

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 700/DEL/2021 [A.Y 2016-17)

The Dy. C.I.T
Central Circle - 1
New Delhi

Vs.

D.L. Heera Bhai Jewellery Arcade
F - 123, Main Market
Rajouri Garden, New Delhi

PAN: AADCD 7804 P

(Applicant)

(Respondent)

Assessee By : Shri Ajay Wadhwa Adv
Ms. Bharti Sharma, CA

Department By : Shri Rajesh Kumar, CIT-DR

Date of Hearing : 25.08.2022

Date of Pronouncement : 25.08.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 24 New Delhi dated 29.01.2021 pertaining to Assessment
Year 2016-17.

2. The grievances of the Revenue read as under:

"1. The Id. CIT(A) erred in law and on facts in holding that the finding of incriminating material is a mandatory requirement for initiation of proceedings u/s 153C of the Act.

2. The Id. CIT(A) erred in law and on facts in holding that the finding of incriminating material for the particular Assessment Year is a mandatory requirement for initiation of proceedings u/s 153C of the Act for that Assessment Year.

3. The Id. CIT(A) erred in law and on facts in not deciding the appeal on merits and cancelling the assessments on the technical ground alone."

3. Briefly stated, the facts of the case are that that a search and seizure operation under section 132 of the Act was carried out on 22.12.2016 at the residential premises of Shri Kapil Kumar. In a consequential action, search was conducted at the residential premises of Shri Mohit Goel and survey u/s 133A of the Act were conducted at the business premises of JMK Exports, M/s Harrison Diamonds PVt Ltd, M/s JMK Jewels PVt Limited and M/s Ringing Bells Private Limited [RBPL].

4. During the course of search on Shri Mohit Goyal, he stated in his statement u/s 132(4) of the Act that cash amounting to Rs. 32.81 crores was deposited in bank account of RBPL post demonetization, which was given to him by Shri Rajesh Chawla, owner of DL Heera Bhai Jewellery. On the basis of this statement, satisfaction note was recorded in the case of DL Heera Bhai Jewellery on the basis of incriminating material recovered during search/survey operation for initiating proceedings u/s 153C of the Act and assessment was framed u/s 153C r.w.s 143(3) of the Act vide order dated 29.12.2019, which was challenged before the ld. CIT(A).

5. The ld. CIT(A), by way of a consolidated order in five Assessment Years i.e. 2012-13 to 2016-17, deleted the additions made by the Assessing Officer drawing support from the decision of the Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 344. Relevant findings of the ld. CIT(A) read as under:

"14.1.2 I have considered facts of the case as well as written submissions of the appellant As mentioned in para 1 of the assessment order, original return of income was filed on 12.10.2016. I have perused both the satisfaction notes recorded by

the Assessing Officer. The first satisfaction note, is by the Assessing Officer of Sh. Mohit Goel, DCIT Central Circle-1 New Delhi, as per which SMS Message/ Data in the Mobile Phone of Mrs. Dharna Goei W/o Sh. Mohit Goel relate to the appellant company. The second satisfaction note is by the Assessing Officer of the appellant company, DCIT Central Circle-1 New Delhi, in which it is stated that SMS Message/ Data in the Mobile Phone of Mrs. Dharna Goel have a bearing on determination of total income of the appellant company.

14.1.3 I have perused SMS Message/ Data in the Mobile Phone of Mrs. Dharna Goel W/o Sh. Mohit Goel which are part of the satisfaction note. It is observed that these SMS messages pertain to the dates 20.04.2016 to 24.12.2016. I have also read all the messages and none of the messages pertain to any of the additions made in the assessment order. In view of these facts, it is held satisfaction note has been recorded by the Assessing Officer. However, the seized material referred to in the satisfaction note does not pertain to AY 2012-13 to AY 2016-17. Also, the seized material referred to in the satisfaction note is in no way related to following three additions made in the assessment order:

- (i) Unexplained credit u/s 68 of two loans received of Rs. 5,95,00,000
- (ii) Disallowance of deduction u/s VIA of Rs, 1,47,119
- (iii) Unexplained credit u/s 68 of two loans received of Rs. 8,00,000

14.1.4 Firstly, the satisfaction note does not refer to any seized material pertaining to AY 2012-13 to AY 2016-17. Secondly, the material referred to in satisfaction note can in no way be considered incriminating with regard to additions made in the assessment order. No seized material has been referred to while making all the four additions in the assessment order. Moreover, the assessment of the appellant stood completed on the date of search.

14.1.5 Detailed judicial decisions have been discussed in order of Appeal No. CIT Delhi- 23/10290/2019-20 for AY 2012-13 above. In view of above judicial decisions well as the fact that no incriminating material pertaining to AY 2012-13 to AY 2016-17 referred to in the satisfaction note or utilized for making additions in the assessment order. it is held that proceedings u/s 153C of Income Tax Act could not be initiated against the assessee. The Assessing Officer could not have assumed jurisdiction u/s 153C of Income Tax Act. Hence, proceedings u/s 153C of Income Tax Act are quashed and Ground No. 5 is allowed.

6. Before us, the ld. DR could not bring any distinguishing decision in favour of the Revenue but placed strong reliance on the findings of the Assessing Officer.

7. We have given thoughtful consideration to the orders of the authorities below. The ld. CIT(A) has based his findings on the ratio laid down in the case of Singhad Technical Education Society [supra] which facts have not been controverted by the ld. DR. As admittedly, no incriminating material could be pointed out by the ld. DR for the Assessment Year under consideration, we do not find any reason to interfere with the findings of the ld. CIT(A).

8. In the result, the appeal of the Revenue in ITA No. 700/DEL/2021 is dismissed.

The order is pronounced in the open court on 25.08.2022.

[ASTHA CHANDRA]
JUDICIAL MEMBER

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 25th August, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	