr. S. Gurushankar, one of the premises of the assessee was also searched on 26.11.2014. Accordingly, notice u/s. 153C of the Act dated 03.11.2016 and notice u/s. 143(2) of the Act dated 06.11.2016 was issued. The assessee filed return of income for Assessment Year 2014-15 on 17.04.2017 and assessment u/s. 143(3) r/w s. 153C of the Act was completed on 31.12.2017. According to the assessee, the Income Tax Department has to complete assessment on or before 31.12.2016 in view of the provisions of s. 153 of the Act. According to the assessee, as per the provisions of the Act, the assessment cannot be made u/s. 153C of the Act beyond the time limit of 21 months from the end of the Financial Year in which search u/s. 132 of the Act was carried out and hence, assessment has to be completed on or before 31.12.2016. The Ld. counsel stated that the assessee's case prima-facie is barred by limitation as per s. 153 of the Act. The Ld. counsel stated that this plea was taken before the A.O by the assessee by filing a letter dated 28.12.2017 and he filed a copy of the letter of the assessee and the relevant text of the letter reads as under:

"With reference to the above stated letter, we wish to submit that in our earlier reply dated 13.11.2017, we already explained that the assessment would be time barred as the time limit has expired. In this present reply, we reiterate the same submissions. Further, we wish to submit that the search in the case of S.Gurushankar was on 26.11.14 and so the time limit for assessment is 21 months from the end of the financial year in which the last of the authorisations for search was executed and hence the due date is 31.12.16. It is submitted that the undue delay on the part of the department

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in the centralization of the file which was done in November 2016, stretching to even beyond the regular time limit of completion of assessment cannot be a reason to extend the time. We therefore, humbly pray that the assessment may be completed accepting the income returned and render justice."

4. According to Ld. counsel, neither the A.O nor the CIT(A) have gone into the issue of limitation, and the CIT(A), despite a specific issue raised before him, simply brushed aside the issue and observed in two lines, which reads as under:

"Since the returns in the case of the appellant are accepted by the assessing officer, therefore no appeal lies. Nor any issue of time limitation arises."

5. The Ld. counsel requested that the issue be adjudicated at the ITAT level only. The facts of prima-facie when referred to by Ld. CIT-D.R, the Ld. CIT-D.R Mr. M. Rajan took us through the provisions of s. 153C of the Act and the relevant proviso reads as under:

"Assessment of income of any other person.

153C.[(1)]......

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"

6. In view of the above proviso, the Ld. CIT-DR stated that the assessment in the case of any person other than the searched person can be done u/s. 153C of the Act only when the search material, including the books of account, is received by the A.O having jurisdiction over such other person, and according to him, this case

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was notified by the concerned A.O having jurisdiction over the present assessee vide Commissioner's Order No.07/2016-17 in C.No.337/PCIT-2/2016-17 dt.20.06.2016. On receipt of seized materials relating the assessee, a notice u/s. 153C r/w s. 153A(3) of the Act dated 03.11.2016 was served on the assessee on 04.11.2016. In response to the notice, the assessee filed return of income on 17.04.2017 returning a total income of Rs. 7,31,81,830/-. The Ld. CIT-DR stated that the A.O has not tinkered with the return of income of the assessee and accepted the return of income as it is. But, when a query was put to whether the CIT(A) had considered the issue of limitation, he could not controvert the above fact situation, but he stated that the case of the assessee be restored back to the file of the CIT(A) and the CIT(A) be directed to consider the provisions of s. 153C of the Act while deciding the issue of limitation.

7. We have heard the rival contentions and gone through the facts and circumstances of the case. We are of the view that the CIT(A) has not at all adjudicated the issue of limitation, despite the fact that the same was raised before him. Even this issue was raised before the A.O raising the objections vide letter dated 28.12.2017 and even the A.O has not adjudicated the objections raised before him. In such situation, we are of the view that let this issue of limitation be decided

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by the CIT(A) afresh by a speaking order. Needless to say that the CIT(A) will provide reasonable opportunity of being heard to the assessee. The orders of the CIT(A) in both the Assessment Years are set aside and the matter remanded back to his file for fresh consideration on the issue of limitation only. Thus, the appeals of the assessee are allowed for statistical purposes.

8. In the result, appeals of the assessee for Assessment Years 2014-15 & 2015-16 are allowed for statistical purposes.

Order pronounced on 20th day of July, 2022 in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(Manoj Kumar Aggarwal)
लेखा सदस्य /Accountant Member

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice President

चेन्नई/Chennai, दिनांक/Dated: 20th July, 2022.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF