IN THE INCOME TAX APPLLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI

BEFORE SH. T.S KAPOOR, ACCOUNTANT MEMBER
AND
SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.282/Del/2020
Assessment Year: 2014-15

Santosh Hospital P. Ltd. **No.1, Santosh Nagar, Pratap Vihar, Ghaziabad** **PAN No.AABCS2244J**	**Vs**	**ACIT** **Central Circle -6** **New Delhi**
(APPELLANT)		**(RESPONDENT)**

Appellant by	Sh. S. K. Gupta, CA
Respondent by	Sh. H. K. Choudhary, CIT DR

Date of hearing:	30/06/2022
Date of Pronouncement:	03/08/2022

ORDER

PER C.M.GARG JM:

This appeal by the assessee is preferred against the order of the CIT(A)-24, New Delhi dated 14.10.2019 pertaining to A.Y. 2014-15.

2. Application of assessee for admission of additional grounds of appeals and revised concise grounds :-

We have heard the arguments of both the sides on the prayer of the assessee for admission of additional grounds. The

Ld. AR submitted that the additional grounds are of legal in nature which goes to the root of the validity of the assessment, therefore, the same may be adjudicated on the basis of material already available on record without any other extraneous material, therefore, same may be admitted for adjudication in view of various judgments of Hon'ble Supreme Court including judgments in the case of Natural Thermal Power Company Limited Vs. CIT 229 ITR 383 (SC) and Jute Corporation of India Limited Vs. CIT 187 ITR 688 (SC).

3. The Ld. DR did raise objection regarding admission of ground No.1, 2, 3 & 4. However, he did not controvert legal position that ground No.3 of assessee of legal in nature that goes to the root of the validity of assessment order.

4. Keeping in view the submissions of both the side prayer of assessee and application of admission of additional ground No.1, 2, 3 and 4 the same are admitted for adjudication which read as under : -

1. *"The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with mandatory legal requirements of the provisions of section 143 (2) of the Income Tax Act therefore such assessment is void ab initio and liable to be quashed.*

2. *"On the facts and circumstances of the case and also in law, the impugned assessment order passed by the Ld. AO u/s. 143 (3) of the Act is invalid and void-ab-initio for want of valid notice u/s. 143 (2) as per law as evident from fact that when return in response to notice was admittedly filed on 26.10.2015, the notice u/s. 143 (2) is issued on very same day i.e. 26.10.2015 which shows non application of mind in issuing notice u/s. 143 (2)*
3. *The impugned assessment order passed is bad in law and void-ab-initio as the same has been passed u/s. 143 (3) of IT Act without complying with provisions of sec 153C of IT Act."*
4. *The Ld. AO has erred both in law and in facts of the case in not allowing suo moto the deduction of the prior period expenses amounting to Rs. 11,05, 027/- when there is no dispute on the allowability of the same except the period to which these pertain. Such expenses need be allowed in view of the decision of Hon'ble Apex Court in the case of CIT Vs. Excel Industries Ltd. 38 Taxman 100 (SC) when there is no dispute to the fact that there is no change in the tax rate in the year to which expense pertain and the year under consideration when the expenses were incurred."*

5. The Ld. AR submitted that in this case search was conducted in a case of third party (searched person) on 27.06.2013 and the AO recorded satisfaction as per requirement u/s.153 C of the Income Tax Act, 1961 on 22.09.2015 to initiate proceedings against the present assessee (other person).

6. The Ld. AR further submitted that in view of proposition rendered by ITAT Bench E in the case of ACIT Vs. Mapsa Private Limited order dated 21.02.2020 in the ITA No.1216-1217/Del/2017 para-6, the relevant assessment years for initiating proceedings u/s. 153C of the Act would be 2010-11 to 2015-16 and, therefore, assessment year under appeal i.e. A.Y. 2014-15 fall within the block period of six years in which assessment order u/s. 143 (3) r.w.s. 153C of the Act has to be made.

7. The Ld. AR further drew our attention towards the impugned assessment order on 30.03.2016 which was passed only u/s. 143 (3) of the Act and submitted that in the first paragraph of order the Ld. AO has mentioned the event of search and has also noted that the assessee filed returned of income on 26.10.2015.

8. The Ld. Counsel submitted that in this case no notice u/s. 153C of the Act has been issued to the assessee by for presnt A.Y. 2014-15 the AO for present A.Y. 2014-15 and the AO had issued

notice u/s. 143 (2) of the Act on the very same date on 26.10.2015 on which the assessee by way of letter informed the AO on very same date i.e. 26.10.2015 that the return of income for A.Y.2014-15 has already been filed vide E filing acknowledgment No.447976991191214 dated 19.12.2014 u/s. 139 of the Act.

9. The Ld. AR vehemently contended that on 26.10.2015 no assessment order was in the possession of Assessing Officer, therefore, he issued notice u/s. 143 (2) of the Act without considering the return of income, therefore, the assessee did not assume valid jurisdiction to pass the assessment order for A.Y. 2014-15, therefore, impugned order may kindly be quashed on these two counts.

10. The Ld. AR has also placed reliance on the judgment of jurisdictional High Courts of Delhi in the case M/s. BNB Investment & Properties Vs. DCIT & Ors. reported in 68 ITR 567 (Del.) following the judgment of Delhi High Court in the case of RRJ Securities Ltd. 380 ITR 612 (Delhi) and Pr. CIT Vs. Server Agency Pvt. Ltd. & Ors. 397 ITR 400 (Delhi).

11. Replying to the above the Ld. CIT DR submitted that satisfaction u/s.153 C is required for A.Y. 2008-09 to 2013-14 and not for the impugned A.Y.2014-15. Further, there is no reliance of any seized documents on the basis of which u/s.153C

satisfaction was recorded. Therefore, the impugned assessment year is a regular assessment year u/s. 143 (3) as there is no reference of any seized documents while making the addition. Therefore, General Power of AO to assess u/s. 143 (3) is not taken away by provision of section 153C, as addition u/s.153C will be restricted to incriminating documents mentioned in satisfaction Note as propounded by Hon'ble Apex Court in the case of CIT –III Pune Vs. Sinhgad Technical Education (Supreme Court). Appeal No.25257 of 2015, 25258 of 2015, 11082 and 11083 of 2017 [(84 taxman.com 290 (SC)]. According, it is prayed that relief should not be given to the assessee on jurisdictional Ground that assessment has to be necessarily framed u/s.153C even for general issues raising out of Return of income filed.

12. We have carefully considered the rival submissions first of all we may point out that ITAT, Delhi E Bench in the case of ACIT Vs. Mapsa Tapes Pvt. Ltd. (supra). After considering the order of Delhi ITAT "A" Bench in the case of M/s. BNB Investment & Properties Ltd. Vs. DCIT (supra) and following the judgment of Delhi High court in the case of RRJ Securities Vs. DCIT (supra) and CIT Vs. Sarwar Agency P. Ltd. (supra) in para-6 held as follows :-

> *"6. We have considered the rival submissions. It is not in dispute that search was conducted on 20.01.2014 in the cases of M/s Mapsa Logistics Pvt. Ltd. & Ors. and satisfaction u/s 153C was recorded on 23.02.2016 that the documents pertaining to assessee*

have been seized during the course of search. The AO, accordingly, issued notice u/s 153C on 23.02.2016. The issue is, therefore, covered by judgment of Hon'ble Delhi High Court in the case of RRJ Securities Ltd. (supra) as is considered by the Ld. CIT(A) in the impugned order. The six assessment years for which assessments/reassessments could be made u/s 153C of the Act would also have to be construed with reference to the date of handing over of the assets/documents to the AO of the assessee i.e. 23.02.2016. Therefore, the relevant assessment years for initiating proceedings u/s 153C would be assessment years 2010-11 to 2015-16. Therefore, the assessment years under appeal i.e. 2008-09 & 2009-10 would be beyond the period of six years. The same view is considered by ITAT Delhi 'A' Bench in the case of M/s. BNB Investment & Properties Vs. DCIT & Ors. reported in 68 ITR 567 (Del.) following the judgment of Delhi High Court in the case of RRJ Securities"

13. In view of the above propositions, when we consider the facts of the present case then undisputedly search on third party was conducted on 27.06.2013 and since some alleged material was found during the course of search which was, as per AO pertaining to present assessee, then the AO of searched persons recorded satisfaction u/s.153C of the Act on 22.09.2015 (assessee paper book page No.35), therefore, in the present case the relevant assessment years for initiating u/s.153C would be assessment years 2010-11 to 2015-16 and present assessment years 2014-15 falls within the said block period of six assessment years, therefore, the AO could have assume valid jurisdiction to

frame assessment u/s.143 (3) r.w.s. 153C of the Act only after issuing u/s. 153C of the Act. Therefore, since admittedly no notice u/s. 153C of the Act has been issue by the AO in the present case. The Ld. CIT (DR) in the written submissions has stated that the satisfaction u/s. 153C was from A.Y.2008-09 to 2013-14 and not for the impugned assessment year 2014-15 and there was no reliance was placed by the AO on any seized document on the basis which u/s. 153C satisfaction was recorded for the impugned assessment year, therefore, impugned year is a regular assessment year u/s. 143 (3) of the Act and therefore, there is no reference in the assessment order to any seized document while making addition are not relevant because it not a case of the assessee that assessment order/ additions should be quashed because the same are not based on any incriminating material.

14. On consideration of argument of the Ld. CIT (DR) we may note that it is not a case of the assessee that the assessment order void in absence of any incriminating material but the legal contention of assessee are of two fold first assessment order has been framed without issuing u/s. 153C of the Act and notice u/s. 143 (2) of the Act has been issued by the AO without having and applying any mind to the income tax return of the assessee for A.Y.2014-15. As on the very same date i.e. on 26.10.2015 which the assessee acknowledged the E filing on 19.12.2014 of return u/s. 139 of the Act in response to the notice u/s. 142 (1) of the

Act, therefore, the AO did not assume valid jurisdiction to frame assessment order u/s. 143 (3) r.w.s. 153 C of the Act. Therefore, impugned assessment order passed u/s. 143 (3) of the Act may kindly be quashed only on these scores.

15. On careful consideration of above submissions as we have noted above that since satisfaction u/s. 153 C of the Act, was recorded on 22.09.2015 and, therefore, as order of ITAT Delhi in the case of Mapsa Pvt. Ltd. (supra) the block period of this year and the year initiation proceedings u/s. 153C of the Act has been counted keeping in view said date of recording of satisfaction i.e. on 22.09.2015 by the AO of the searched person.

16. On this basis the period of six years would be A.Y.2010-11 to 2015-16 and the year of initiation of proceedings u/s. 153 C of the Act viz the year of search for the purpose of other person would be assessment year 2016-17. Obviously present assessment year under consideration A.Y.2014-15 falls within the period of six years from A.Y.2010-11 to 2015-16, therefore, the AO was required assumed jurisdiction to initiate assessment proceedings and to frame assessment order for present A.Y.2014-15 only by issuing u/s. 153C of the Act. Undisputedly, impugned assessment order has been framed u/s. 143 (3) of the Act by mentioning details of search in the first para by the AO. As per contention of Ld. CIT (DR) since the search was conducted in the case of other person on 27.06.2013, therefore, the relevant year of

search was A.Y.2014-15 for present assesee i.e. other personand, therefore, the AO was in treating the present assessment year as year of the search for the other person and thereby the AO was not required to issue u/s. 153C of the Act to the assessee in the present case.

17. In view of the above, we are not in agreement with the contention of the Ld. CIT (DR) that present A.Y.2014-15 should be taken as year of search for the other person also, therefore, there was no requirement of issuing u/s. 153C of the Act to the assessee before initiating assessment proceedings for A.Y.2014-15.

18. In the case of CIT Vs. Mapsa (supra) in para-6 the coordinate Bench of the Tribunal on the judgment of jurisdictional High Court of Delhi in the case of RRJ Securities Limited (supra) and Pr. CIT Vs. Server Agency Pvt. Ltd. & Ors. (Supra) categorically held that in the case of other person the six assessment years for which assessment / reassessment could be made u/s. 153 C of the Act also have to be construed with reference to the date of handing over of the assets / documents to the AO of the assessee i.e. 22.09.2015 in the present case, therefore, present A.Y.2014-15 would obviously fall within the block period of six years of commencing from A.Y.2010-11 to 2015-16, therefore, we are compelled to hold that before initiating assessment proceedings for A.Y.2014-15 the mandatory

requirement for the AO was to issue u/s. 153C of the Act to the assessee which is not complied by the AO, therefore, the AO did not assume valid Jurisdiction to pass assessment order for A.Y. 2014-15.

19. Consequently, impugned assessment as well as first assessment order dated 30.03.2018 and first appellate order dated 14.10.2019 are not sustainable and thus we quash the same accordingly. Ground No. 3 of assessee's appeal is allowed.

20. The Ld. AR submitted that the impugned assessment year is invalid and without jurisdiction as the said assessment has been completed without complying mandatory legal requirement provision u/s. 143 (2) of the Act and, therefore, such assessment is void-ab-initio and liable to be quashed. It was contended by the AR that impugned assessment order has been passed without assuming valid jurisdiction by the AO by issuing notice u/s. 143 (2) of the Act as per mandatory requirement of law, which is evident from the fact that in response to notice dated 29.09.2015 of the AO, the assessee admittedly file letter vide dated 26.10.2015 informing the AO that he has already filed only copy of E-acknowledgment return No. 447976991191214 dated 19.12.2014 u/s. 139 of the Act and he informed the AO about filing of return much prior on 19.12.2014 by submitting copy of acknowledgment and the AO immediately on the very same issued notice u/s. 143 (3) to the assessee without having original

or copy of return of income applying his mind to the return of income. The AO was sitting in the central circle and return was though filed on the portal of the department and at the time of issuing u/s. 143 (2) notice of the Act the AO was only having original or copy of e-acknowledgment of filing of return only and he was not having original or copy of return of income tax, therefore, it was impossible for him to examine and apply his mind to the return filed by assessee on 19.12.2014. Therefore, in view of judgment of the jurisdictional High Court of Delhi in the case of DIT Vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del) it has to be held that without issuing notice u/s. 143 (2) of the Act, the AO did not assume valid jurisdiction to frame assessment order u/s. 143(3) of the Act.

21. Replying to the above the Ld. CIT (DR) submitted that the proposition rendered by Hon'ble High Court of Delhi in the case of Society for Worldwide Interbank Financial Telecommunications (supra) does not apply to the present case as in that case the AO issue notice u/s. 143 (2) of the act immediately after receiving return of income hand to hand and, therefore, it was held that notice was ready even prior to the filing of return, therefore, the AO had no opportunity to apply his mind u/s. 143 (2). But in the present case the AO was having the copy of the return, before issuing notice u/s. 143 (2) of the Act dated 26.10.2015, therefore,

the benefit of said judgment is not available for the assessee in the present case

22. Placing rejoinder to the above, the Ld. AR again drew our attention to the page No.40 of assessee paper book and submitted that the assessee on 26.10.2015 only filed copy of acknowledgment of E-filing of E-return on 29.12.2014 and no copy of return was placed before the AO on 26.10.2015. Thus, the AO without having benefit of perusal and application of mind to the return of income the AO issued u/s. 143(2) of the Act, immediately on the same date on 26.10.2015, therefore, benefit of proposition rendered by the Hon'ble Supreme Court in the case of Society for Worldwide Interbank Financial Telecommunications (supra) is available for the assessee in the present case which is on the higher pedestal as in that case the copy of return was given by hand to the AO and immediately the AO gave notice u/s. 143 (2) to the same AR who handed over copy of the return to the AO but in the present case the AO was only having E-acknowledgement of filing of return and not the copy of the return, therefore, notice u/s. 143 (2) of the Act has to be held as bad in law and invalid.

23. On careful consideration of above submissions we are satisfied that lordship speaking for the case Society Worldwide Interbank Financial Telecommunications (supra) in paras 7 to 12 held thus :-

7. We have examined the assessment order, the order passed by the Commissioner of Income-tax (Appeals) as well as the impugned order passed by the Tribunal and have heard the submissions made by the learned counsel for the appellant/ Revenue.

8. We are of the view that the impugned order does not call for any interference. Both the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal have returned a concurrent and clear finding of fact that the notice under section 143(2) was issued on March 23,2000, and since the return was filed on March 27, 2000, the notice was not a valid one and, therefore, the assessment completed on the basis of the notice was also invalid and was consequently set aside. It is for the first time before us that the learned counsel for the appellant contends that the notice, in fact, was issued on March 27, 2000, and not on March 23, 2000, the date which is recorded on the notice itself. No such contention was raised before the lower appellate authorities. Consequently, the said contention cannot be raised before us for the first time.

9. However, even if we accept what the learned counsel for the appellant/ Revenue submits, it does not make the case any better for him. In paragraph 3.4 of the memorandum of appeal, the appellant has stated that the return was filed by the assessee on March 27, 2000, and the notice under section 143(2) was served upon the authorized representative of the assessee by hand when the authorized representative of the assessee came and filed return. However, the date of the notice was mistakenly mentioned as March 23, 2000.

10. Assuming the aforesaid to be true, the notice was served on the authorized representative simultaneously on his filing the return which clearly indicates that the notice was ready even prior to the filing of the return. Section 143(2) of the said Act clearly indicates that where a return has been furnished under section 139, or in response to a notice under section 142(1), the Assessing Officer shall—

"(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim ...
(ii) notwithstanding the aforesaid, if the Assessing Officer considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, he may serve the assessee a notice requiring him, on a date to be specified therein, either to attend

his office or to produce, or cause to be produced, an); evidence on which the assessee may rely in support return."

11. The provisions of section 143(2) make it clear that the notice can only be served after the Assessing Officer has examined the return filed by the assessee. Whereas what paragraph 3.4 indicates is that when the assessee came to file the return, the notice under section 143(2) was served upon the authorized representative by hand. Thus, even if we take the statement of the Assessing Officer at face value, it would amount to gross violation of the scheme of section 143 (2) of the said Act.

12. In any event, we do not agree with the contentions raised by the learned counsel for the appellant that the notice was issued on March, 27, 2000 in as much as the Tribunal has already returned a finding that the notice was issued on March 23, 2000. That being the case, no interference with the impugned order is called for.

24. In view of above the facts and circumstances of that case was that the return was filed on 27.03.2000 and notice u/s 143 (2) was served on the same AR's of the asessee by held when the AR of assessee came and filed copy of return to the AO in that situation their lordship held that it is gross violation of scheme of provision u/s. 143(2) of the Act as the AO has to apply his mind to the return and thereafter, if he consider it necessary or to ensure that the assessee has not understated his income or not claimed excessive loss or not under paid the tax in any manner then he may serve notice u/s. 143 (2) of the Act on the assessee fixing a date to attend his office. It was observe by Hon'ble High Court u/s. 143 (2) make it clear that the notice can only serve after the AO has examined the return filed by the assessee. In the present case we are satisfied that at the time of issuing notice u/s. 143 (2) of the Act on 26.10.2015, the AO was only having copy of acknowledgment of filing return of income by the assessee and not the copy of the return. Therefore, immediately after

receipt of copy of acknowledgment of filing of return on 26.10.2015 immediately issuing notice u/s. 143 (2) of the Act on the very same date would amount to issuing notice without having benefit of perusal of return of income tax and without examination of the same by the AO. Therefore, we incline to hold that the notice issued by the AO on 26.10.2015 was not a valid notice as per mandate of section 143(2) of the Act and Judgment of Hon'ble Supreme Court in the case of DIT Vs. Society for Worldwide Interbank Financial Telecommunications (supra). Thus, we are compelled to hold that the AO did not assume valid jurisdiction to frame assessment u/s. 143 (3) of the Act on the strength of notice dated 26.10.2015 u/s. 143 (3) of the Act. Consequently, in view of aforegoing discussion impugned assessment proceedings, assessment order and all subsequent proceedings and orders are hereby quashed. Accordingly, additional ground No.1 and 2 of assessee are also allowed.

25. The assessee has not pressed additional ground No.4. Hence, the same is dismissed as not pressed.

26. Since we have granted relief to assessee on legal additional ground No.1, 2 and 3, therefore, grounds of assessee on merits are not being adjudicated above as having become infructuous.

27. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 03.08.2022.

Under Rule 34 (4) of the ITAT Rules, 1963.

Sd/-	**Sd/-**
(T.S. KAPOOR)	**(C.M. GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

NEHA
Date:-03.08.2022
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI