

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.215/Del/2016
Assessment Year: 2010-11

Jasneet Kaur Chattwal, House No. 8, Road No. 57, West Punjabi Bagh Delhi 110026 PAN DGWPS 1397 K	vs.	ITO, Ward-25(3), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Salil Aggarwal, Sr Advocate Shri Shailesh Gupta, CA
For Revenue :	Shri Om Prakash, Sr DR

Date of Hearing :	16.03.2023
Date of Pronouncement :	23.03.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal filed by the assessee is directed against the order dated 21.01.2015 of the Ld. CIT(A), New Delhi, relating to Assessment Year 2010-11.

2. Learned senior counsel pressing into service ground no. 2 & 3 of assessee submitted that in the present case the Assessing Officer initiated reassessment proceeding on the basis material found and seized during the course of search and seizure operation on

26.03.2010 in the case of Assem Kumar Gupta & Group. The learned counsel further submitted that as per order of ITAT Pune Bench in the case of **Vikram Munishwarlal Bajaj vs ITO in ITA No. 2552/Pun/2017** dated 29.10.2018. In such a situation the AO should have invoked provisions of section 153C of the Act and not section 147/148 of the Act, therefore initiation of reassessment proceeding and consequent order including reassessment order dated 11.03.2013 may kindly be held as *null and void* being bad in law.

3. Replying to the above the learned Senior DR strongly supported that action of the AO in initiating the reassessment proceeding.

4. On careful consideration of above submissions first of all I note that the identical legal issue raised by the assessee was adjudicated in favour of the assessee by ITAT Pune Bench in the case of Vikram Munishwarlal Bajaj (supra) with following observations and finding:-

5. I have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the

validity of the assessment framed u/s 143(3) r.w.s. 147 of the Act. It is an undisputed fact that the case of assessee was re-opened on the basis of a document found during search and seizure action u/s 132 of the Act in the case of "Marvel Group" wherein one of the partner had admitted to have collected 'on money' from various flat purchasers. As per those details, it was noted that assessee had also paid "on money" of Rs.6,65,000/-. Thus, it is seen that the re-opening was on the basis of search carried out at Marvel Group, wherein the documents pertaining to the assessee was found. AO had initiated re-assessment proceedings and had framed the assessment u/s 143(3) r.w.s. 147 of the Act. It is assessee's contention that AO should have proceeded u/s 153C of the Act instead of Sec.147 / 148 of the Act. I find that identical issue arose in the case of V.L. Khandge and others in ITA No.1971 & 2057/PUN/2014 and others, wherein the Co-ordinate Bench of the Tribunal has held that AO after receipt of information belonging to assessee that was found during the course of search should have been initiated proceedings u/s 153C of the Act and not u/s 147/148 of the Act. It was further held that in such a situation, the re-assessment proceedings passed u/s 148 of the Act does not stand. The relevant observation of the Tribunal in the case of V.L. Khandge and others (supra) read as under :

ITA No.2552/PUN/2017 "8. The issue which arises before us is whether in such facts and circumstances of the case, where the basis of making investigation and assessment thereafter in the hands of assessee is on the basis of information unearthed during the course of search action on the premises of Shri Ganesh Khandge on 12.02.2013, then whether proceedings are to be initiated under section 148 or under section 153C of the Act. The perusal of provisions of section 153C of the Act reflects that in case any document relating to any other person is found during the course of search on a person, then the said document is to be forwarded to the Assessing Officer in-charge of the person other than the person searched. The proceedings have to be initiated against such person on the basis of such document

found and impounded. Section 153C of the Act very clearly provided that where the conditions as mentioned in the said section prevail, then provisions of said section have to be applied notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153 of the Act. The requirement of section 153C of the Act is the first satisfaction of Assessing Officer that any money, bullion, jewellery or other valuable article or thing or books of account or documents or assets belongs to a person other than the person referred in section 153A of the Act, then the books of account or documents or assets seized or requisitioned, shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue notice of assessment or re-assessment of the income of other person in accordance with provisions of section 153A of the Act. The Assessing Officer has to record satisfaction that books of account or assets seized or requisitioned, have a bearing on determination of the total income of such other person. The said provisions are notwithstanding anything contained in sections as mentioned above including sections 147 / 148 of the Act. In other words, where the provisions of section 153C of the Act are attracted in given set of facts and the documents impounded during the course of search, then the proceedings have to be initiated under section 153C of the Act as per prescribed procedure and no proceedings can be initiated under section 147 / 148 of the Act. The said proposition has been held by the Pune Bench of Tribunal in the case of *Joshi Wadewale Hadapsar Vs. DCIT in ITA Nos.105 & 106/PUN/2016*, relating to assessment years 2009-10 & 2010-11 with lead order in the case of *Mrs. Vasundhara Shailesh Joshi Vs. DCIT in ITA Nos.95 & 96/PUN/2016*, relating to assessment years 2009-10 & 2010-11, vide consolidated order dated 27.03.2018. The relevant findings of the Tribunal are as under:-

28. The first issue which arises is whether the assessment in such circumstances was to be made under section 153C or 148 of the Act and connected issue is whether

such an issue of assessment being completed under a particular section was valid or not, can be raised while deciding the issue of levy of penalty under section 271(1)(c) of the Act against the income assessed in the hands of assessee. In this regard, the learned Authorized Representative for the assessee has pointed out that the issue stands covered by the ratio laid down in ITO Vs. Shri Shailendra B. Agrawal (supra) and in bunch of appeals with lead order in ACIT Vs. Shamsundar Laxman Jagtap (supra). The relevant ITA No.2552/PUN/2017 provisions of the Act to which reference is being made is section 153C of the Act which provides as under:-

"153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A:

Provided that in case of such other person, the 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 reference 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.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been

received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year--

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before 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, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

29. Section 153C of the Act very clearly lays down that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153 of the Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or ITA No.2552/PUN/2017 other valuable article or thing seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, such books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and the Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of other person in accordance with provisions of section 153A of the Act. Section thus, very clearly

lays down the procedure to be followed when during the course of search on a person any money, bullion, jewellery or valuable article or thing, or any books of account or documents or any information contained therein pertains to or relate / relates to other than the person searched; then first, all the said assets or information is to be handed over to the Assessing Officer, who is incharge of the person other than the person searched and then the Assessing Officer has to proceed and determine the income of the other person in accordance with provisions of section 153C of the Act. The said section very clearly also lays down that the provisions of section 153C of the Act are to be applied notwithstanding anything contained in sections 139, 147, 148, 151 and 153 of the Act. Applying the said provisions to the facts of the present case, wherein certain documents were found during the course of search at the residence of partners of assessee firm on the basis of which, additional income was to be assessed in the hands of partnership firm i.e. one of the assessee before us, then for making aforesaid addition, recourse which was open to the Assessing Officer was to initiate proceedings under section 153C of the Act. Where the provisions of said section are to be applied, then no proceedings can be initiated under section 147, 148, 151 and 153 of the Act. Accordingly, we hold that when during the course of search under section 132 of the Act at the residence of Mrs. Vasundhara S. Joshi and Shri Shailesh Joshi, loose paper bundle Nos.6, 7, 8 and 9 were found, which depicted the receipts and expenditure relating to different outlets being run under the partnership firms and the additional income was also offered by the persons searched on behalf of partnership firms, in which he was partner, on the basis of such documents found during the course of search, then for making addition in the hands of partners, provisions of section 153C of the Act are attracted. Once the said provisions are so attracted, then there is no question of initiating any proceedings under section 147 / 148 of the Act. Accordingly, we hold that proceedings initiated under section 147 / 148 of the Act are thus, not correctly initiated.

9. The issue raised in the present appeal is squarely covered by the issue before the Tribunal in *Joshi Wadewale Hadapsar Vs. DCIT (supra)* and following the same parity of reasoning, we hold that re-assessment proceedings initiated against the assessee under section 147 / 148 of the Act are not warranted. The Assessing Officer after ITA No.2552/PUN/2017 receipt of information belonging to the assessee should have invoked provisions of section 153C of the Act and not section 147 / 148 of the Act. Accordingly, we hold so. Consequently, reassessment order passed under section 148 of the Act does not stand. The Assessing Officer is thus, directed to cancel the same. Consequently, the additional ground of appeal raised by the assessee is allowed and we hold that assessment framed by the Assessing Officer is null and void. Consequently, the issue raised on merits by the assessee and the Revenue becomes academic in nature and the same are dismissed."

6. Before me, Revenue has not pointed out any contrary binding decision in its support. I therefore following the decision of Pune Tribunal in the case of *V.L. Khandge and others (supra)* and following the same reasoning hold that the re-assessment order passed u/s 148 of the Act in the present case does not stand and therefore the assessment framed by the AO to be null and void. Since I have held herein that the assessment framed by the AO u/s 143(3) r.w.s. 147 of the Act to be null and void, the issues raised on merits have become academic in nature and therefore not adjudicated Thus, the grounds of assessee are allowed.

5. In view of above the present case is squarely covered in favour of the assessee by the order of ITAT Pune Bench (supra). I may also pointed out that the learned Senior DR has relied on the order of

ITAT Delhi Bench dated 07.06.2019 in the case of **M/s. Mannat Hospitality (P) Ltd. vs ITO** and on perusal of this order I note that in this case no material belonging to the assessee was found and seized during the search operation and the only evidence of accommodation entries was gathered during the course of post such inquiries whereas in the present case the AO in the first page of assessment order noted that as per seized records M/s. Jasneet Kaun Chattwal obtained accommodation entry. Therefore preposition rendered by co-ordinate Bench of ITAT Delhi in the case of M/s. Mannat Hospitality (P) Ltd.(supra) does not apply to the facts of the present case in favour of the revenue as the facts are quite dissimilar and different. Therefore I am in agreement with the contention of the senior counsel of the assessee that the preposition rendered by co-ordinate Bench of Delhi is not applicable to the present case

6. Respectfully following the preposition rendered by order of ITAT Pune Bench in the case of Vikram Munishwarlal Bajaj (supra) the grounds no. 1, 2 & 3 of assessee are allowed and I hold that the

reassessment order passed u/s. 147 r.w.s. 143(3) of the Act, dated 11.03.2013 is not valid and sustainable being *null and void*.

7. Since in the earlier part of this order I have quashed reassessment order by allowing legal grounds of assessee therefore other grounds of assessee on merits are not being adjudicated upon as having become academic.

8. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 23.03.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 23rd March, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi