

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1816/Del./2021
(ASSESSMENT YEAR : 2012-13)**

**ITA No.1817/Del./2021
(ASSESSMENT YEAR : 2013-14)**

DCIT, Circle 5,
Delhi.

vs. M/s. HN Properties Pvt. Ltd.,
Khasra No.172, Neel House,
Lado Sarai, Opp. Qutub Minar,
New Delhi – 110 030.

(PAN : AABCT9070B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Madhur Aggarwal, Advocate
REVENUE BY : Shri M. Baranwal, CIT DR

Date of Hearing : 20.12.2022

Date of Order : 23.12.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These appeals by the Revenue are directed against the orders of the Id. CIT (Appeals)-24, New Delhi both dated 13.08.2021 for the assessment years 2012-13 & 2013-14.

2. Since the appeals were heard together and matters are similar, these are being disposed off by this common order. We are referring to AY 2012-13.

3. The grounds of appeal for AY 2012-13 taken by the Revenue read as under :-

“1. That on the facts and circumstances of the case and in law the addition of Rs.2,75,18,088/- made in the order passed u/s 153C/143(3) of the Income Tax Act is arbitrary, against law and facts on record

2 That on the facts and circumstances of the case and in law the assumption of jurisdiction by the Id. AO u/s 153C as well as proceeding conducted there under are against the provisions contained in the Income Tax Act) is bad in law, is without jurisdiction and barred by limitation and hence liable to be quashed.

3 That on the facts and circumstances of the case and in law the learned Assessing officer while making the addition failed to consider the fact that no incriminating documents in respect of forfeiture of shares have been found during search and as such addition made in the order u/s 153C/ 143(3) is bad in law and hence liable to be quashed.

4. That on the facts and circumstances of the case and in law the learned Assessing officer failed to appreciate that the original assessment have already been completed u/s 143(3) of the Income Tax vide order dated 27/02/2015 by Income Tax officer, Ward- 11 (2), New Delhi and in the' original assessment forfeiture of shares have been held to be genuine.

5 That on the facts and circumstances of the case and in law the learned Assessing officer failed to appreciate the fact that amount received on account of forfeiture of share is capital receipt and is not taxable and all the documentary evidence to prove the genuineness of forfeiture of shares have been submitted and during the course of assessment proceeding.

6 That on the facts and circumstances of the case and in law the statement relied upon in the impugned assessment order has not been brought to the knowledge of the appellant and is not related to appellant and the alleged investigation carried out by the Income Tax department were carried out on the back of the

assessee without bringing any cogent material on record (if any collected) and without providing an opportunity to cross examine the same.

7 That the addition made in the order passed u/s 153C is not based on judgment and inquiry conducted by the Id. AO and is not based on facts of the case but the addition has been made simply on the basis of incorrect facts, suspicion, assumption, surmises, & conjectures and without bringing any cogent material on record.

8 That on the facts and circumstances of the case and in law the learned AO while making the above addition arbitrarily and, mechanically rejected the explanation and evidence tendered by the appellant and made the addition by drawing subjective, premeditated and preconceived inferences therefore the same is not sustainable.

9 The learned Assessing officer erred in levying the interest and initiating the penalty proceeding u/s 271 (1)(c) of the Income Tax Act.”

4. In this case, there was search and seizure action initiated on 07.04.2016 in the case of Shri Harvansh Chawla. During the course of search, documents and material containing information having a bearing on taxable income of M/s. H.N. Properties Pvt. Ltd. were seized. AO further noted that satisfaction was recorded on 29.03.2019 and seized material was handed over to the AO of M/s. H.N. Properties Pvt. Ltd. u/s 153C of the Income-tax Act, 1961 (for short 'the Act'). In the said order, AO made addition of Rs.2,75,18,088 for this assessment year.

5. Against this order, assessee went in appeal before the Id. CIT (A). Assessee challenged the jurisdiction assumed by the AO u/s 153C of the Act. The contention of the assessee was that these two assessment years i.e.

2012-13 & 2013-14 are beyond six years from the date of recording of satisfaction and hence cannot be subject to 153C proceedings. In this regard, ld. CIT (A) referred to assessee's reliance on the decision of ITAT, Delhi in the case of Karina Airlines International Ltd. vs. ACIT, Circle 5, Delhi in ITA No.203/Del/2021 order dated 09.06.2021. Ld. CIT(A) accepted the contentions of the assessee and in his order further referred to Hon'ble Delhi High Court decision in the case of CIT vs. RRJ Securities Ltd. (2016) 380 ITR 612 (Delhi). Ld. CIT (A) agreed to the contention that these two assessment years under appeals were beyond the limitation of six years from the date of satisfaction and were outside the purview of section 153C of the Act. In this regard, ld. CIT (A) also referred to the decision of Hon'ble Delhi High Court in the case of RRJ Securities Ltd. (supra). Relevant findings of the Ld. CIT (A) is reproduced as under :-

“4.2.4 I have considered facts of the case as well as written submission of the appellant. As noted in para 1 of the assessment order, a search and seizure action u/s.132 of the Income-tax Act was initiated on 07.04.2016 in the case of Sh. Harvansh Chawla at C- 17, Nizammudin East, New Delhi. During the course of search, documents and material containing information having a bearing on taxable income of M/s H N Properties Private Limited were seized. As noted in para 3 of the assessment order, as per provisions of section 153C of the Act, satisfaction by the AO of the searched person (Sh. Harvansh Chawla in this case) was recorded on 29.03.2019 and seized material was handed over to the AO of M/s H N Properties Private Limited, the assessee company. After perusing the information available on record and documents/information received from the AO of searched person, satisfaction was recorded on 15.05.2019 on part of the AO of M/s H N Properties Private Limited (the assessee). Thereafter, notice

u/s 153C of the Act was issued manually on 15.05.2019 and sent by post and duly served on assessee.

4.2.5 The appellant has claimed that the assessment in this case is u/s 153C of the Income Tax Act and as such the date of recording of satisfaction is construed as date of search and as such the Assessing Officer can issue the notice u/s 153C for six assessment year's preceding the year in which satisfaction have been recorded. The satisfaction was recorded on 15/05/2019 i.e. in the assessment year AY 2020-2021 and as such six preceding previous years covered under u/s 153C of the Income Tax Act would be AY 2014-15, 2015-16,2016-17,2017-18,2018-19 and AY 2019-20.

4.2.6 In this regard, Hon'ble Delhi High Court in the case of CIT Vs. RRJ Securities Ltd. [2016] 380 ITR 612 (Delhi) held that in terms of proviso to section 153C, a reference to the date of the search under the second proviso to section 153A 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 Assessing Officer 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 would also have to be construed with reference to the date of handing over of assets/documents to the Assessing Officer of the assessee.”

After referring to several case laws, ld. CIT (A) concluded as under :-

“ The facts of the present appeal are identical to those decided in above judgment of Hon'ble ITAT Delhi in the case of Karina Airlines International Ltd vs ACIT, Circle 5, Delhi ITA No 2031 Dell 2021 dated 09106/2021. Respectfully following above judgment of Hon'ble ITAT Delhi, it is held that since the date of search was 07.04.2016, the amendment brought by the Finance Act, 2017 would not be applicable. Hence, in view of judgment of Hon'ble Delhi High Court in the case of CIT Vs. RRJ Securities Ltd. [2016] 380 ITR 612 (Delhi), six years covered u/s 153C of Income Tax Act would be

A Y 2014-15 to A Y 2019-20 since the date of recording of satisfaction was 15.05.2019. Hence, proceedings u/s 153C of Income Tax Act for A Y 2012-13 are quashed and additions of Rs.2,75,18,0881- and Rs.9,5841- are hereby deleted. Ground No.2 of the appeal is allowed.”

6. Similar order was passed in AY 2013-14 by the ld. CIT (A).
7. Against these orders, Revenue has filed appeals before us. We have heard both the parties and perused the records.
8. Ld. Counsel of the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of Hon'ble Delhi High Court in the case of CIT vs. RRJ Securities Ltd. (supra) and the facts in the case are quite identical in the decision of ITAT, Delhi in Karina Airlines International Ltd. (supra). Ld. Counsel submitted that six years from the date of satisfaction would cover AYs 2014-15 to 2019-20 and not AYs 2012-13 & 2013-14.
9. Per contra, ld. DR for the Revenue has tried to distinguish the case law by referring to rules of interpretation and amendment brought about by Finance Act, 2017. He has urged that there cannot be two different sets of 6 years for the purpose of 153A and 153C of the Act. He also relied upon the order of the AO.
10. Upon careful consideration, we note that in this case, there was a search conducted on 07.04.2016. AO's satisfaction for starting 153C proceedings against the present assessee was recorded on 29.03.2019.

Taking this into account, six preceding assessment years are 2014-15 to 2019-20 which excludes AYs 2012-13 & 2013-14. This is as per the ratio laid down by aforesaid two decisions including Hon'ble Delhi High Court in the case of CIT vs. RRJ Securities Ltd.. ITAT, Delhi in Karina Airlines International Ltd. (supra) had held that the amendment brought by the Finance Act, 2017 would not be applicable as it is prospective. It is not the case that Hon'ble High Court has reversed the above decision of ITAT, Hence, following the precedence, we reject the pleadings and submission of the ld. CIT DR for the Revenue. In the present cases, since the date of search was 07.04.2016 the amendment brought by the Finance Act, 2017 would not be applicable. Accordingly, respectfully following the precedent as above, we do not find any infirmity in the order of the ld. CIT (A). Hence we uphold the same.

11. Our above order applies *mutatis mutandis* to both the appeals here.

12. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on this 23rd day of December, 2022.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 23rd day of December, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-24, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
