

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./ITA Nos.: **218, 219/CHNY/2020 &**
337/CHNY/2021

निर्धारण वर्ष/Assessment Years: 2009-10, 2010-11 & 2014-15

Shri Yennarkay R.
Chiranjeevirathnam,
No.34G, Poothaiammal Nagar,
Sivakasi – 626 123.

The DCIT / ACIT,
vs. Central Circle 2
Madurai.

PAN: ABNPC 2248Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri K. Balasubramanian, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing : 17.11.2022

घोषणा की तारीख/Date of Pronouncement : 23.11.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These three appeals by the assessee are arising out of different orders of the Commissioner of Income Tax (Appeals)-19, Chennai in ITA Nos. 200, 201 & 202/2016-17 of different dates 29.11.2019 & 28.02.2019. The assessments were framed by the ACIT, Central Circle -2, Madurai for the assessment years 2009-10,

2010-11 & 2014-15 u/s.143(3) r.w.s 153C of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders of even date 31.12.2016.

2. First, we will deal with **ITA Nos.218 & 219/Chny/2020** for the assessment years 2009-10 & 2010-11.

3. At the outset, the Id.counsel for the assessee drew our attention to petition filed under Rule 11 of the Income Tax Appellate Tribunal Rules, 1963 stating that the assessee has raised additional ground, which is purely legal, as the assessment framed u/s.153C of the Act is barred by limitation. For this, assessee has raised following additional ground which is common in both the years. The additional ground raised by assessee in assessment year 2009-10 is as under:-

“Authorities below erred in issuing notice u/s.153C and completing the assessments for AY 2009-10 & 2010-11 which are barred by limitation because the provisions of section 153C(1) of the I.T.Act, 1961 do not apply to these two assessment years.”

However, the assessee in assessment year 2010-11 has raised this ground in splitting into three as under:-

1.1 Learned CIT (A) erred in holding that [vide para 6.7 p.11 of appellate order] that there is no legal infirmity in the proceedings initiated under sec.153C.

1.2 He failed to appreciate that the satisfaction note reproduced by him at p.10 refers to:"Name, address and PAN of the person in whose case action under section 153C is proposed" is in respect of PAN: AAAHC8711 which is the HUF of the appellant for which status alone approval is granted by JCIT for issue of notice u/s 153C.

1.3 Thus, in the absence of recordal of any satisfaction note in the individual Status of the appellant as required u/s 153C, issue of notice to individual and completion of individual assessment u/s 143(3) r.w.s 153C of the Act on 31-12-2016 is illegal, void and without jurisdiction.

3.1 From the above grounds raised in these two assessment years by assessee, those are additional grounds but are purely legal and go to the root of the matter. The Id.counsel for the assessee pointed out that the Tribunal has not to investigate or not to bring on record any facts as the facts are available from the assessment orders itself, that the assessment framed u/s.153C of the Act in these two assessment years 2009-10 & 2010-11 are barred by limitation. When these facts were confronted to Id.CIT-DR, he could not controvert the fact situation but opposed vehemently admissibility of the additional grounds.

4. Brief facts relating to these two assessment years are that the assessee is a Director in Standard Press (India) Pvt. Ltd., and filed his return of income for the assessment year 2009-10 originally on 03.09.2009 and for assessment year 2010-11 on 02.11.2010.

Subsequently, a search u/s.132 of the Act was conducted by the Income-tax Department on Standard Fireworks group on 16.10.2014 and consequently, the residential premises of the assessee was also covered by the search. Subsequently, a notice u/s.153C r.w.s. 153A(a) of the Act was issued dated 11.11.2016 calling for returns of income for these two assessment years. In response to these notices, the assessee filed returns of income for assessment year 2009-10 and 2010-11 on 28.11.2016. The AO framed assessment u/s.143(3) r.w.s. 153C of the Act vide orders dated 31.12.2016 in both the assessment years. Aggrieved, assessee preferred appeal before the CIT(A).

5. The assessee before CIT(A) agitated the issue of validity of assessment framed u/s.143(3) r.w.s 153C of the Act vide letter dated 31.12.2016 in both the assessment years, taking a stand that assessment completed is illegal, void and without jurisdiction. It was contended before CIT(A) that the assessee's premises having been covered by search u/s.132 of the Act on 16.10.2014, the AO ought to have issued notice u/s.153A(1)(a) of the Act and not u/s.153C of the Act. But the CIT(A) noted that there is a recording of satisfaction by the AO in regard to seized material and hence, the

assessee's matter is covered u/s.153C of the Act and CIT(A) noted that the AO recorded satisfaction on 10.11.2016 while completing the assessment of the searched person i.e., Standard Fireworks Pvt. Ltd. The CIT(A) recorded this fact in para 6.7 & 6.8 as under:-

“6.7 The AO has recorded the satisfaction derived from the perusal of the seized material and the same is dated 10/11/2016. The notice u/s 153C is issued after the recording of satisfaction on 11/11/2016.

6.8 The following satisfaction has been recorded by the assessing officer for both the assessment years involved separately.

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.....
.....

Thus, it cannot be said there is any technical flaw or legal infirmity in the proceeding initiated and computed u/s.153C.”

The CIT(A) rejected the ground of illegality in both the assessment years and hence, assessee preferred appeal before Tribunal.

5.1 Now before us, the Id.counsel for the assessee only pointed out that assessment was framed u/s.153C of the Act and the AO of the searched person has recorded his satisfaction in regard to these two assessment years in assessee's case on 10.11.2016 and from that date, it is to be considered that the search is initiated on that date and the six years will start from that very date. The Id.counsel for the assessee countered that assessment year 2009-

10 & 2010-11 will not fall in the block of six years as envisaged in the search assessment provisions i.e., 153A to 153D which is code in itself. Hence, in view of these facts, we admit the additional ground and adjudicate the issue.

6. The fact relating to the present two appeals relating to assessment year 2009-10 & 2010-11 are that the assessment was completed by the AO u/s.143(3) r.w.s. 153C of the Act vide orders dated 31.12.2016. Further, admitted position is that notice for initiating search was also issued u/s.153C of the Act. For this, the reasoning of CIT(A) is reproduced in above para 5. We noted from the findings of CIT(A) and perusal of satisfaction recoded in the case of Standard Fireworks Pvt. Ltd., Sivakasi that was recorded on 10.11.2016 and which clearly administers that the assessment is to be completed u/s.153C of the Act. As pointed out by Id.counsel for the assessee, the case law of Hon'ble Delhi High Court in the case of CIT vs. RRJ Securities Ltd., 380 ITR 612, wherein the provisions of section 153C of the Act is interpreted that in the case of search person, the AO of the searched person assumes possession of the seized documents / assets on search of the assessee and the seized asset / documents, in case 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 does not belong to the searched person. The Hon'ble Delhi High Court interpreted that 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. The Hon'ble Delhi High Court has considered this issue 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 year 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.”

6.1 In the present case before us, the relevant assessment year involved are 2009-10 & 2010-11 and satisfaction is recorded by the AO as is evidence from the satisfaction note reproduced by the CIT(A) in his order at page 10 & 11 and the same was recorded on 10.11.2016. It means that the date of search is to be considered as 10.11.2016 in the case of this assessee and if we make a reverse

counting that means, the years in the block of six assessment years will come only assessment year 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 & 2016-17. These six assessment years and part of the search year will come in this block of six assessment years and not others, while making assessment u/s.153C of the Act. It means that the assessment years 2009-10 & 2010-11 are clearly barred by limitation. In view of the above facts and circumstances, we hold that the assessments framed u/s.153C r.w.s. 143(3) of the Act in these two assessment years are barred by limitation and hence, bad in law. We quash the assessments and allow this additional ground raised by assessee.

7. Since we have allowed the additional ground and quashed the assessment in both the assessment years, we need not go into the merits of the case. Therefore, the appeals of the assessee in assessment year 2009-10 & 2010-11 are allowed.

8. Now coming to **ITA No.337/Chny/2021** for the assessment year 2014-15.

9. At the outset, it is noticed that this appeal is barred by limitation by 862 days. Brief facts are that as per Form No.36, the order of CIT(A) dated 28.02.2019 was received by assessee on 13.03.2019, which is not in dispute. The due date for filing of appeal is 12.05.2015 but appeal was actually filed on 20.09.2021. It is to be clarified that Covid-19 pandemic started on 25.03.2020 and nationwide lockdown was announced by Central Government. But, the assessee has to explain the delay up to 24.03.2020 and it means, there is a delay of 316 days. The Id.counsel for the assessee drew our attention to the affidavit filed by assessee which reads as under:-

“I, YENNARKAY R. CHIRANJEEVIRATHNAM, Son of R. RAVINDRAN, aged about 50 years, residing at 34G, Poothaiammal Nagar, SIVAKASI 626123, hereby solemnly and sincerely affirm and state:

That I am the appellant in the IT appeal for AY 2014-15 being filed before the Hon'ble ITAT Chennai.

That I am fully aware of the contents of this affidavit.

That I was under the bonafide impression that, for AY 2014-15, the learned AO validly issued the notice u/s 153C r.w.s 153A(a) on 29-11-2016 and therefore I responded to the same by filing ROI on 22-12- 2016.

That after the completion of the assessment under sec. 143(3) r.w.s 153C on 21-12-2016 but during the pendency of my appeal against this asst.order before CIT (Appeal)-19 Chennai, on the advise of my Counsel. I applied for copy of 'satisfaction note' recorded in my case for AY 2014-15 on 25-10-2017 and again on 13-11-2017. Request was also made to the CIT Appeal)-

19 Chennai on this issue on 30-10-2017. But all these met with no response.

That on receiving the appellate orders for AY 2009-10 and 2010-11 in ITA Nos.200/16-17 & 201/16-17 dt.29-11-2019 respectively, I noticed that the satisfaction note reproduced by CIT (A)-19 Chennai in his appellate order relates to my HUF having PAN: AAAHC8711L and not to my individual status having PAN: ABNPC2248Q.

That, therefore, on 5-7-2021, I sought for a copy of the satisfaction note for AY 2014-15 also under Sec.6(1) of the RTI Act.

That, in response, I received reply of the ACIT, Central Circle-2 Madurai dt.6-8-2021, enclosing a copy of the Satisfaction Note, a perusal of which reveals that the same relates to my HUF having PAN:AAAHC8711L and not to my individual status having PAN: ABNPC2248Q.

That, since the notice u/s 153C issued to my individual status, without recording a satisfaction note, I am advised that the assessment completed u/s 143(3) r.w.s 153C on 21-12-2016 is illegal, void and without jurisdiction and therefore I took steps to meet my counsel and to file an appeal against the appellate order dt. 28-2-2019 for AY 2014-15.

That, though the appellate order is dt. 28/2/2019, which was received by me on 13/3/2019, normally, I ought to have filed this appeal on before 12/5/2019, but, since, for the first time, I am made aware of the above satisfaction note only on 6-8-2021 I took steps immediately to file this appeal. In the process a delay of 2 years, 4 months and 8 days has happened.

That, thus, the above delay has happened for the reasons stated above and also due to covid-19 effect, lock down, travel restriction, which were beyond my control.

I, therefore, pray that Hon'ble ITAT Bench be pleased to condone the delay, admit this appeal and render justice.

Solemnly and sincerely affirmed at Sivakasi on this 13th day of September 2021.”

The Id.counsel for the assessee read out the affidavit and stated that the assessee could not receive satisfaction note recorded in his case for assessment year 2014-15. When it was pointed out to the Id.counsel that the satisfaction note is very much available in the order of CIT(A) at para 7, the Id.counsel could not answer the same. Further, the Bench enquired that how satisfaction note is important for filing of appeal before Tribunal, when the assessee filed appeal before CIT(A) and CIT(A) adjudicated by noting the relevant satisfaction note in para 7 as under:-

7. However, the satisfaction recorded for initiating 153 C proceedings was called for from the assessing officer and it was noted that the following satisfaction has been made: -

“With reference to the above it is submitted that the issue affects the jewellery is be considered for assessment in assessment year 2015 - 16, and the proceedings are in progress. The assessee himself offered additional income of 1.87 crores on account of excess jewelry for assessment year 1415 during the course of search. In view of these are demand draft for L87 crore was published by the assessee and the same was deposited in PD account. The assessee has not offered the above admitted amount in either assessment years 2014 - 15 or in 1516, the proposal for proceeding under section 153 C in assessment year 2000 1415 was submitted.”

It seems that the plea taken by the assessee in his affidavit is itself defeated from the very order of the CIT(A) and no other cause is attributed by the assessee for this long delay. In view of the fact that there is no reasonable cause and delay in filing appeal minus

Covid period is 316 days and total delay is 862 days. Since, there is no reasonable cause adduced, we refuse to condone the delay. Hence, the appeal of the assessee is dismissed as un-admitted.

10. In the result, the appeals filed by the assessee in ITA Nos.218 & 219/CHNY/2020 are allowed and ITA No.337/CHNY/2021 is dismissed.

Order pronounced in the open court on 23rd November, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)
(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 23rd November, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy 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. |

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT