

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.1108/Hyd/2018		
Assessment Year: 2010-11		
JCIT (OSD), Central Circle – 1(2), Hyderabad.	Vs.	M/s. Amsri Homes Private Limited, Secunderabad. PAN : AAGCA1280M.
(Appellant)		(Respondent)
Assessee by:	Sri K.C. Devdas.	
Revenue by:	Sri Jeevan Lal Lavidiya	
Date of hearing:	01.03.2023	
Date of pronouncement:	07.03.2023	

ORDER

Per Shri Laliet Kumar, J.M.

The captioned appeal is filed by the Revenue, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-11, Hyderabad dated 05.01.2018 for the A.Y. 2010-11 on the following grounds :

“1. Whether on the facts and circumstances of the case, and in law, the CIT(A) has accepted that the assessing officer has fundamental jurisdiction for invoking proceedings u/s.153C of the Act and having accepted that the Id CIT(A) should not have quashed the assessment.

2. Whether on the facts and circumstances of the case and in law the IdCIT(A) failed to appreciate that the satisfaction displays the reason or basis for concluding that the assessing officer is satisfied that this document was incriminating and belonging to the assessee. The fact has not been disputed by the Ld.CIT(A) and therefore, the Ld.CIT(A) should not have held that assessment u/s.153C not validly initiated.

3. *On the facts and in the circumstances of the case, the order of the Id. CIT(A) is perverse and bad in law as Ld.CIT(A) stated that no addition has been done on the basis of seized document as recorded in satisfaction note. He failed to appreciate that the document which was incriminating may not be incriminating at the time of completion of assessment. Whether the material would conclusively prove that it is incriminating or not is not of concern at the stage of issuing notice u/s.153C. The material which was considered incriminating prima facie may be not incriminating at the end due to various circumstantial evidences. Therefore, declaring entire proceeding as null and void is not correct and hence there is a perversity in the order of the Ld.CIT(A).*

4. *Whether on the facts and circumstances of the case, the reliance of Ld.CIT(A) in the case of Singhad Technical Education Society is correct when the incriminating document has a bearing for all assessment years, even though the same was accepted by the assessee in submissions filed before the CIT(A) which is part of the impugned assessment order. Hence there is factual inaccuracy in the order of the CIT(A).*

5. *Whether on the facts and circumstances of the case, and in law, the Ld.CIT(A) failed to appreciate the judgement in the case of E.N. Gopakumar [390 ITR 131 (Kerala)], wherein the Hon.High Court has categorically stated that assessment proceedings generated by issuance of a notice u/s.153A (or 153C) can be concluded against interest of assessee including making additions even without any incriminating material being available against assessee in search under section 132 on basis of which notice was issued under section 153A or 153C?*

6. *Whether on the facts and circumstances of the case, and in law, the CIT(A) failed to appreciate that in this case, there was no concluded assessment u/s.143(3) and therefore, the AO is empowered to assess/reassess total income as per Act.*

2. The brief facts of the case are that the assessee company is engaged in the business of development, constructions and real estate activities. A search and seizure-operation u/s.132 was carried out in the case of M/s.Amsri Builders and its partners on 27.12.2013 wherein certain incriminating material pertaining to the assessee in annexure A/AB/Off/PO/01, etc., were found and seized. As a consequence, notice u/s 153C of the Act was issued and duly served on the assessee after recording satisfaction as to the

seized material belongs to the assessee. In response to the notice u/s 153C, assessee filed its return of income on 14.08.2015 for A.Y. 2010-11 declaring income at Rs. NIL. Finally, assessment was completed by the Assessing Officer making an addition of Rs.1,85,00,000/- u/s 28(iv) of the Act.

3. Feeling aggrieved by the order passed by the assessing officer, Revenue filed appeal before the Ld. CIT(A), who allowed the appeal of assessee by holding as under :

“7. The issues raised by the appellant are two fold. One is, whether there is due satisfaction as required u/s 153C for initiation of the proceedings and two, whether the assessment completed u/s 143(3) r.w.s. 153C is tenable, as no addition emanating from or connected with the material seized has been made.

8. I have perused the material relied on by the Assessing Officer in recording the satisfactory note as recorded by the Assessing Officer. The document relied upon above is an MOU dt.22.02.2007 between M/s.Indiareit Fund Scheme(IFS)-1, Sri.P.Amruth Prasad, Sri.Uppu Srinivas and the appellant company w.r.t the proposed investment by IFS in the two projects /properties identified by the appellant company and their promoters. The appellant company and the promoters have entered into JDA with the owners of the two properties so identified. The document relied on by to record satisfaction as above is related to F.Yr:22.02.2007(A.Y-2008-09). On the basis of above document, holding the same as belonging to the appellant, notice u/s 153C has been given.

9. It is seen from the assessment order that no addition based on seized material or material gathered during the course of search has been made. The additions made are on the basis of some other transactions of the assessee and the Balance Sheet of the appellant, the details furnished and the explanations given by the appellant during the assessment proceedings u/s 153C of the I.T. Act, 1961.

10. The initial satisfaction based on the seized material has been recorded by the Assessing Officer. The documents mentioned therein relate to the transactions of assessment year 2007-08 and not for assessment year 2010-11. There are no documents related to the period relevant to the assessment year under consideration were relied on by the Assessing Officer in the satisfaction recorded for issuing notice u/s 153C. So, there is no co-relation with the documents seized and relied and the proceedings initiated for this assessment year. Accordingly, the

same is liable to be quashed in view of the decision of Hon'ble Supreme Court in the case of Singhad Technical Education Society dated 28.09.2017. The assessment made accordingly, held to be not validly initiated and are quashed."

4. Feeling aggrieved by the order passed by the Ld. CIT(A), the Revenue is in appeal before us on the grounds mentioned herein above.

5. At the outset, ld. DR had drawn our attention to Paras 7 to 10 of the order of the ld.CIT(A) whereby the ld.CIT(A) had deleted the addition made by the Assessing Officer on the pretext that there is violation of section 153C of the Act and ld.CIT(A) after relying upon the decision of Hon'ble Supreme Court in the case of Singhad Technical Education Society had deleted the addition holding that there was improper exercising of powers u/s 153C of the Act. It was submitted by the Ld. DR that the material seized during the course of search from the premises of Amsri Builders, are the incremental documents pertaining to the assessee in the form of the development agreement, and the said development agreement pertains to the assessment year under consideration. It was submitted that the wrong finding of fact was recorded by the Ld. CIT(A), whereby he had wrongly held that the document did not pertain to the assessment year under consideration. It was submitted on account of the above error the order of the Ld. CIT(A) is required to be cancelled.

6. The ld. AR, on the other hand, had drawn our attention to the satisfaction note placed at page 37 of the paper book wherein it was clearly mentioned that the documents pertain to M/s. Amsri Infra Projects Pvt. Ltd and the documents are not in the name of assessee before us and further it was submitted that on account of the above, there was wrong recording of satisfaction and therefore, the action on the part of the ld.CIT(A) was correct.

7. We have heard the rival arguments on both the parties and perused the material available on record. From the perusal of the order passed by the Id.CIT(A), it is abundantly clear that the Id.CIT(A) had deleted the addition on the pretext that the documents seized during the search and seizure operation carried out u/s 132 of the Act in the premises of M/s. Amsri Builders on 27.12.2013 do not pertain to assessment year under consideration. However, from the perusal of Memorandum of Understanding dt.22.02.2007, it is abundantly clear that the MOU was spread over to various years including A.Y. 2010-11 before us. Therefore, the findings recorded by the Id.CIT(A) is non-est and against the record. In view of the above, we are of the opinion that the order of the Ld. CIT(A) is required to be set aside as being contrary to facts on record. In the present case the Ld. CIT(A) had granted the relief to the assessee on the technical ground that the incriminating material does not pertain to the year under consideration and had refrained from deciding the grounds on merit. As we have decided the legal ground against the assessee and in favour of the revenue, therefore, we deem it appropriate to direct the Ld.CIT(A) to decide the remaining grounds of appeal on merits. Accordingly, the appeal of the Revenue is allowed for statistical purposes.

9. In the result, the appeal of Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 7th March, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 7th March, 2023.

TYNM /sps

Copy to:

S.No	Addresses
1	M/s. Amsri Homes Private Limited, D.No.9-1-164, 5 th Floor, Amsri Plaza, S.D. Road, Secunderabad.
2	Jt. Commissioner of Income Tax (OSD), Central Circle – 1(2), Hyderabad.
3	Pr.CIT (Central) Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order