

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 2252/Mum/2021 (A.Y. 2014-15)**

**Dy.CIT, CC-7(2),**

Room No. 655, Aayakar Bhavan,

M.K. Road, Mumbai-400020.

..... Appellant

Vs.

M/s Glamour Health Care Pvt. Ltd.

4 Kiran Villa, 34, Ram Mandir Road,

Danda, Khar (West),

Mumbai-400052.

**PAN: AAACN2617F**

..... Respondent

Appellant/Revenue by : Sh. Rakesh Garg, CIT-DR

Respondent/Assessee by : Sh. Rajiv Khandelwal, AR

Date of hearing : 22/09/2022

Date of pronouncement : 19/12/2022

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by Revenue is directed against the order of Commissioner of Income Tax (Appeals)-49, Mumbai [for short 'Ld. CIT(A)'] passed under section 250 of the Income Tax Act, 1961 [for short 'the Act'] vide order dated 24.08.2021 for Assessment Year (AY) 2014-15. The Revenue has raised the following grounds of appeal:

*“1. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) is justified in deciding that AO did not have jurisdiction to make additions in an assessment u/s 153C of the Act in the case of the assessee by ignoring the fact that there was incriminating material/evidence.*

*2. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) is justified in deciding that the assessment u/s 153C was done solely on the basis of statement recorded under section 132(4) of the Act by ignoring the fact that incriminating material was available with AO which was duly recorded in the satisfaction note.*

*3. On the facts and the circumstances of the case and in law, the Ld. CIT(A) has failed to discuss the merits of the case wherein the assessee has brought its unaccounted income Rs 1,50,00,000/- into its books of account.”*

2. Brief facts of the case are that assessee filed its return of income on 07-02-2015 declaring total income at NIL. Thereafter a search operation u/s 132 of the act was conducted in the case of Thakkar and Ashar Group on 05-07-2017. At the time of search no scrutiny assessment was made in the case of assessee and there was no time left to issue notice u/s 143(2). In view of this this case falls in the category of un abated assessment.

3. Assessment of the assessee u/s 143(3) r.w.s. 153C was made based on the statement of one Shri Dev Kumar Thakkar, with the AO claimed to be a director of the company. Case of the assessee was centralised and notice u/s 153C was issued dated 26-09-2019 to the assessee in response to that assessee filed its return of income on 05-11-2019 at Rs. NIL.

4. In the assessment order the AO has heavily relied on the statement of Shri Dev Kumar Thakkar, who was one of the directors of the company as per the records of the ROC available on the MCA website. Statement of Shri Dev Kumar Thakkar was brought on record by the AO vide page 8 to 19 of the assessment order.

5. We have gone through the assessment order, statement of Shri Dev Kumar Thakkar (in the assessment order itself), order of the Ld.CIT(A) and submissions of the assessee on factual and legal front before various forums. After careful consideration of these order/submissions we observed as under:

- a) Case of the assessee centralised and notice u/s 153C was issued based on the statement of one Shri Dev Kumar Thakkar although no incriminating material in the form of any gold, bullion, cash or any document which goes against the assessee.
- b) Despite of assessee specific demand for satisfaction note, AO never supplied the same to assessee
- c) The whole assessment proceeding in the case of assessee u/s 153C was carried out merely on the basis of appraisal report as no satisfaction note and facility to cross examine (the person on whose statement AO relied upon) were never provided to the assessee.

6. We have referred the provisions of section 153C which clearly reveals that for the purposes of making assessment or reassessment u/s 153C of the act, the AO of the searched person has necessarily recorded a satisfaction to the effect that the document or materials found during the search u/s 132 do not belong to the searched person and rather it belongs to the person named specifically. That is, the detection of incriminating material at the site of other person leading to an inference of undisclosed income is a *sine qua non* for invocation of section 153C in the case of another person.

7. Moreover, despite of the fact that jurisdiction assumed by AO in the case of assessee is under challenge by the assessee still assessee furnished all the

documents relating to unsecured loans of Rs 1.5 cr received during the assessment year. Assessee submitted documents like confirmations of the parties, ITR, balance-sheets, computation of income and bank statements pertaining to the parties. In addition to above assessee specifically requested to the AO about issuance of notice u/s 133(6) to the parties concerned for the sake of establishing authenticity of its submission and satisfaction of the AO. Instead of considering this relevant request of the assessee, AO chosen to proceed in his own fashion.

8. Considering the facts above we further relied on the following judicial pronouncement of the honourable jurisdictional High court, apex court and board circular as under:

- Arpit land Pvt Ltd 393 ITR 276 (Bom)
- CIT vs Lavanya Land Pvt Ltd 397 ITR 246 (Bom)
- CIT vs Calcutta Knit wears 223Taxmann 115 (S.C)
- CBDT circular no. 24/215 dated 31-12-2015.

Based on above judicial pronouncement and board circular we reached to a conclusion that before a notice u/s 153C could be issued, AO is required to arrive at a conclusive satisfaction that documents belong to a person other than searched person and same should be available to the assessee. No assessment u/s 153C can be initiated merely on the basis of the statement of a person in whose premises the search was conducted. Such a statement may be an initiating point but it cannot be equated with corroborative evidence against another person.

9. It is further noted that the person on whose statement the whole proceeding u/s 153C was initiated and accomplished, himself retracted the original statement by executing two affidavit dated 12-07-2017 and 31-07-2017 before the AO. In the whole assessment proceeding the principle of natural justice is violated as no cross examination was provided to the assessee. on this issue we rely upon Andaman Timber Industries Vs CCE 62 Taxmann.com3 (S.C).

10. In view of the above findings, Ground No. 1 and 2 raised by the Revenue are dismissed.

11. As far as Ground No. 3 relating to deletion of addition made u/s 68 is concerned as discussed supra assessee produced all the relevant documents to prove the identity, genuineness and credit worthiness before the AO with a self-offering request/ submission for issuance of notice u/s 133(6) to the concerned parties, we don't have any reason to doubt about the intention of the assessee and consequently on the transactions. Based on this observation ground no. 3 raised by revenue is dismissed on merits.

12. In view of the above it is pronounced that the order of the AO failed both in terms of assuming jurisdiction u/s 153C as well as on merits u/s 68.

**13. In the result, appeal filed by the Revenue is dismissed.**

Order pronounced in the open court on 19<sup>th</sup> day of December, 2022.

Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER  
Mumbai, दिनांक / Dated: 19/12/2022  
SK, Sr.PS

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) /The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt.Registrar)  
**ITAT, Mumbai**