

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 250/Chny/2020
निर्धारण वर्ष / Assessment Year: 2016-17

Shri D.N. Vikraman
Rep by his Legal Heir
Mr. N.V. Ajay,
2/3C/12, Ganesh Nagar,
Tuticorin.

Assistant Commissioner of
v. Income Tax,
Central Circle -2,
Madurai.

[PAN: AAZPV-2953-J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. K. Ravi, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. T.M. Sugunthamala, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 10.10.2022

घोषणा की तारीख/Date of Pronouncement

: 14.10.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned CIT(A)-19, Chennai, dated 27.09.2019 and pertains to assessment year 2016-17.

2. At the outset, we find that there is a delay of 65 days in appeal filed by the assessee. During the course of hearing,

when defect was brought to the notice of the learned AR present, he has submitted that delay in filing of appeal is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of the Hon'ble Supreme Court **suomotu** Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

3. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in **suomotu** Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of Courts and Tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings

before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee.

5. The assessee has raised following grounds of appeal:

"1. The order of the Commissioner of Income-tax (appeals)-19, is contrary to law, facts and circumstances of the case.

2. The Commissioner of Income tax (Appeals) erred in not dealing specifically with the quantum of gold and jewellery found at the time of search. This led to the Assessing Officer not being certain about the issues allowed by the CIT(Appeals).

3. The Commissioner of Income tax (Appeals) erred in confirming the addition of Rs. 1,91,380/- as unexplained cash in spite of the details furnished by the Appellant that there was sufficient cash balance as per the accounts to explain the cash in the hands of the Appellant.

4. The Appellant craves leave to file additional grounds of appeal at the time of hearing."

6. The brief facts of the case are that a search action was conducted in the business premises of M/s. VVD & Sons (P) Ltd on 17.11.2015. During the course of search one of the directors of M/s. VVD & Sons (P) Ltd, Shri. Vikaramam's residence was also searched u/s. 132 of the Income-tax Act (herein after referred to as "the Act"). During the course of search gold jewellery, diamond and silver articles were found and seized. Consequent to search, the assessment has been completed u/s. 143(3) r.w.s. 153C of the Act on 29.12.2017

and determined total income of Rs. 73,46,381/- by making addition towards unexplained jewellery and unexplained cash found in the course of search. The assessee carried the matter in appeal before the first appellate authority and the Ld CIT(A), for the reasons stated in their appellate order dated 27.09.2019 dismissed appeal filed by the assessee.

7. Aggrieved by the Ld. CIT(A) order, the assessee is in appeal before us. The Ld. AR for the assessee referring to the assessment order passed by the AO u/s. 143(3) r.w.s. 153C of the Act dated 29.12.2017 submitted that the AO has issued notice u/s. 142(1) of the Act, whereas completed assessment u/s. 153C of the Act, contrary to the law. He, further submitted that the assessment year in question pertains to the year of search and thus, the question of issue of notice u/s. 153C does not arise and thus, once there is no notice u/s. 153C, the assessment framed u/s. 143(3) r.w.s. 153C is *void and ab-initio*.

8. The Ld. DR on the other hand had fairly agreed that there is no notice u/s. 153C of the Act was issued for the impugned assessment year. However, she further submitted

that since the assessment year in question pertains to the year of search, the AO has rightly issued notice u/s. 142(1) of the Act and he completed the assessment. Therefore, merely for the reason that it was stated in the assessment order that assessment was completed u/s. 143(3) r.w.s. 153C does not vitiate the entire proceedings.

9. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. A search was conducted on 17.11.2015 and consequent to search, the assessment was framed for AY 2016-17 which has been completed u/s. 143(3) r.w.s. 153C of the Act. As per the provisions of section 153A/153C, the AO shall assess or re-assess income of six assessment years immediately preceding the assessment year in which the search takes place. In this case, search was conducted on 17.11.2015 and six assessment years preceding to the year of search are AY 2010-11 to 2015-16. Therefore, the AO can frame assessment u/s. 153A/153C up to AY 2015-16. In the present case, assessment year in question before us is AY 2016-17 and said AY is the year of search. Therefore, the question of issue of notice u/s. 153C does not arise. In fact,

the AO has not issued notice u/s. 153C of the Act and this fact has been fairly accepted by Ld. DR present for the Revenue. But, the AO has issued notice u/s. 142(1) of the Act and completed assessment u/s. 143(3) r.w.s. 153C of the Act, even though he cannot issue notice u/s. 153C for the impugned assessment year. Therefore, we are of the considered view that, in absence of notice u/s. 153C of the Act, the assessment framed by the AO u/s. 143(3) r.w.s. 153C of the Act dated 29.12.2017 is *void and ab-initio* and liable to be quashed. Thus, we quash the assessment order passed by the AO u/s. 143(3) r.w.s. 153C of the Act dated 29.12.2017.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 14th October, 2022 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 14th October, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |