

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 458/Del/2017
(Assessment Year : 2006-07)

M/s. Y. P. Infrastructure Pvt. Ltd., F-213A, 1 st Floor, Lado Sarai, New Delhi	Vs.	ITO Ward – 27(4) New Delhi
PAN No. AAACY 2994 P		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Pulkit Saini, Adv.
Revenue by	Shri T. Kipgen, CIT – D.R.

Date of hearing:	13.12.2022
Date of Pronouncement:	09.02.2023

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 28.10.2016 of the Commissioner of Income Tax (Appeals)-10, New Delhi relating to Assessment Year 2006-07.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company. AO has noted that as per the information and documents received from ACIT Central Circle – 2, Jaipur, a search and seizure operation was conducted on 6th May

2010 at the office premises of M/s. KGK Infrastructure & Developers Private Limited and its group companies at Jaipur. The documents seized during the course of the search at the office premises of M/s. KGK Infrastructure & Developers Private Limited contained a copy of an agreement entered into between M/s. Shivam Real Estate & Developers, Jaipur and the assessee which was with respect to the sale of 18.44 hectare agricultural land situated at village Vimalpura, Jaipur. AO has further noted that ACIT, Central Circle-2, Jaipur vide letter F.No. ACIT/Central Circle-2/2012-13/Letter/A/483 dated 24th / 28th June 2013 had referred the case of the assessee for initiating the proceedings under section 153C of the Act on the basis of documents seized and information gathered during the course of search/post search proceedings in the case of M/s. KGK Infrastructure & Developers Private Limited. Thereafter, the notice under section 153C read with Section 153A of the Act dated 27th February 2014 was issued and served on the assessee to which assessee *inter alia* submitted that the return filed by it on 22nd November 2006 for A.Y. 2006-07 under Section 139(1) of the Act be treated as return filed in response to notice under Section 153C of the Act. Thereafter, the case was taken up for scrutiny and assessment was framed under Section 143(3) read with Section 153C of the Act vide order dated 27th February 2015 and the total income was determined at Rs.30,51,000/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 28th October 2016 in Appeal No. 83/16-17 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following effective ground :

“1. That under the facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred while confirming the additions of Rs.30,51,000/- on relying the photocopy of the Agreement and ignoring the original agreement which is a bonafide copy. Therefore, the orders passed by the Ld. CIT(A) may be liable to be quashed and the exorbitant additions made as such may be liable to be deleted.”

5. Assessee thereafter vide letter dated 26th September 2022 has raised the additional ground which reads as under:

“That both the notice dated 27.02.2014 and order of assessment dated 27.02.2015 has been framed u/s 153C/143(3) of the Act are without jurisdiction and, deserve to be quashed as such.”

6. With respect to the raising of the additional grounds, it is the submission of the assessee that the additional ground being a legal ground and since it goes to the root of matter, the same be admitted in view of the decision of Hon'ble Apex Court in the case of National Thermal Power Company Limited vs. CIT reported in 229 ITR 383 and Hon'ble Bombay High Court in the case of CIT vs. Pruthvi Brokers & Shareholders (P.) Ltd. reported in 349 ITR 336 (Bom).

7. Learned DR objected to the additional ground raised by the assessee and submitted that only such grounds/issues can be

raised before the Tribunal which arise from CIT(A)'s order. He further submitted that assessee has never raised the additional ground which it seeks to raise now before CIT(A) and he, therefore submitted that the admission of additional ground at such stage be not admitted. In support of its contentions, he placed reliance on the decision of Hon'ble Apex Court in the case of Manji Dana (1966) 60 ITR 582 (SC), Mukti Properties Pvt. Ltd. (2011) 12 taxmann.com 215 and the decision of Hon'ble Punjab and Haryana High Court in the case of Aravali Engineers Private Limited (2011) 11 taxmann.com 291.

8. On the issue of admission of additional grounds, we have heard the rival submissions and perused the materials on record. We find that facts which are necessary for adjudication of legal issue raised by the assessee by way of additional grounds of appeals are already on record and no new material or evidence is relied upon to challenge the legal issue. We find that the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. (supra) after considering the decision in the case of Jute Corporation of India Ltd. (supra) has observed that the Tribunal has jurisdiction to examine the question of law which arise from the facts as found from the authorities below and having bearing the tax liability of the assessee. It has further held that there is no reason to restrict the power of Tribunal u/s 254 only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals) and that both the assessee and department

have a right to file an appeal/cross objections before the tribunal and the Tribunal should not be prevented from considering questions of law arising in assessment proceedings although not raised earlier. It has further held that the view that tribunal is confined only to issues arising out of the appeal before CIT(A) is too narrow a view to take of the powers of the tribunal. We further find that the case laws relied upon by Learned DR are not applicable to the present facts of the case. We therefore following the aforesaid decision rendered by Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. (supra) admit the additional ground and proceed to dispose of the appeal.

9. Learned AR pointing from the assessment order submitted that a search and seizure operation was conducted on the premises of M/s. KGK Infrastructure & Developers Private Limited on 6th May 2010 and based on the documents seized and information gathered during the course of search and post search proceedings, in the case of assessee proceedings was initiated under Section 153C of the Act. He pointed to the 1st para of the assessment order wherein ACIT, Central Circle-2, Jaipur vide letter dated 24th/28th June 2018 had referred the case of the assessee to the AO for initiating the proceedings under Section 153C of the Act. He thereafter pointed to Para 3 of the assessment order wherein AO has noted that notice under Section 153C read with Section 153A of the Act was issued on 27th February 2014. He submitted that as per proviso to Section

153C, for taking action under Section 153C, the date of search would be substituted by the date of receiving the books of accounts or document or the assets allegedly belonging to the assessee and seized in the course of search of the such person. Pointing to the assessment order, he submitted that the material that was found during the course of search was handed over to the AO of the assessee on 24th / 28th June 2013 and therefore the year of search would be 2013-14 i.e. A.Y. 2014-15 and accordingly the six years for which proceedings under Section 153C of the Act can be initiated would be from A.Y. 2008-09 to A.Y. 2013-14. He therefore submitted that the notice issued under Section 153C of the Act for A.Y. 2006-07 being beyond the period of six years was thus clearly barred by limitation and being outside the scope of Section 153C of the Act and therefore the AO had no jurisdiction to make the assessment of the assessee for that year. In support of his contentions, he placed reliance on the decision of Honorable Delhi High Court in the case of CIT vs. RRJ Securities Ltd. reported in 380 ITR 12 (Del) and decision in the case of PCIT vs. Sarwar Agency (P.) Ltd. reported in [2017] 85 taxmann.com 269 (Delhi). He therefore submitted that the assessment being *void-ab-initio* be set aside.

10. Learned DR on the other hand supported the order of lower authorities.

11. We have heard the rival submissions and perused the

material available on record. In the present additional ground assessee is challenging the assessment framed under Section 153C/143(3) of the Act being barred by limitation and therefore without jurisdiction. It is an undisputed fact that the AO of the searched person on the basis of the documents seized had referred the case of the assessee to the AO of the assessee on 24th/28th June 2013 for initiating the proceedings under Section 153C of the Act. Further, it is also an undisputed fact that notice under Section 153C/143(3) of the Act was issued by the AO to the assessee on 27th February 2014. Thus since the date of receipt of assessment/ documents by the AO of the assessee was on 24th / 28th June 2013, the date of search in the case of the assessee in terms of proviso to Section 153C will be F.Y. 2013-14 and the relevant assessment year would be A.Y. 2014-15. Accordingly, the six assessment year for which notice could have been issued under Section 153C of the Act will be for A.Y. 2008-09 to A.Y. 2013-14. The impugned A.Y. 2006-07 being beyond the period of six years, according to us, is barred by limitation. To support an aforesaid conclusion, we find support from the decision of Hon'ble Delhi High Court in the case of RRJ Securities Ltd. (supra) wherein at para 24, it has been observed as under:

“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.”

12. Before us, Revenue has not placed any contrary binding decision in its support nor has placed on record any material to demonstrate that the aforesaid decision rendered by Hon'ble Delhi High Court in the case of RRJ Securities Ltd. (supra) has been set aside/stayed or overruled by higher judicial forum. We, therefore, relying on the aforesaid decision of Hon'ble Delhi High Court in the case of RRJ Securities Ltd. (supra) hold that the assessment framed by the AO under Section 153C of the Act for A.Y. 2006-07 to be barred by limitation. We, therefore, set aside the impugned assessment order. Since we have held the assessment order to be barred by limitation the other grounds raised by the assessee have been rendered academic and therefore, not adjudicated.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 09.02.2023

Sd/-

**(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 09.02.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI