

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.987/Mum/2012

(निर्धारण वर्ष / Assessment Years: 2008-09)

Mrs. Kasturben V. Faria 71/73, 4 th Floor, Bazar Gate Street, Fort, Mumbai- 400001.	बनाम/ Vs.	DCIT (OSD-II), Central Range-7 Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPF0990Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Ms. Hiral Sejjal	
Revenue by:	Shri Achal Sharma (DR) & Ms. Vranda U Matkarni	

सुनवाई की तारीख / Date of Hearing: 04/07/2022

घोषणा की तारीख /Date of Pronouncement: 22/07/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)-40, Mumbai dated 04.11.2011 for AY. 2008-09.

2. The assessee in this case is the wife of Shri Vinod K. Faria whose premise was searched u/s 132 of the Income Tax Act, 1961 (hereinafter "the Act") on 30.05.2008. And later the AO has passed the assessment order on 29.12.2010 u/s 153/144 of the Act. On appeal, the Ld. CIT(A) has partly allowed the appeal of the assessee. Still not satisfied the assessee is before us preferring this appeal.

3. Before us, in addition to the two original grounds raised by the assessee while filing the appeal, the assessee has filed the additional grounds of appeal which is legal ground challenging the jurisdiction of the AO to have passed assessment order the u/s 153C of the Act, without recording the essential satisfaction note before invoking the



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jurisdiction u/s 153C of the Act. The Ld. DR opposing the admission of the legal ground which was raised few months before (i.e, January, 2022) submitted that the assessee had never opposed/challenged the jurisdiction of AO neither during assessment proceedings nor during the first appellate proceedings. So the Ld. DR does not wants us to admit the legal ground.

4. We note in this context that the search happened in assessee's husband premises on 30.05.2008. And the assessment order has been passed by the AO u/s 144/153C on 29.12.2010. The Ld. AR admits that this legal ground has not been raised before any of the authorities below and for the first time the same has been raised before this Tribunal on 17.01.2022. We note that assessee has raised the legal ground challenging the very jurisdiction of AO to have invoked the jurisdiction u/s 153C of the Act. Since it is a legal issue challenging the jurisdiction of AO we admit the same. Further according to Ld. AR, it is settled that before the AO assumes jurisdiction u/s 153C of the Act, he ought to record the requisite satisfaction as contemplated by the Act, which according to Ld. AR, the AO has not recorded before issuing notice u/s 153C of the Act. For adjudicating this legal issue, we have to examine records as to whether the AO had recorded the "satisfaction" as envisaged under the Act before issuing notice u/s 153C of the Act. Since it is a mixed question of fact as well as law whether the AO has recorded requisite satisfaction note u/s 153C of the Act, we set aside the impugned order of the Ld. CIT(A) and restore the appeal back to the file of Ld CIT(A) with a direction to adjudicate



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the additional grounds [Legal issues] raised before us. Needless to say that assessee be given proper opportunity of hearing; and the assessee is directed to be diligent and if advised, file written submission and case laws before the Ld. CIT(A) in support of the legal ground and the Ld. CIT(A) to pass a speaking order in accordance to the law.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 22/07/2022.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/07/2022.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai