

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

I.T.As No.7560 & 7561/DEL/2017
Assessment Years 2006-07 & 2007-08

Malik Network & Computer P. Ltd., B-4/71 A, Lawrance Road, Delhi.	v.	ITO, Ward-16(2), New Delhi.
TAN/PAN: AACCM2552Q		
(Appellant)		(Respondent)

Appellant by:	Ms. Sumangla Saxena, Adv. Shri Rajiv Saxena, Adv.		
Respondent by:	Ms. Sarita Kumari, CIT-DR		
Date of hearing:	21	12	2022
Date of pronouncement:	23	01	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed at the instance of the Assessee against the respective orders of the Commissioner of Income Tax (Appeals)-XXXIII, New Delhi ['CIT(A)' in short] both dated 31.03.2017 arising from the assessment orders both dated 30.03.2015 passed by the Assessing Officer (AO) under Section 153C of the Income Tax Act, 1961 (the Act) concerning AYs 2006-07 & 2007-08.

2. As per the grounds of appeal, the assessee has *inter alia* challenged the assessments framed under Section 153C of the Act on the ground that the impugned assessment orders passed by the Assessing Officer are without jurisdiction and *void ab*

initio and thus liable to be quashed.

3. At the time of hearing, the ld. counsel for the assessee, Ms. Sumangla Saxena pointed out at the outset that the captioned appeals concerning Assessment Years 2006-07 and 2007-08 are liable to be quashed at the threshold as the Assessing Officer could not have validly initiated notice under Section 153C of the Act for framing assessment owing to embargo of limitation placed under Section 153C of the Act. It was submitted that the date of search in the case of the searched person (other than assessee) is 25.08.2011. However, satisfaction towards escapement in the hands of the assessee herein by the Assessing Officer of the searched person was recorded on 05.03.2014. This satisfaction note dated 05.03.2014 was handed over to the Assessing Officer of the assessee on 21.03.2014. The Assessing Officer of the assessee in turn recorded satisfaction note on 22.09.2014. There is no reference to the date of receiving document seized by the Assessing Officer having jurisdiction on the assessee. The notice under Section 153C was eventually issued on 22.09.2014. It was next contended that no search operation under Section 132 of the Act carried out in the case of the assessee. As per the proviso to Section 153C of the Act, the date of handing over books or recording of date of satisfaction under Section 153C of the Act should be treated as date of initiation of search for determination of six assessment years as provided under Section 153A(1)(b) of the Act. In view of the aforesaid position, it was contended that if period of six years is calculated from the date of 21.03.2014, the Assessments Years 2006-07 and 2007-08 are

manifestly barred by limitation and thus would be out of purview of Section 153C r.w. Section 153A of the Act. Therefore, the notice issued under Section 153C of the Act for both the assessment years in question are incompetent in law and hence the assessment orders passed under Section 153C of the Act concerning Assessment Years 2006-07 and 2007-08 are liable to be quashed *in limine*.

4. The Id. DR relied upon the orders of the lower authorities.

5. We have heard the rival submissions on the issue. One of the controversies in the present case arises towards computation of limitation period under Section 153C of the Act for the purposes of issuance of notice and assessment thereon. As per Section 153A of the Act (in the case of searched persons), the limitation of preceding six years starts from the financial year in which search was conducted. However, in the case of Section 153C of the Act (person other hand searched person), the limitation of preceding six years starts from the date of receipt of seized assets or documents from the Assessing Officer of the person searched as per the erstwhile proviso to Section 153C of the Act which states as under:

“provided that in the case of such other person reference to the date of initiation of the search under Section 132 or making of requisition under Section 132A, in the second proviso to sub Section (1) of Section 153A shall be construed as references 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”

6. We notice here that the reasons for issue of notice under Section 153C r.w. Section 153A of the Act were recorded by the

Assessing Officer of the searched person on 05.03.2014. The satisfaction note was handed over to the Assessing Officer of the assessee on 21.03.2014. As a corollary, the books of accounts, documents seized etc. were handed over to the Assessing Officer of the assessee. Therefore, the limitation for preceding six years starts from the aforesaid date, i.e., 21.03.2014. Consequently, the Assessment Years 2006-07 and 2007-08 are clearly outside the sweep of exercise of jurisdiction under Section 153C of the Act. The jurisdiction of issue notice under Section 153C are ousted insofar as Assessment Year 2006-07 and 2007-08 are concerned when the date of handing over of satisfaction note dated 05.03.2014 to the Assessing Officer of the assessee on 21.03.2014 is reckoned. Similar view has been expressed by the Hon'ble Delhi High Court in the case of *Pr.CIT vs. Sarwar Agency P. Ltd. (2017) 85 taxmann.com 269 (Del)*. We thus find merit in the plea of the assessee that respective notices issued to the assessee under Section 153C of the Act for assessment years in question, i.e., Assessment Years 2006-07 and 2007-08 are without jurisdiction as these assessment years are beyond the purview of six assessment years in terms of pre-amended provisions of Section 153C of the Act. As a corollary, the assessments passed under Section 153C of the Act as a sequel to invalid notices are also liable to be quashed. In terms of these observations, the respective assessment years for Assessment Years 2006-07 and 2007-08 are set aside and quashed.

7. In view of the observations made hereinabove, we do not consider it expedient to dwell upon other grounds of appeal

agitated on behalf of the assessee.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on 23/01/2023.

Sd/-
[NARENDER KUMAR CHOUDHRY]
JUDICIAL MEMBER

DATED: /01/2023

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER