

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.991/Mum./2021
(Assessment Year : 2011-12)

ITA no.992/Mum./2021
(Assessment Year : 2012-13)

ITA no.993/Mum./2021
(Assessment Year : 2013-14)

ITA no.994/Mum./2021
(Assessment Year : 2014-15)

ITA no.995/Mum./2021
(Assessment Year : 2015-16)

Shri Unmesh Deepak Khanvilkar
Flat no.602, 6th Floor, Plot no.44
Amrutvani CHS Ltd., 15th Road
Chembur (East), Mumbai 400 071
PAN – AOJPK1520Q

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-7(1), Mumbai

.....Respondent

Assessee by : Ms. Mahisha H. Ghind
Revenue by : Shri Ankush Kapoor

Date of Hearing – 10/05/2023

Date of Order – 11/05/2023

ORDER

The present appeals have been filed by the assessee challenging the impugned orders of even date 16/03/2021, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-49, Mumbai, [*learned CIT(A)*], for the assessment years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16, which in turn arose from the assessment orders passed under section 153C r/w section 143(3) of the Act.

2. The present appeals are filed after a delay of 16 days. As per the assessee, the impugned orders of even date 16/03/2021 were received by the assessee on the same date, and the present appeals were filed by the assessee on 31/05/2021. The assessee vide his affidavit submitted that due to the pandemic situation and the lockdown implemented in the State of Maharashtra, he could not co-ordinate with the office of his Chartered Accountant for the purpose of filing further appeal, which resulted in the delay in filing the present appeals. We find that vide order dated 10/01/2022, passed by the Hon'ble Supreme Court, in M.A. no.21 of 2022, in M.A. no.665 of 2021, in Suo-Motu Writ Petition (Civil) no.3 of 2020, the limitation period for filing the appeal was extended upto 29/05/2022. In view of the above, since the present appeals have been filed within the extended time granted by the Hon'ble Supreme Court during the Covid period, therefore there is no delay in filing the present appeals and we proceed to decide the same on merits.

3. Since these appeals pertain to the same assessee involving similar issues, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order.

4. For all the years under consideration, the assessee has raised common grounds of appeal. For reference same are reproduced as under:-

"1. The Hon'ble CIT (A) has erred in upholding the order passed by the Ld. Assessing Officer u/s. 153C r.w.s. 143(3) of the I.T. Act, 1961, without appreciating the fact that the same was ab-initio void and bad in law since the very initiation of proceedings u/s. 153C of the I.T. Act, 1961 were not called for as the Investigation wing/ Assessing Officer had not found any incriminating material pertaining to assessee for the year under appeal.

2. Without prejudice to above, the appellant submits that the Hon'ble CIT (A) has erred in upholding the order passed by the Ld. Assessing Officer u/s. 153C r.w.s. 143(3) of the I.T. Act, 1961, without appreciating the fact that the same has been passed without

providing a satisfaction note recorded by appellant's assessing officer inspite of having specifically requested for or atleast mentioning in the Assessment order as to the applicability of provisions of sec 153C of the LT. Act, 1961 to appellant's case making the order ab-initio void & bad in law.

3. The Hon'ble CIT(A) has erred in upholding the initiation of proceedings u/s 153C of the IT Act, without appreciating the fact & the law laid down by various judicial forums that since no incriminating material was found pertaining to the year under appeal the proceedings initiated were ab initio void & bad in law.

4. The appellant craves leave to add, amend, alter and/or vary any of the grounds at the time or before the hearing of this appeal. 5. The appellant therefore prays that order passed by assessing officer u/s 153C r.w.s 143(3) & the order passed by Hon'ble CIT (A) may please be cancelled / dropped / annulled."

5. The only dispute raised by the assessee in present appeals is pertaining to the validity of proceedings initiated under section 153C of the Act.

6. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that a search and seizure action under section 132 of the Act was conducted at the residence and office premises of M/s D.Y.Patil Group of cases on 27/07/2016 at Navi Mumbai. The assessee is an employee of Padamshree D.Y. Patil University, Navi Mumbai. In the search and seizure operation, the residential premises of the assessee at Chambal and Navi Mumbai were also covered in the same search. Consequent to the search action, the case of the assessee was centralised with DCIT Central Circle-7 (1), Mumbai, for coordinated investigation, assessment and for having a uniform view on the common issues pertaining to various D.Y. Patil Groups located at Navi Mumbai, Pune, and Kolhapur. Upon verification of the relevant materials seized during the course of the search and statements recorded, a satisfaction note under section 153C of the Act was received by the AO from the AO of the searched persons on 31/07/2018. Accordingly, notices under section 153C of the Act were issued to the assessee for the assessment years 2011-12 to 2016-17 on 01/08/2018. In response to the

notices issued under section 153C of the Act, the assessee filed the return of income for assessment year 2011-12 on 26/11/2018 and for assessment years 2012-13 to 2015-16 on 18/08/2018. In all the assessment years under consideration before us, the Assessing Officer ("AO") passed the assessment order under section 153C r/w section 143(3) of the Act without making any addition and assessed the total income of the assessee at the returned income. The learned CIT(A) dismissed the appeal filed by the assessee vide separate impugned orders and upheld the invocation of proceedings under section 153C of the Act. Being aggrieved, the assessee is in appeal before us for the assessment years 2011-12 to 2015-16.

7. In the present case, it is undisputed that there is no tax effect involved in the years under consideration since the assessment under section 153C r/w section 143(3) of the Act has been concluded at the returned income. However, as per the assessee, adjudication on the validity of initiation of proceedings under section 153C of the Act is relevant for the subsequent assessment year(s), which are currently pending before the learned CIT(A). We find that adjudication on the validity of initiation of proceedings under section 153C of the Act in favour of either party, in the present appeals, will have no impact on the total assessed income, as the AO has accepted the total income as declared by the assessee in his return of income without making any addition. Thus, in view of the above, we are of the considered opinion that the various grounds raised by the assessee challenging the initiation of proceedings under section 153C of the Act, in the present appeals, are rendered academic and therefore, are kept open.

8. We further find that the findings of the learned CIT(A) upholding the initiation of proceedings under section 153C of the Act, in light of the aforesaid uncontroverted facts, also do not impact the computation of the total income of the assessee. Such being the circumstances, we are of the view that the entire exercise by the learned CIT(A) in adjudicating the various grounds raised by the assessee on the validity of initiation of proceedings under section 153C of the Act is merely academic, with no other relevance for the assessment years under consideration. Therefore, in the facts and circumstances of the present appeals, we direct that the findings of the learned CIT(A), in the impugned orders, on the validity of initiation of proceedings under section 153C of the Act shall not have any precedential value while deciding appeal(s), which are currently pending before the learned CIT(A). However, in any case, in the future, upon disposal of appeal(s) currently pending before the learned CIT(A) for subsequent assessment year(s), if either party is so advised that the decision on the validity of initiation of proceedings under section 153C of the Act in the present appeals has a bearing on the subsequent year(s), then the said party shall have the liberty to approach the Tribunal to seek recall of this order to the extent of adjudication of the aforesaid issue. As a result, grounds raised by the assessee in the present appeals are dismissed as infructuous.

9. In the result, all the appeals by the assessee are dismissed.

Order pronounced in the open Court on 11/05/2023

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 11/05/2023

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Mumbai; and*
- (5) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai