

**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, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No.144/Chny/2018**  
(निर्धारण वर्ष / **Assessment Year: 2007-08**)

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|---|----------------------|---|
| <b>M/s NSR Corp.</b><br>No.174, Sathyamurthy Road<br>Ram Nagar, Coimbatore – 641 009. | <b>बनाम/<br/>Vs.</b> | <b>DCIT</b><br>Central Circle-2,<br>Coimbatore. |
| स्थायी लेखा सं./जीआइ आर सं./ <b>PAN/GIR No. AAFN-6975-L</b>                           |                      |   |
| (□ पीलार्थी/ <b>Appellant</b> )   | :                    | (प्रत्यर्थी / <b>Respondent</b> )               |

|                                       |   |                                     |
|---------------------------------------|---|-------------------------------------|
| अपीलार्थी की ओरसे/ <b>Assessee by</b> | : | Shri B. Ramakrishnan (F.C.A)-Ld. AR |
| प्रत्यर्थी की ओरसे/ <b>Revenue by</b> | : | Shri Guru Bashyam (CIT)-Ld. DR      |

|   |   |            |
|---|---|------------|
| सुनवाई की तारीख/ <b>Date of Hearing</b>       | : | 07-06-2022 |
| घोषणा की तारीख / <b>Date of Pronouncement</b> | : | 30-08-2022 |

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2007-08 arises out of the order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 28.11.2017 in the matter of an assessment framed by Ld. Assessing Officer u/s 153C r.w.s. 143(3) on 31.03.2015. The assessee has filed concise grounds of appeal on 26.04.2018 which read as under:

1. The Ld. CIT(A) is wrong in holding that there was a transfer of capital assets during the previous year on the basis of an unregistered JDA dated 30<sup>th</sup> March, 2007 as the

decision of the apex court reported in 398 ITR was not applicable to in the facts of the case.

2. The CIT(A) ought to have held the appellant was a dealer in real estate development and therefore the subject matter of JDA was only with regard to the stock in trade and not capital asset

3. The CIT(A) should have quashed the assessment, in the facts and circumstances and in Law, as not valid.

The assessee has filed additional ground of appeal on 31.05.2018 which read as under: -

The learned CIT(A) has failed to appreciate that the order dated 31.03.2015 made u/s 153C rws 143(3) of the I.T.Act, 1961 by the AO was without jurisdiction, as the provisions of Section 153C(1) of the I.T.Act, 1961 did not apply to the assessment years, in question, in facts and the circumstances of the case and in law.

2. Drawing attention to legal grounds, Ld. AR submitted that this year fall outside the period of six assessment years and therefore, Ld. AO had no jurisdiction to frame assessment u/s 153C rws 153A(1)(b). Reliance has been placed on various decisions, the copies of which have been placed on record. In particular, the decision of Hon'ble Delhi High Court in the case of **CIT V/s RRJ Securities Ltd. (380 ITR 612)** is stated to be directly applicable to the facts of this case. The Ld. CIT-DR, on the other hand, controverted the arguments of Ld. AR and placed on record a copy of satisfaction note recorded by Ld. AO in case of the assessee. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

### **Assessment Proceedings**

3.1 The assessee being resident firm is stated to be engaged in real estate business. Pursuant to search action u/s 132 on 10.01.2013 in the case of M/s Rasi Seeds Private Ltd. group of cases, certain documents were found from the resident of Shri M. Ramasami, Chairman-cum-Managing Director of that entity. The documents were seized wherein page nos. 23 to 31 was a Joint Development Agreement (JDA) dated

30.03.2007 between the assessee (land-owner) and another entity namely SMS Gardens (P) Ltd. (SGPL) (developer). The agreement was for construction of a residential complex containing 248 flats on 4 acres 25 cents of land owned by the assessee in Uppilipalayam Village, Coimbatore. Since the seized document belonged to the assessee, proceedings u/s 153C r.w.s. 153A was initiated against the assessee after recording of reasons and after obtaining due approval from appropriate authority. The case of the assessee was centralized vide Notification No.07/2013-14 dated 20.08.2013 and notice u/s 153C r.w.s. 153A was issued on 24.09.2013. In response, the assessee filed return of income on 01.04.2014.

3.2 The assessee objected to the jurisdiction u/s 153C of the Act and requested for furnishing the justification and basis of issue of notice u/s 153C r.w.s. 153A. The assessee also sought information as to the date of receipt of relevant document from the AO of the searched person.

3.3 However, these objections were over-ruled primarily on the ground that notice was issued on the basis of a seized documents containing JDA dated 30.03.2017 found during the course of search u/s 132 on 10.01.2013 from the residential premises of Shri M. Ramasami, Chairman-cum-Managing Director of M/s Rasi Seeds Private Ltd. Since the documents belonged to the assessee, proceedings u/s 153C r.w.s. 153A were required to be initiated for AYs 2007-08 to 2012-13. It was also informed that jurisdiction over the case of Shri M. Ramasami as well as assessee vested with the office of same assessing officer and a noting of the satisfaction was made separately by DCIT, Central Circle-II, Coimbatore that the seized document belonged to the assessee. Such recording of satisfaction was made the case of Shri M. Ramasami on

23.09.2013. Since the AO having jurisdiction over both the assesseees was one and the same, it may be seen that the document in question was already in the custody of AO. Therefore, the date of receipt of relevant documents from AO of the searched person would not arise at all. Accordingly, the objection was over-ruled.

3.4 In the above background, Ld. AO proceeded to compute the income arising to the assessee out of JDA. It was noted that as land owner, the assessee was entitled for 30% of super built-up area in the project. This land was purchased by the assessee and was shown as capital asset. Accordingly, in exchange of 70% undivided share of land, the landowner would get 30% of super built-up area. The sale of land was completed when the JDA was affected by the land owner and the possession was handed over on the said date i.e., 31.03.2007. The estimated cost to complete the project was pegged at Rs.71.79 Crores and the assessee' share therein (30%) would come to Rs.21.53 Crores which would constitute sale consideration. After deducting there-from 70% of total land cost, the resultant short-term capital gain was computed by Ld. AO at Rs.19.63 Crores.

3.5 The assessee opposed the same on the ground that there was no accrual of income because at the time of entering into JDA, nobody knows at what price the apartments would be sold at future date. In fact, in the returns for AYs 2013-14 and 2014-15, entire sale proceeds of the flats that were sold in those years was offered to tax after deducting the pro-rata cost of the land as applicable to individual flats. Therefore, the question of taxing the same in this year would not apply at all. However, rejecting the same, Ld. AO held that transfer has taken place on the date of entering into JDA and gains accrued to the assessee in this year.

Finally, short-term capital gain of Rs.19.63 Crores was brought to tax and the assessment was framed.

### **Appellate Proceedings**

4. During appellate proceedings, the assessee assailed to jurisdiction of Ld. AO and also contested the issue on merits. However, Ld. CIT(A) held that the possession was handed over at the time of entering into JDA on 30.03.2017 and therefore, the transfer was complete and accordingly, the assessee was liable to pay taxes on short-term capital gains in this year. No finding was rendered on the legal issues. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

5. Since the assessee has raised a pertinent legal issue contesting the jurisdiction of Ld. AO, we take up the same first. It could be seen that pursuant to search action u/s 132 on 10.01.2013 in the case of M/s Rasi Seeds Private Ltd. group of cases, certain documents were found from the resident of Shri M. Ramasami, Chairman-cum-Managing Director of that entity. The documents, inter-alia, contained Joint Development Agreement (JDA) dated 30.03.2007 between the assessee (land-owner) and another entity namely SMS Gardens (P) Ltd. (SGPL) (developer) for the construction of a residential complex on certain land owned by the assessee at Coimbatore.

6. Since the seized document belonged to the assessee, proceedings u/s 153C r.w.s. 153A was initiated against the assessee after recording of reasons and after obtaining due approval of prescribed authority. The case of the assessee was centralized vide Notification No.07/2013-14 dated 20.08.2013 and notice u/s 153C r.w.s. 153A was issued on

24.09.2013. In response, the assessee filed return of income on 01.04.2014.

7. It could be seen that jurisdiction over the case of Shri M. Ramasami as well as the assessee vested with same AO and a satisfaction note initiating proceedings u/s 153C in the case of assessee was recorded on 24.09.2013, a copy of which has been placed on record by the revenue. Therefore, to count the jurisdiction of AO, this date i.e., 24.09.2013 assumes importance. The provisions of Sec.153C(1) provide as under: -

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) 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 the relevant assessment year or years referred to in sub section (1) of section 153A :

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:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated."

These provisions provide that in case of search on a person, if AO 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

any other person then the books of account or documents or assets so 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 the relevant assessment year or years referred to in sub-section (1) of section 153A. It has further been provided that in case of such other person, the reference to the date of initiation of the search u/s 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.

8. The provision of Sec.153A (1)(a) postulates issuance of notice in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted. In the present case, the satisfaction note (as placed by revenue on record) has been recorded by Ld. AO on 24.09.2013 which falls in previous year 2013-14, the relevant assessment year for which is AY 2014-15. Therefore, considering the statutory mandate, the notice that could be issued to the assessee would be as under: -

| Year No. | Previous Year | Assessment Year |
|----------|---------------|-----------------|
| 1.       | 2012-13       | 2013-14         |
| 2.       | 2011-12       | 2012-13         |
| 3.       | 2010-11       | 2011-12         |
| 3.       | 2009-10       | 2010-11         |
| 5.       | 2008-09       | 2009-10         |
| 6.       | 2007-08       | 2008-09         |

The year before us is AY 2007-08. Clearly, this year would be out of the purview of proceedings u/s 153C as per statutory mandate. This being so, the Ld. AO, in our considered opinion, had no jurisdiction to proceed u/s 153C and therefore, the consequential assessment as framed by Ld. AO could not be sustained in the eyes of law.

9. Our aforesaid conclusion is duly supported by the case law of Hon'ble High Court of Delhi in **CIT V/s RRJ Securities Ltd. (380 ITR 612)** wherein it was held as under: -

23. In the present case, the Assessee had claimed that the assessments for the concerned assessment years were not pending on the date of recording of satisfaction by the AO and, therefore, would not abate by virtue of the second proviso to Section 153A of the Act. Further, the period of six years would also have to be reckoned with respect to the date of recording of satisfaction note – that is, 8th September, 2010 – and not the date of search.

24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment years 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue

is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year.

This decision follows earlier decision rendered in **SSP Aviation Ltd. V/s DCIT (2012; 20 Taxmann.com 214)**. No contrary decision is on record.

10. Therefore, considering the entirety of facts and circumstances, we would hold that issuance of notice u/s 153C could not be sustained in the eyes of law for the year under consideration since the jurisdictional conditions to issue the same was not fulfilled and it was barred by limitation. Resultantly, the consequential assessment framed by Ld. AO would have no legs to stand. The delving into to merits of the case has, therefore, been rendered merely academic in nature.

11. The appeal stand allowed in terms of our above order.

Order pronounced on 30<sup>th</sup> August, 2022.

Sd/-

(MAHAVIR SINGH)

उप अध्यक्ष / VICE PRESIDENT

चेन्नई / Chennai; दिनांक / Dated : 30-08-2022

EDN/-

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded 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