

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHAMAN, ACCOUNTANT MEMBER**

**ITA No.7682/M/2019
Assessment Year: 2010-11
&
ITA No.7680/M/2019
Assessment Year: 2011-12**

M/s. Global Paper Impex Ltd., 93, Dadi Seth Agiry Lane, Kalbadevi Road, Mumbai – 400 002 PAN: AACCR8872L	Vs.	Dy. CIT, CC-12, 8 th Floor, Pratishtha Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**ITA No.7603/M/2019
Assessment Year: 2011-12**

Dy. CIT, CC-2(2), Old CGO Building, 8 th Floor, M.K. Road, Mumbai - 400020	Vs.	M/s. Global Paper Impex Ltd., 93, Dadiseth Agiary Lane, Kalbadevi Road, Mumbai – 400 002 PAN: AACCR8872L
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Hari S. Raheja, A.R.
Revenue by : Shri Hoshang B. Irani, D.R.

Date of Hearing : 29 . 06 . 2022

Date of Pronouncement : 22 . 09 . 2022

O R D E R**Per : Kuldip Singh, Judicial Member:**

For the sake of brevity aforesaid interconnected appeals bearing common question of law and facts are being taken up for disposal by way of composite order.

2. The appellant, M/s. Global Paper Impex Ltd. (hereinafter referred to as 'the assessee') and appellant Dy. CIT, CC-2(2), Mumbai (hereinafter referred to as the Revenue) by filing aforesaid cross appeals sought to set aside the impugned order dated 20.09.2019 passed by Commissioner of Income Tax (Appeals)-48, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2010-11 & 2011-12 on the grounds inter alia that :-

ITA No.7682/M/2019 for A.Y. 2010-11

“1. On the facts and circumstances of the case and in law the Ld Commissioner of Income Tax (Appeal) erred in not allowing the additional grounds of appeal on the ground that the assessment order is passed on the normal provisions of the Act, based on notice issued under section 143(2) without accepting the fact that notice u/s 153C was issued in the case of the Appellant and based on the date of initiation of search on the basis of satisfaction note, the year falls within the period of six years from the date of initiation of search and order should have been passed under section 153C r.w.s. 153A and not under section 144/143(3) of the Income Tax Act, 1961 on the ground or grounds as stated in the Appellate Order or otherwise.

2. On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax (Appeals) (referred as CIT(A)) erred in confirming the ex-parte order passed by the Assessing Officer (AO) by invoking the provision of section 144 without calling any information from the AO on the ground or grounds as contained in the appellate order or otherwise.

3. On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the rejection of Books of account u/s 145(3) on the ground or grounds as contained in the appellate order or otherwise.

4. *On the facts and circumstances of the case and in law the Ld. CIT (A) erred in confirming the addition of G.P @25% based on order in some other case, and thereby confirming the addition on account of gross profit of Rs.26,32,58,275/- on the ground or grounds as stated in the Appellate order of otherwise.*

5. *The Appellant crave leaves to add, amend, alter, modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another.”*

ITA No.7680/M/2019 for A.Y. 2011-12

“1. *On the facts and circumstances of the case and in law the Ld Commissioner of Income Tax (Appeal) erred in not allowing the additional grounds of appeal on the ground that the assessment order is passed on the normal provisions of the Act, based on notice issued under section 143(2) without accepting the fact that notice u/s 153C was issued in the case of the Appellant and based on the date of initiation of search on the basis of satisfaction note, the year falls within the period of six years from die date of initiation of search and order should have been passed under section 153C r.w.s. 153A and not under section 144/143(3) of the Income Tax Act, 1961 on the ground or grounds as stated in the Appellate Order or otherwise.*

2. *On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax (Appeals) (referred as CIT(A)) erred in confirming the ex-parte order passed by the Assessing Officer (AO) by invoking the provision of section 144 without calling any information from the AO on the ground or grounds as contained in the appellate order or otherwise.*

3. *On the facts and circumstances of the case and in law the Ld. CIT (A) erred in confirming the addition of G.P @7 % based on order in some other case, and thereby confirming the addition on account of gross profit of Rs. 4,61,29,365/- on the ground or grounds as stated in the Appellate order of otherwise.*

4. *The Appellant crave leaves to add, amend, alter, modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another.*

The appellant prays this Hon'ble Tribunal to direct the A,O. to delete the additions.”

Revenue's grounds of appeal (ITA No.7603/M/2019 for A.Y. 2010-11)

1. *Whether the CIT (A) was justified in reducing GP from 28% to 25% ignoring the basis adopted by the AO based upon the exact comparable case viz. M/s. Shruti Arts Pvt. Ltd.*

2. Whether the CIT (A) was justified in deleting the addition of Rs.50,00,000/- stating it to be estimation on imaginary basis rather than remanding the matter for verification of bank account which the assessee failed to produce during the assessment proceedings.

3. Whether the CIT (A) was justified in deleting the addition of Rs.50,00,000/- by ignoring the observation of the Assessing officer that the huge finance from the bank remained unreconciled with the stock and movement of goods resulting in the premise that it was misappropriated for non-business purpose."

4. The Appellant craves leave to add, to amend and/ or to alter any of the grounds of appeal, if need be.

5. The Appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)- 48, Mumbai may be set aside and that of the Assessing Officer restored."

3. Briefly stated facts necessary for adjudication of the controversy at hand in all the aforesaid appeals are: on the basis of search and seizure operation carried out in case of Reliable Paper (I) Pvt. Ltd. and its group company, Mumbai during the period 23.02.2010 and 20.04.2010 notice under section 142(1) of the Income Tax Act, 1961 (for short 'the Act') dated 19.11.2012 was issued and served upon the assessee. However, assessee has not filed the return of income in response to the notice under section 142(1) of the Act. Then notice under section 142(1) dated 11.01.2013 along with questionnaire was issued and duly served upon fixing the next date as 23.01.2013 but none appeared on behalf of the assessee. Thereafter, subsequent notices were issued but assessee failed to comply with the same and consequently Assessing Officer (AO) proceeded to complete the assessment under section 144 of the Act.

4. AO proceeded to assess the income of the assessee on estimation basis by taking sales turnover of the assessee of the

previous year and extrapolating the sales turnover by 10% of the previous years which amounts to Rs.9,57,30,405/-. AO by considering the extrapolating the turnover by extra 10% which comes to Rs.1,05,30,34,458/- proceeded to compute the income of the assessee at Rs.29,48,49,648/- being 28% of the total turnover i.e. Rs.1,05,30,34,458/- as discussed in the preceding para. AO also made adhoc addition of Rs.55,00,000/- under section 68 as unexplained cash credit on his failure to submit the bank statements after repeated requests and thereby framed the assessment at the total income of Rs.29,98,49,650/- under section 144 of the Act.

5. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved assessee as well as Revenue have come up before the Tribunal by way of filing present cross appeals for A.Y. 2010-11.

6. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

7. Undisputedly both the cases for A.Y. 2010-11 & 2011-12 have arisen on the basis of search took place in the case of Reliable Group of Company during the period 23.02.2010 to 20.04.2010. It is also not in dispute that as per 1st and 2nd proviso of section 153C and 153A respectively the AO got jurisdiction on the date on which he records the satisfaction note, which is the date of initiation of search, and the date in this case as per record is 19.11.2012 because the AO has recorded his satisfaction for the other assessment years

viz. 2004-05 to 2009-10 in which he had issued the notice under section 153C of the Act. It is also not in dispute that when the date of recording the satisfaction is 19.11.2012 then proceedings under section 153C of the Act are required to be initiated for all the assessment years for six years i.e. 2006-07 to 2011-12. It is also not in dispute that assessment made by the AO in case of assessee for A.Y. 2004-05 to 2009-10 under section 153C have been deleted on the ground that the same did not arise out of any seized material. It is also not in dispute that on 19.11.2012 assumed date for recording satisfaction of the assessment for A.Y. 2010-11 was not pending and notice under section 142(1) was issued whereas no notice under section 143(2) has ever been issued. It is also not in dispute that addition in this case for both the years is not based upon any seized material. It is also not in dispute that on 19.11.2012 A.Y. 2011-12 was pending and notice under section 143(2) was issued on 24.09.2012 meaning thereby assessment abates and notice under section 153C of the Act was required to be issued.

8. In the backdrop of the aforesaid facts and circumstances of the case the Ld. A.R. for the assessee raised legal ground that the assessment for both the years i.e. A.Y. 2010-11 and 2011-12 was required to be framed under section 153C of the Act and not under section 144 of the Act as has been done by the AO and relied upon the decision rendered by co-ordinate Bench of the Tribunal in case of Shri Meer Hassan vs. ITO & ors. in ITA No.1571/Del./2015 & ors. vide order dated 28.02.2019 and in case of DCIT vs. M/s. Specialty Paper Ltd. in ITA No.6869/M/2016 to 6874/M/2016 for A.Ys. 2004-05 to 2009-10 vide order dated 21.03.2018.

9. This issue was decided by the Ld. CIT(A) against the assessee on the sole ground that the entire argument of the assessee is on the assumed date of satisfaction note under section 153C of the Act i.e. 19.11.2012.

10. However, on the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A).

11. On the basis of grounds raised by the assessee, argument addressed by the Ld. Counsels for the parties to the aforesaid appeals the sole legal issue to be decided in this case is:

“as to whether assessment for both the years i.e. A.Y. 2010-11 & 2011-12 undisputedly being the part of last six assessment years from the date of search were required to be framed under section 153C read with section 153A of the Act and not under section 144 read with section 143(3) of the Act?”

12. When we examine aforesaid issue in the light of the fact that undisputedly assessment proceedings in case of the assessee for A.Y. 2010-11 & 2011-12 were initiated on the basis of search and seizure operation carried out in case of Reliable Paper (I) Pvt. Ltd. under section 132 of the Act during period 23.02.2010 and 20.04.2010 wherein incriminating documents relating to the assessee were allegedly found as has been recorded by the AO in first para of the assessment order, assessment was required to be framed under section 153C read with section 153A of the Act and not under section 144 of the Act. Ld. CIT(A) decided this legal issue against the assessee on the sole ground that assessee has assumed the date of satisfaction note under section 153C of the Act as 19.11.2012.

13. However, the Ld. A.R. for the assessee to substantiate his argument drew our attention towards order dated 21.03.2018 passed in ITA No.6875 to 6879 of 2016 in case of assessee for A.Y. 2005-06 to 2009-10 which were also part of the assessment years covered by the block assessment on the basis of search and seizure operation carried out on Reliable Group during the period 23.02.2010 and 20.04.2010, it has specifically come on record that the “the AO has assumed jurisdiction to make the impugned assessment by issuing notices for each of the captioned assessment years under section 153C of the Act dated 19.11.2012.”

13. Furthermore, during the assessment proceedings the Ld. CIT(A) called upon the AO to bring on record the satisfaction note recorded in these cases, to which AO informed by way of letter dated 18.03.2016, DCIT/CENT.CIR.2(2)/Rem./2015-16 which is part of the judicial record that “as regards satisfaction note, a reference may be drawn to the assessment order wherein the AO has mentioned that, “the satisfaction was drawn before initiating the proceedings u/s 153C. Sir, it may further be appreciated that this records were originally lying on 8th floor of this building. Thereafter records were shifted to 11th floor due to renovation on 8th floor. Further after restructuring records were again shifted to 8th floor. In this process, the satisfaction note appears to have been misplaced. I rely on the provision of section 292B and 292BB of the Income Tax Act, 1961. Therefore it is submitted that notice u/s 153C is properly issued and served on the assessee.”

14. The onus to prove the date of recording of the said satisfaction note by the AO was on the Revenue which they have

failed to discharge. Moreover, it is amply proved on the record from the order dated 21.03.2018 (supra) passed in case of assessee for A.Y. 2005-06 2009-10 and from the date of search that the satisfaction note was recorded on 19.11.2012 which mandates that the assessment in this case was to be framed under section 153C of the Act for assessment years 2006-07 to 2011-12 (including A.Y. 2010-11 & 2011-12 the years under consideration)

15. Co-ordinate Bench of the Tribunal in case of Shri Meer Hassan vs. ITO & ors. in ITA No.1571/Del./2015 & ors. vide order dated 28.02.2019 decided the identical issue by holding that provisions contained under section 153C of the Act are applicable to initiate the assessment proceedings on the basis of seized material, seized in case of some third person, initiation of assessment proceedings under section 147 of the Act is void ab-initio by returning following findings:

“12. In the backdrop of the aforesaid facts and circumstances of the case, the first question for determination in this case is :-

“as to whether on the basis of alleged incriminating material seized during search at the premises of M/s. R.B. Enterprises on 04.03.2009, AO as well as CIT (A) have erred in initiating the proceedings u/s 147 of the Act.”

13. The ld. AR for the assessee challenging the impugned order contended that when the AO has specifically relied upon material/ documents LP-103 A-1 pages 30 seized during the search operation conducted at the premises of M/s. R.B. Enterprises, he had the authority to assess that person u/s 153C of the Act as the provisions contained u/s 153C are non-obstante provisions which specifically exclude the operation of section 147 of the Act and as such, assessment framed in this case u/s 147 is not sustainable in the eyes of law.

14. However, on the other hand, ld. DR for the Revenue relied upon the order passed by the ld. CIT (A).

15. For facility of reference, provisions contained u/s 153C are extracted for ready perusal 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 17[for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] 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 subsection (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 18 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 19[and for the relevant assessment year or years as referred to in sub-section (1) of section 153A] except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return

of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before 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, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.”

16. Bare perusal of the provisions contained u/s 153C which is a non-obstante provision shows that when the assessment order shows that the assessment proceedings were to be initiated on the basis of incriminating material found in search of a third party, as in the present case, the provisions contained u/s 153C are applicable which specifically excludes application of sections 147 & 148 of the Act.

17. In the instant case, undisputedly, originally assessment proceedings were initiated against the present assessee u/s 153C read with section 153A of the Act which was completed vide order dated 30.12.2011 but the same were annulled by ld. CIT (A) vide order dated 28.08.2012 on the ground that proper course in this case was to initiate proceedings u/s 147 of the Act and make assessment accordingly. The said assessment u/s 153C read with section 153A was completed on the basis of some seized material/document LP-103 A-1 pages 30, which is a memorandum of understanding alleged to have been entered into between the assessee and M/s. R.B. Enterprises.

18. So, we are of the considered view that when provisions contained u/s 153C are applicable in this case to initiate assessment proceedings on the basis of seized material seized in case of some third party, notice issued u/s 148 of the Act and subsequent assessment framed u/s 147 of the Act is void ab initio and as such, assessment framed u/s 147/143(3) of the Act is liable to be quashed.”

16. Not only this 1st and 2nd proviso to section 153C and 153A of the Act make it clear that the AO acquires jurisdiction on the date

on which satisfaction note has been recorded, which ought to be date of search, and in this case date of recording satisfaction has come on record as 19.11.2012, then proceedings under section 153C are required to be initiated for the preceding six assessment years i.e. 2006-07 to 2011-12. As on 19.11.2012 the assessment for assessment year 2010-11 was not pending. The AO has undisputedly issued the notice under section 142(1) and no notice under section 143(2) of the Act was ever issued, which vitiates the entire assessment proceedings framed under section 144 of the Act, particularly when addition made in these cases is not based on seized material.

17. At the same time, in case of assessment year 2011-12, the assessment was pending and notice under section 143(2) of the Act was issued on 24.09.2012. Since the assessment abates again notice under section 153C of the Act was required to be issued.

18. In view of what has been discussed above, we are of the considered view that the assessment framed in this case by the AO under section 144 of the Act is not sustainable as the same was required to be framed under section 153C read with section 153A of the Act, hence ordered to be quashed without entering into merits of this case. Consequently, appeals filed by the assessee are allowed and appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 22.09.2022.

Sd/-

**(S. RIFAUR RAHAMAN)
ACCOUNTANT MEMBER**

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 22.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.