

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K CHOUDHRY, JUDICIAL MEMBER

ITA.Nos.4952 to 4954/Del./2018
Assessment Years 2011-2012, 2013-14 & 2014-15

The DCIT, Central Circle, Noida	vs.	Munny Entertainment Pvt. Ltd., 689, Sector -6, Panchkula, Haryana PAN AAGCM6628P
(Appellant)		(Respondent)

Cross Objection Nos.169 to 171/Del./2018
Arising out of
ITA No. 4952 to 4954/Del./2018
Assessment Years 2011-2012, 2013-14 & 2014-15

Munny Entertainment Pvt. Ltd., 689, Sector -6, Panchkula, Haryana PAN AAGCM6628P	vs.	The DCIT, Central Circle, Noida
(Cross-Objector)		(Respondent)

For Revenue :	Ms. Sarita Kumari, Sr. DR
For Assessee :	Shri Ved Jain, Advocate Shri Aman Garg, CA

Date of Hearing :	14.12.2022
Date of Pronouncement :	04.01.2023

ORDER

PER ANIL CHATURVEDI, A.M. :

These appeals filed by the Revenue and the Cross Objection filed by the Assessee are directed against the Order of the Ld. CIT(A)-IV, Kanpur, dated 25.04.2018 in Appeal No.CIT(A)-IV/11259,11287 & 11292/DCIT-CC Noida/2016-17 relating to the A.Ys. 2011-2012, 2013-14 & 2014-15

2. All these appeals and cross objections filed by the revenue and assessee are with respect to the same party but for different assessment years. Before us, at the outset both the parties submitted that the facts and the issue involved in all the appeals are identical and; the submissions made by them by arguing one appeal would be applicable to the other appeals also. Ld.AR further submitted that cross objections filed by the assessee are in support of the decision of Ld. CIT(A) and if the appeals of the Revenue are dismissed then the cross objection filed by the assessee can

be treated as infructuous. In view of the aforesaid submissions of the parties, we proceed to dispose of all the appeal by a consolidated order but however proceed with narrating the facts in ITA 4953/Del/2018 for A.Y. 2013-14.

3. Assessee is a company stated to be involved in the production of motion pictures radio, television and other entertainment activities. A.O. has noted that a search & seizure operation u/s. 132 of the Act was conducted on 27.11.2014 in the case of Maconns, Meenu and Yadav Singh Group Noida covering its business premises and residences of the Director, their family members and other business associate and key persons. A.O. has noted that during the search operation at the residence of Shri Abhay Maheshwari, a laptop was found and seized. On scanning the seized data it was found that M/s. Golf Link Hospitality Pvt. Ltd., had obtained unsecured loans, share application money and share capital from various doubtful entities including the assessee. Consequently notice u/s. 153C of the Act was issued on 30.05.2006 and in response to which

assessee submitted a copy of acknowledgment of ITR filed on 04.07.2016 claiming loss of Rs. 6,79,663/- . Thereafter case was taken-up for scrutiny and consequently, assessment was framed under section 153C r.w.s 143(3) of the I.T. Act, 1961 vide order dated 28.12.2016 and the total income was determined by the A.O. at Rs.17,21,80,337/-.

2.1. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) for A.Y. 2011-12, 2013-14 & 2014-15, who vide order dated 07.10.2019 in Appeal No. CIT(A)-IV/11259,11287 & 11292/DCIT-CC Noida/2016-17 granted substantial relief to the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal and has raised the following effective ground :

1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the

issuance of notice u/s 153C, without appreciating that in the satisfaction note the AO had clearly brought out all the facts and circumstances, which indicated that the names of the entities including the assessee, appearing on seized documents pertaining to Golf Link Hospitality Pvt. Ltd. were in the nature of accommodation entries only for routing the undisclosed income of Yadav Singh Group and hence such documents constituted "incriminating material" for the purpose of the issue of notice u/s 153C in the context of assessee

2. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that the seized balance sheet of Golf Link Hospitality Pvt. Ltd. did not constitute "incriminating material" on grounds that the balance sheet was part of regular books, without appreciating that since all the searched entities of the Yadav Singh Group were found to be engaged in routing the unaccounted funds by layering

through various entities including assessee, controlled by them as mentioned in the satisfaction note, therefore the mere fact that the entries were recorded in regular balance sheet of the beneficiary could not by itself allow the treatment of such seized documents as non-incriminating in the context of entities providing accommodation entries i.e. assessee as the expression used in 153C is "in relation to person other than the searched person.

3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that the seized balance sheet of Golf Link Hospitality Pvt. Ltd. did not constitute "incriminating material" on grounds that the balance sheet was part of regular books, without appreciating that whether the material is incriminating or not, is to be seen in context of totality of facts and circumstances and in the context of the person in whose hands such entries in the documents represent the unexplained income.*

4. *Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in law while holding that there was no incriminating material for the issuance of notice w/s 153C, without appreciating that while recording the satisfaction for issue of 153C the test for "incriminating material" has to be only in nature of prima face belief based on some material having live nexus and not in the nature of absolute evidence established after detailed investigation of facts or law.*

5. *Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in applying the decision of the Hon'ble Supreme Court in the case of M/s Sinhgad Technical Education Society, which was distinguishable on the facts of the present case.*

6. *The order of the CIT (A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.*

4. Before us, at the outset Ld. DR submitted that though the Revenue has raised various grounds, but the sole controversy is that the Revenue is aggrieved by the decision of Ld. CIT(A) in holding that there is no incriminating material for issuance of notice and therefore the assessment framed u/s. 153C were legally unsustainable and therefore quashed.

5. Before us, Ld. DR took us through the assessment order and submitted that during the course of search a laptop was found from the residence of Shri Abhay Maheshwari, and the data retrieved from the laptop had showed that Golf Link Hospitality Pvt. Ltd. had obtained unsecured loans from various doubtful entities including the assessee. She therefore submitted that the material found during the course of search was incriminating material and the A.O. was therefore justified in framing the assessment u/s. 153C. She submitted that Ld. CIT(A) has erred in holding that the assessment framed u/s. 153C to

be bad in law. In support her contentions she also placed reliance on the following decisions:-

1. *Sanjay Kumar Choudhary (HUF) vs. ACIT (2022)*
136 taxmann.com 151 (Surat-Trib)
2. *Pravinbhai Keshavbhai Patel vs. Deputy*
Commissioner of Income Tax, Centre Circle -1(2),
Ahmedabad (2014) 45 taxmann.com 533 (Ahmedabad-
Trib)
3. *Ganpati FincapServices (P.) Ltd. vs Commissioner*
of Income Tax (2017) 82 taxmann.com 408 (Delhi)
4. *Rajesh Sunderdas Vaswani vs ACIT (2016) 76*
taxmann.com 311 (Gujarat)
5. *SSP Aviation ltd vs. DCIT (20 taxmann.com 214)*
6. *CIT vs Classic Enterprises (35 taxmann.com 244,*
219 Taxmann 237, 358 ITR 465, 268 CTR 364)
7. *Savesh Kumar Agarwal vs Union of India (35*
taxmann.com 85, 216 Taxman 109, 353 ITR 26)

6. She therefore submitted the order of the Ld. CIT(A) be set aside and the order of A.O. be upheld.

7. Ld.AR on the other hand reiterated the submissions made before A.O. and Ld. CIT(A). He further placed on record the copy of satisfaction note for initiation of proceeding u/s. 153C and from it he pointed to the chart which showed the share application money accepted by Golf Link Hospitality Pvt. Ltd. and the outstanding as on the Balance Sheet date. From that table he pointed to the name of the assessee which was appearing therein. He further submitted that identical issue arising out of the same search arose in one of the other group companies namely YPT Entertainment House Pvt. Ltd., whose name also appeared in the same satisfaction note. He submitted in that case, the coordinate bench of Tribunal vide order dated 28.02.2022 in ITA No. 4946 & 4949/Del/2018 had upheld the order passed by Ld. CIT(A) and has dismissed the appeal of the Revenue. He pointed to the copy of the aforesaid order which is placed at page no. 22 to 30 of the paper book.

8. He further submitted that assessee had not provided any unsecured loan to Golf Link Hospitality Pvt. Ltd. but in fact it was a case of investment in the share capital of Golf Link Hospitality Pvt. Ltd. He submitted that the amount of investment has been shown in the books of accounts of the assessee and no adverse inference has been drawn by A.O. in the reassessment order in relation to the transaction of the assessee with Golf Link Hospitality Pvt. Ltd. He further submitted that the additions have been made by A.O. despite there been no incriminating material found during the course of search in respect aforesaid addition. He also placed reliance on the decision of Hon'ble Apex Court in the case of PCIT vs. Sinhgad Technical Education Society reported in (2017) 397 ITR 344 (SC). He therefore submitted that in view of the aforesaid facts no interference to the order of Ld. CIT(A) is called for.

9. We have heard the rival submissions and perused the material on record. The issue in the present appeal of Revenue is with respect to the quashing of assessment order

passed by u/s. 153C of the Act. We find that Ld. CIT(A) vide para 5.5 of the order, after considering the submissions, remand report and assessee submissions to the remand report has given a finding that in the satisfaction note, the basis on which the A.O. had initiated the proceedings u/s. 153C indicated that assessee had invested of Rs. 50 lac each in A.Y 2011-12 and A.Y 2012-13 but the factual position is that the investments exist only in A.Y 2011-12, meaning hereby that according to the satisfaction note the reasons were recorded only for A.Y. 2011-12 and there exists no satisfaction for years other than A.Y 2011-12 for issuing notice u/s. 153C. He has further given a finding that even for A.Y 2011-12, the satisfaction which has been recorded is not based on incriminating assets/documents found as a result of search and that there does not exist any incriminating document which “belongs to” or “pertains to” or “relates to” the assessee. He has further noted that the investments reflected in the Balance Sheet of Golf Link Hospitality Pvt. Ltd. were part of its regular books of

accounts and was disclosed by the assessee and Golf Link Hospitality Pvt. Ltd. in the return of income and cannot be considered to be incriminating material. He has further given a finding that the A.O. has not made any addition on the basis of any incriminating material found and further it does not co-relate with the satisfaction noted by A.O. CIT(A), by following the decision of Hon'ble Apex Court in the case of Sinhgad Technical Education Society (supra) and Hon'ble Delhi High Court in the case of Index Security P. Ltd. held the notice issued u/s. 153C to be *void ab initio*, invalid and legally not sustainable. He accordingly annulled the assessment framed u/s. 153C of the Act.

10. We further find that on identical facts in the case of YTP Entertainment House Pvt. Ltd., one of the group concern of the assessee, on issuance of notice u/s. 153C arising out of the same search was held to be not legally sustainable and therefore assessment was annulled. Before us, Revenue has not pointed to any distinguishing feature in the facts of the present case and in the case of YTP

Entertainment House Pvt. Ltd., nor has pointed to any fallacy in the findings of Ld. CIT(A). Further the decisions relied upon the Revenue are distinguishable on facts and are therefore not applicable to the facts of the present case. Considering the totality of the aforesaid facts we find no reason to interfere with the order of Ld. CIT(A) on this issue and thus the **grounds of Revenue are dismissed.**

11. **The appeal of the revenue is dismissed.**

12. Since we have dismissed the appeal of the Revenue and considering the contentions of Ld.AR, **the cross objections of the assessee are also dismissed.**

13. As far as ITA No. 4952 & 4954/Del/2018 and CO's for the corresponding ITA's are concerned, both the parties have stated that the facts in those cases are identical to that of ITA No. 4953/Del/2018. We have hereinabove for the reasons stated therein have upheld the order of Ld. CIT(A). We for similar reasons uphold the order Ld. CIT(A) for A.Ys. 2011-12 & 2014-15 and thus dismiss

the appeal of Revenue and CO of assessee. **Thus the appeals in ITA No. 4952 & 4954/Del/2018 are dismissed, and the corresponding cross objections of the assessee are also dismissed.**

14. **In the result all the appeals of Revenue and cross objections of Assessee are dismissed.**

Order pronounced in the open Court on 04.01.2023.

Sd/-
(N.K CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 04th January, 2023

NV/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.