

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K CHOUDHRY, JUDICIAL MEMBER

ITA.No.2269/Del./2018
Assessment Year 2010-11

The ACIT, Central Circle- 15, New Delhi	vs.	MSG Finance India P. Ltd. 201-H, Gautam Nagar, New Delhi 110049. PAN AAACM 9766 E
(Appellant)		(Respondent)

Cross Objection No.70/Del./2022
Arising out of
ITA.No.2269/Del./2018
Assessment Year 2010-11

MSG Finance India P. Ltd. 201-H, Gautam Nagar, New Delhi 110049. PAN AAACM 9766 E	vs.	The ACIT, Central Circle- 15, New Delhi
(Cross-Objector)		(Respondent)

For Revenue :	Ms. Sarita Kumari, CIT-DR
For Assessee :	Ms. Shweta Bansal, CA

Date of Hearing :	09.03.2023
Date of Pronouncement :	31.03.2023

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the Revenue and the Cross Objection filed by the Assessee are directed against the Order of the Ld. CIT(A)-XXVI, New Delhi, dated 03.01.2018 in Appeal No.10531/16-17 relating to the A.Y. 2010-11.

2. The relevant facts as culled out from the material on record are as under :-

3. Assessee is a company AO has noted that a search and seizure operation u/s. 132 of the Act was carried out on 28.03.2015 in the case of M.M Aggarwal Group of cases and the assessee was also covered in the search. Consequent upon the search notice u/s. 153A of the I.T Act was issued to the assessee on 17.11.2016 which was duly served upon the assessee. In response to the notice u/s. 153A assessee filed return of income u/s. 153A on 26.11.2016 declaring loss of Rs. 80,259/-. Thereafter the case was taken up for scrutiny and consequently assessment was framed u/s.

153A r.w.s 143(3) vide order dated 29.12.2016 and the total income was determined at Rs. 4,24,19,740/-.

4. Aggrieved by the order of the AO, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 03.01.2019 in Appeal No. Appeal No.10531/16-17, allowed the appeal of the assessee.

5. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal and has raised the following effective grounds in ITA no. 2269/Del/2018:

1. On the facts & circumstances of the case the CIT(A) has erred in holding the assessment invalid on the basis of address in search warrant without considering that warrant was duly served upon Shri Pradeep Kumar, who is director of assessee company as acknowledged by him while signing search warrant, and also the Vice President (Corporate Affairs) of Heritage Beverages Pvt. Ltd. situated on address which was mentioned in search warrant.

6. Assessee has also filed the CO. and has raised the following grounds:-

1. The Ld. CIT(A) has grossly erred on facts as well as in law in not deciding the ground no. v, vi, vi

mentioned on page 2 of the Ld. CIT(A)'s order inspite of the fact that all the submissions and documents were duly submitted and explained before the Ld. CIT(A).

2. The appellant craves leave to add, alter, modify and withdraw any grounds before or during the course of appellate proceedings.

7. Since the issues raised by the Assessee and Revenue are interconnected the appeal of the Revenue and the C.O are considered together. We first proceed with deciding the appeal of the Revenue.

8. AO had noticed that assessee had received of Rs. 4,25,00,000/- as share capital from various companies which according to AO did not have any factual identity and creditworthiness. It was also noted by AO that the investment by such entities with the assessee group was namely in the form of share capital which was subscribed at abnormally high premium which lacked genuineness on their part. AO thereafter for the reasons stated in the order held the amount of Rs. 4,25,00,000/- received by the assessee to be unexplained cash credit and made its addition u/s. 68 of the Act.

9. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A).

10. Before CIT(A), assessee challenged the framing of assessment u/s. 153A r.w.s 143(3) and stating it to be without jurisdiction. CIT(A) held the proceedings u/s. 153A to be illegal arbitrary and without jurisdiction and the relevant findings of the CIT(A) are as under:-

5.3 Grounds no. 2, 3 & 4 pertain to the issue that no search u/s 132 was undertaken in this case, I have perused the search warrant sent by the AO vide letter dt. 01/12/2017 which though contained the name of the assessee yet it was served at the address "Plot No, 237-238, UdyogVihar, Phase-I, Gurgaon". This is the address of factory premises of Ms Heritage Beverages Pvt Ltd. It is a fact that the address of the assessee was "201H, Gautam Nagar, New Delhi". Earlier the address of the assessee was H-2/56, Mahavir Enclave, New Delhi. The assessee has changed its address from H-2/56, Mahavir Enclave, New Delhi to 201-H, Gautam Nagar, New Delhi on 31/12/2011, i.e., much before than the date of search. The same is evident from Form 18 filed before ROC in respect of change in address. Further, the Ld. AR has filed a copy of income tax return and annual return filed before ROC just prior to the date of search, i.e., AY 2014-15 and just after the date of search, i.e., AY 2015-16 which clearly evidences that at the time of search the address of the appellant was "201H, Gautam Nagar, New Delhi" and not "Plot No, 237-238, Udyog Vihar, Phase-I, Gurgaon". Even the AO though fully in the knowledge of correct

address being of Gautam Nagar yet did not bring out any connection of the assessee with the Udhyog Vihar address. In view of these facts, it is conclusively proved that no search was conducted at the premises of the appellant. Therefore, the proceedings us 153A are ex-facie illegal, arbitrary and without jurisdiction and hence the assessment order is hereby annulled.

5.4 Since the assessment order has already been annulled, other grounds have become infructuous and therefore, they are not being adjudicated.

11. Aggrieved by the order of Ld. CIT(A), Revenue is now before us.

12. Before us, Ld. DR submitted that the issue raised in the present appeal is covered in favour of the Revenue by the order of the co-ordinate bench of Tribunal in assessee's own case in ITA 2270/Del/2018 for A.Y. 2011-12 order dated 26.07.2022, the copy of aforesaid order was placed on record. It was further submitted that the facts of the case in the year under consideration are identical to that of earlier years and to support the contention that the facts are identical, Ld. DR pointed to the findings of CIT(A) at para 5.3 of the order viz-a-viz the findings noted by CIT(A) in A.Y. 2011-12 which is being reproduced by the co-ordinate

bench of Tribunal at page 2 of the order. It was therefore submitted that since the facts in the present case are identical to that of earlier years, the matter be restored back to CIT(A). Ld. AR did not controvert, the factual submissions made by Ld. DR, but however supported the order of CIT(A).

13. We have heard the rival submissions and perused the material on record. The Revenue is aggrieved by the order of CIT(A), wherein he has held the proceedings to be illegal arbitrary and without jurisdiction and hence annulled the assessment order and therefore not decided the grounds on merit. We find that identical issue arose in the case of assessee for A.Y. 2011-12 before the co-ordinate bench of Tribunal. The co-ordinate bench of Tribunal vide order dated 26.07.2022 (in ITA No. 2270/Del/2018) decided the issue by observing as under:-

4. Grounds of the revenue pertains to the adjudication by the ld. CIT(A) that no search u/s 132 was undertaken in this case .

5. The operative para of the order of the Ld. CIT(A) is as under:

“I have perused the search warrant sent by the AO vide letter dated 01.12.2017 which though contained the name of the assessee yet it was served at the address “Plot No, 237-238, Udyog Vihar, Phase-I , Gurgaon”. This is the address of factory premises of M/s Heritage Beverages Pvt. Ltd. It is a fact that the address of the assessee was “201H , Gautam Nagar , New Delhi”. Earlier the address of the assessee was H-2/56, Mahavir Enclave, New Delhi. The assessee has changed its address from H-2/56, Mahavir Enclave, New Delhi to 201-H, Gautam Nagar, New Delhi on 31.12 .2011, i.e. , much before than the date of search. The same is evident from Form 18 filed before ROC in respect of change in address. Further, the Ld. AR has filed a copy of income tax return and annual return filed before ROC just prior to the date of search, i.e., A .Y . 2014-15 and just after the date of search, i.e., A .Y . 2015-16 which clearly evidences that at the time of search the address of the appellant was U201U , Gautam Nagar , New Delhi” and not “Plot No , 237-238 , Udyog Vihar, Phase-I, Gurgaon”. Even the AO though fully in the knowledge of correct address being of Gautam Nagar yet did not bring out any connection of the assessee with the Udhog Vihar address. In view of these facts, it is conclusively proved that no search was conducted at the premises of the appellant.”

6. We have perused the warrant of authorization u/s 132 of the Income Tax Act, 1961 (Warrant No. 4859) wherein the name of the assessee “MSG Finance India Pvt. Ltd.” has been duly mentioned. The relevant part of the warrant of authorization u/s 132 of the Income Tax Act, 1961 is as under:

-----If summons under sub-section (1) of Section 37 of the Indian Income-tax Act, 1922 or under sub-Section (1) of Section 131 of the Income Tax Act, 1961, or a notice under sub-section (4) of Section 22 of the Income Income-tax Act, 1922, or under subsection (1) of

section 142 of the Income Tax Act, 1961 is issued to xxxx , yyyy, zzzz, ,MSG Finance India Pvt . Ltd. , mmmm , gggg.....

[name of the person] to produce, or cause to be produced, books of accounts or other documents which will be useful for, or relevant to, proceedings under the Indian Income-tax Act, 1922, or under the Income Tax Act, 1961, he would not produce, or cause to produced, such books of account or other documents are required by such summons or notice.

Sarvashri/Shri/Shrimati xxxx , yyyy , zzzz , ,MSG Finance India Pvt. Ltd., mmmm, gggg...are/is in possession of any money, bullion, jewellery or other valuables articles or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be disclosed for the purposes of the Indian Income-tax Act, 1922 , or the Income Tax Act, 1961;

And whereas I have reason to suspect that such books of accounts, other documents, money, bullion, jewellery or other valuable articles or thing have been kept and are to be found in Plot No. 237- 238, Udyog Vihar , Phase-1, Gurgaon

(Specify particulars of the building /place/ vessel/ vehicle/ aircraft);

This is to authorize and required you.....-as per overleaf [Name of the Deputy Director or of the Deputy Commissioner or of the Assistant Director or of the Assistant Commissioner or the Income Tax Officer]

a. To enter and search that building/place/vessel/ aircraft.

7. The said warrant No. 4859 has been duly seen and signed by Shri Pradeep Kumar, Director of MSG Finance India Pvt. Ltd. and also by two independent witnesses.

8. A bare reading of the warrant proves that it has been issued after due satisfaction that summons under sub-Section (1) of Section 131 of the Income Tax Act, 1961 are issued. The assessee would produce the documents as required. The warrant is also based on the satisfaction that the assessee company is in position of material which has not been disclosed for the purpose of Income Tax Act, 1961. The warrant reveals that the issuing authority has reason to suspect that such valuable things are kept and are to be found at Plot No.237/238, Udyog Vihar, Phase-1, Gurgaon and authorized the Officers of the Department to enter and search such place.

9. Further, we have also gone through the provisions of Section 132 of the Income Tax Act, 1961 which is as under:

10. The fundamentals behind the issue of authorization u/s 132 of the Income Tax Act, 1961 and Rule 112(1) of the Income Tax Rules, 1962 can be summarized as under:

a. The warrant issuing authority has reasons to believe that issue of notice u/s 131 would not result in fruitful outcome.

b. The warrant issuing authority has reasons to believe that issue of notice u/s 142(1) would not result in appropriate compliance.

c. There is a belief that the assessee has not disclosed taxable income for the taxation purpose.

d. There is a belief that the assessee would not disclose taxable income for the taxation purpose.

e. There is a reason to suspect that evidences pertaining to such taxable income are kept at different buildings/premises.

f. Hence, the warrant is issued to search any such buildings/premises to enter, identify, examine, seize, inventorise all such evidences viz. books of accounts, documents, money, bullion, jewellery or other valuable article or thing.

11. From the above, it is very clear that a warrant can be issued in the name of any assessee to search any place where the documents pertaining to the assessee have been kept or are to be found as per the satisfaction of the warrant issuing authority.

12. In the instant case, the warrant has been issued in the name of the assessee and the premises namely "Plot No. 237- 238, Uydog Vihar, Phase-1, Gurgaon" is the place where the warrant issuing authority had belief and had reasons to suspect that the documents and evidences leading to evasion of tax pertaining to the assessee have been kept or are to be found as per the satisfaction of the warrant issuing authority. The Director of the company has seen the warrant, signed and was present throughout the search procedure which can be observed by going through the warrant of authorization. Hence, the warrant is said to be rightly issued and search on the assessee has been correctly took place.

13. The observations of the ld. CIT(A) that there was no warrant executed at the address mentioned in the ROC record or the other address of the assessee and hence "no search was conducted" goes against the fundamentals of issue of warrant of authorization u/s 132. It is not necessary that warrant has to be issued

only at /on the premises of the registered office of the company or corporate office, factory or godown but a warrant can be authorized to any other place where the issuing authority satisfies and reasons to suspect that the material/evidences pertaining to the assessee have been kept and are to be found. The ld. CIT(A) ignored the provisions of Section 132(1), the proviso under clause (B), provisions of (1A) which clearly deal with the jurisdiction, the premises and the actions that can be taken by the revenue authorities.

14. Hence, we hold that the decision of the ld. CIT(A) that “no search was conducted” on the assessee and summarily nullifying the proceedings u/s 153A as “ex-facie illegal” is devoid of any merit and cannot be sustained.

15. The ld. CIT(A) is hereby directed to adjudicate the grounds on merits of the case.

14. Before us no distinguishing feature in the facts of the present case and that of A.Y. 2011-12 has been pointed by the assessee. In such a situation we for the reasons given by the co-ordinate bench while deciding the appeal of the assessee for A.Y. 2011-12 and for similar reasons restore the issue back to the CIT(A). Since CIT(A) had not adjudicated the grounds on merits and since the matter is being restored back to the CIT(A). CIT(A) is directed to adjudicate the grounds on the merits of the case in

accordance with law. Needless to state that CIT(A) shall grant adequate opportunity of hearing to both the parties and assessee is also directed to promptly furnish the details called for by the authority. **Thus the ground of the Revenue is allowed and cross-objection of the Assessee is also allowed.**

15. To sum-up, **appeal of Revenue is allowed and cross-objection of Assessee is also allowed.**

Order pronounced in the open Court on 31.03.2023.

Sd/-
(N.K CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 31st March, 2023

NV/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.