

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE SHRI S RIFAUR RAHMAN, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 665/Mum/2023
(Assessment Year: 2010-11)

Nitin A. Shah 31/32, 8 th Floor, Giriraj Apartment, Teen Batti, Walkeshwar, Mumbai-400 006	Vs.	ITO-19(2)(4) 217, Matru Mandir, Tardeo, Grant Road, Mumbai-400 020
PAN/GIR No. AAHPS 3826 K		
(Appellant)	:	(Respondent)
Assessee by	:	Ms. Suchek Anchaliya/ Shri Tushar Nagori
Revenue by	:	Dr. Mahesh Akhade
Date of Hearing	:	18.05.2023
Date of Pronouncement	:	22.05.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-47, Mumbai ('Id.CIT(A) for short), passed u/s.153C r.w.s. 143(3) of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2010-11.

2. It is observed that there has been a delay of 587 days for filing this present appeal and the learned Authorised Representative (Id. AR for short) for the assessee during the appellate proceeding has submitted that an Affidavit for condoning the delay with the reasons has been filed by the assessee and that after considering the decision of the Hon'ble Supreme Court in the matter of *Re Cognizance For Extension of Limitation* (in

Miscellaneous Application No. 21 Of 2022 in Miscellaneous Application No. 665 of 2021 in *Suo Motu Writ Petition (C) No. 3 of 2020* dated 10.01.2022), where the period of limitation was extended owing to the Covid Pandemic, the delay in filing the appeal was calculated to be 306 days. On a perusal of the reasons stated by the assessee, we are of the considered opinion that the assessee had sufficient cause for the delay in filing the appeal within the limitation period, hence, we deem it fit to condone the delay in filing the present appeal.

3. The assessee has challenged the appeal on various grounds where the Id. CIT(A) had confirmed the impugned addition and also on the grounds of jurisdiction of the Assessing Officer (A.O. for short) invoking the provisions of section 153C of the Act.

4. The brief facts are that the assessee is an individual engaged in trading of shares and securities. The assessee had filed his return of income dated 27.01.2011, declaring total income at Rs.7,28,554/-. Pursuant to a search action u/s. 132 of the Act conducted in the case of Shri Bhanwar Lal Jain Group dated 04.10.2013 and a survey conducted in assessee's premises, the A.O. passed the assessment order u/s. 143(3) r.w.s. 153C of the Act on the assessee determining the total income at Rs.64,09,045/- relying on the incriminating documents found during the search action conducted at Shri Bhanwar Lal Jain Group where the assessee was said to be one of the beneficiary of accommodation entry on account of bogus loans from M/s. Millenium Star which was a benami concern managed and controlled by Shri Bhanwar Lal Jain Group and his son Shri Rajesh B. Jain. The A.O. made an addition of Rs.55,46,000/- on unsecured bogus loan and Rs.1,34,491/- on the interest income received by way of cash during the impugned year.

5. Aggrieved by the said order, the assessee was in appeal before the Id. CIT(A), challenging the impugned addition.

6. The Id. CIT(A) then confirmed the addition made by the A.O. on the ground that the assessee has failed to substantiate the loan received from M/s. Millenium Star and also the addition on the interest amount received in cash for the reason that the assessee has failed to produce documentary evidences or details pertaining to the same.

7. The assessee is in appeal before us, challenging the order of the Id. CIT(A) in confirming the addition made by the A.O.

8. The Id. AR for the assessee contended that the assessee has challenged the initiation of proceeding u/s. 153C of the Act based on the survey action which according to the Id. AR ought not to have been made. The Id. AR harped on the legal ground that the assessment order should not have been passed u/s. 153C of the Act.

9. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the said fact and stated that there are discrepancies in the order passed by the first appellate authority. The Id. DR contended that the assessee has not raised the ground of jurisdiction u/s. 153C of the Act. The Id. AR for the assessee on the other hand had brought our notice that the assessee had filed revised grounds challenging the jurisdiction u/s. 153C of the Act whereas the Id. CIT(A) adjudicated the issue involving reopening u/s. 147 of the Act which according to the Id. AR may be due to inference from the earlier assessment order. Further, the Id. AR brought our attention to page no. 31 of the appeal set where the grounds challenging the jurisdiction u/s. 153C

of the Act was enumerated. The ld. DR further brought our attention to the order of the ld. CIT(A) at para nos. 9 and 10 of the order where the facts of the case was completely misled. The ld. DR also specified that M/s. Nice Diamonds was not related to the impugned year and pertains to some other assessment year and only M/s. Millenum Star was involved for this year. The ld. DR further contended that para no. 11 of the ld. CIT(A)'s order is also misinterpreted on the basis of the fact that protective addition made in the hands of the assessee. The ld. DR brought to our notice that the A.O. has not made protective addition in the hands of the assessee for the impugned year. The ld. DR reiterated that facts of the present case has been wrongly interpreted in the order of the ld. CIT(A) and stated that the issues specified above needs to be remanded back to the ld. CIT(A).

10. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has raised the grounds of jurisdiction invoked by the A.O. u/s. 153C of the Act before us. It is observed that this issue was not adjudicated by the ld. CIT(A) as per the order of the first appellate authority. Though the ld. AR has stated that this ground was raised before the ld. CIT(A), we do not find any observation on this in the order of the ld. CIT(A). The ld. DR had also submitted a copy of the satisfaction note recorded u/s. 153C in the case of Shri Bhanwar Lal Jain Group and the assessee. The ld. DR vehemently controverted the submission of the ld. AR. We find merit in the submission of the ld. DR, wherein this ground raised by the assessee has to be adjudicated by the first appellate authority. We have also considered the submission of the ld. DR in pointing out the factual error crept in the order of the ld. CIT(A) which

requires *de nova* adjudication on the above mentioned issues. We remand all these issues back to the file of the Id. CIT(A) who is directed to decide the issues raised by the assessee in the grounds of appeal as per Form No. 35. It is needless to say that the assessee may be given sufficient opportunity of being heard.

11. In the result, this appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 22.05.2023

Sd/-

Sd/-

(S Rifaur Rahman)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated :

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai