

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)

ITA Nos. 1053 to 1055/MUM/2018
Assessment Years: 2008-2009 to 2010-11

Grasim Industries Limited,
Corporate Finance Division,
A-2, Aditya Birla Centre, S.K.
Ahire Marg, Worli,
Mumbai-400030.
PAN No. AAACG 4464 B
Appellant

Vs.

The DCIT CC-1(4),
Room No. 902, 9th floor, Old
CGO Building, M.K. Road,
Mumbai-400020.

Respondent

ITA Nos. 1557, 1562 & 1559/MUM/2018
Assessment Years: 2008-2009 to 2010-11

JCIT (OSD), Central Circle-
1(4),
Room No. 902, Pratishtha
Bhavan, 9th floor, Old CGO
Building Annexe,
Mumbai-400020.

Vs.

Grasim Industries Limited,
Corporate Finance Division, A-
2, Aditya Birla Centre, S.K.
Ahire Marg, Worli,
Mumbai-400030.

PAN No. AAACG 4464 B
Respondent

Appellant

Assessee by : Mr. Yogesh Thar/ Ms. Ayushi
Modani
Revenue by : Dr. Kishor Dhule, CIT-DR

Date of Hearing : 26/04/2023
Date of pronouncement : 31/05/2023



ORDER

PER OM PRAKASH KANT, AM

These cross appeals by the assessee and Revenue are directed against separate orders, each dated 27.04.2016, passed by the Ld. Commissioner of Income-tax (Appeals)-47, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2008-09, 2009-10 and 2010-11 respectively. As common grounds are involved in these appeals, therefore same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First of all, we take up the cross appeals of the assessee and Revenue for assessment year 2008-09. The grounds raised by the assessee are reproduced as under:

1. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in validating the action of the Assessing Officer ('AO') in issuing of an invalid notice us 153C of the Act and in passing order dated 29.03.2016 u/s 153C r.w.s. 143(3) of the Act.*
2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the AO in issuing notice u/s 148 of the Act and holding that the payment of Rs. 10,53,83, 193/- made by the Appellant on account of capital work in progress was an accommodation entry and no depreciation allowance is allowable on the said amount in the subsequent years.*
3. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the AO in rejecting the claim of the Appellant to treat the subsidy of Rs.8,12,15,141/- under Technology Up-*



gradation Fund Scheme as capital in nature and not chargeable to tax.

4. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the AO in rejecting the claim of the Appellant to treat dividend income of Rs. 1,16,24,021/- received from M/s Alexandria Carbon Black Limited, Egypt as not taxable in India and exclude the same from taxable income.*

2.1 The grounds raised by the Revenue are reproduced as under:

1. *On the facts and the circumstances of the case and in law the Ld. CIT(A) erred in granting relief to the assessee stating that no disallowance us 153C of the Act is called for as there are no incriminating materials found during the search and the assessment has reached its finality and was not abated at the initiation proceedings us. 132(1) of the Income Tax Act, 1961'*
2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred, in holding that no addition can be made u/s 153C of the Act, once the assessment has reached to finality us 143(3) of the Act, and no incriminating documents have been found and seized in the case of the assessee during the course of search and seizure action relying upon the decision of the jurisdictional Bombay high Court decision in the case of Continental Warehousing Corn. and M/s Murli Agro Products without appreciating that the revenue has not accepted the decision and has filed SLP in the Hon'ble Apex Court"*
3. *"On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance of Rs. 24,35,82,219/- on account of additional Spill Over Depreciation by treating the assessment as flawed in light of the judgements which are subjudice before Apex and Bombay High Court. Besides this issue has not been examined and tested in the assessment and/or the Appellate Authorities.»*
4. *"On the facts and circumstances of the case and in law the Ld. CIT(A) erred in allowing the additional Spill Over Depreciation relying upon the judicial pronouncement in the case of CIT vs Continental Warehousing Corn. [374 ITR 6451- Hon'ble Mumbai HC, without appreciating that*



the revenue has not accepted the aforesaid judicial pronouncement and SLP is pending before the Hon'ble Supreme Court for adjudication"

3. Briefly stated, facts of the case are that the assessee company is engaged in manufacturing of viscose staple fiber, chemicals, cements and sponge Iron etc. For the year under consideration, the assessee filed its original return of income on 30/09/2008, declaring total income at ₹ 2681, 92, 06, 011/-which was subsequently revised to ₹ 2612, 46, 19, 627/-on 17/11/2009. The return of income was processed under section 143(1) of the Income-tax Act, 1961 (in short the Act) and thereafter scrutiny assessment under section 143(3) of the Act was completed on 25/03/2010 determining total income at ₹ 2779, 86, 88, 325/-. Thereafter, on receipt of information from the investigation wing of Income-tax department Kolkata, the reassessment proceedings were initiated by way of issue of notice dated 03/01/2014 under section 148 of the Act.

3.1 Thereafter, consequent to the search action u/s 132 of the Act at the premises of M/s Aditya Birla Management Corporation Pvt. Ltd. (ABMCPL) i.e. a group concern , on 16th October 2013, certain incriminating material pertaining to the assessee was found and seized by the Assessing Officer of the searched person. Accordingly, he intimated to the Assessing Officer of the assessee. Thereafter, the Assessing Officer treated the reassessment proceedings as got abated and he issued notice u/s 153C r.w.s. 153A of the Act, on



26.11.2014 requiring the assessee to file return of income for the assessment year under consideration along with other assessment years falling in the search period. The assessment proceedings u/s 153C of the Act were concluded by the Assessing Officer on 29.03.2016, wherein the Assessing Officer withdrawn the claim of the additional depreciation of the assessee. The Assessing officer also on the basis of information from investigation wing of the Income-tax department, which was received prior to proceedings u/s 153C of the Act, rejected the claim of capital work-in-progress debited in books of account in respect of Cement Plant at Kotputali, Rajasthan. On further appeal, the assessee challenged validity of the assessment proceedings u/s 153C of the Act as well as challenged the merit of the additions. The Ld. CIT(A) upheld the validity of the assessment proceedings u/s 153C of the Act. The Ld. CIT(A) however, held that assessment was unabated , therefore, the Assessing Officer was not authorized to disturb the completed proceedings except the aid of the incriminating material. The Ld. CIT(A) accordingly directed the Assessing Officer to withdraw the disallowance of additional spill over depreciation allowance. On the issue of rejection of capital work in progress amounting to Rs.10,53,83,193/-, the Ld. CIT(A) upheld the action of the Assessing Officer.

4. Before us, the Ld. Counsel of the assessee filed a Paper Book containing pages 1 to 693. The assessee has challenged the



impugned order of Ld. CIT(A) on merit of the addition as well as on legality of the assessment order. On merit, the assessee has filed an application for admitting additional evidence. Therefore, firstly, we are taking the grounds of the assessee related to merit of the addition for adjudication.

5. The brief facts qua the ground No. 2 of the appeal are that during the course of the search at the premises of 'Shri Pravin Aggarwal' and its group companies on 12.11.2012 by the Investigation Wing Kolkata, it was found that a company namely M/s 'Taral Wincom Pvt. Ltd'. (now known as M/s LinkpointInfrastructure Pvt. Ltd.) was managed by Shri Pravin Aggarwal and he had given bogus entries of accommodation bills through said company to various entities and the assessee was one of the beneficiary of accommodation entry bills of Rs.10,53,83,193/-. The Assessing Officer issued notice u/s 148 of the Act. The assessee vide letter dated 02/06/2014 objected for issue of the notice u/s 148 of the Act. The assessee claimed that M/s Taral Wincom Pvt. Ltd (in short 'the Taral') had rendered certain professional services to the assessee in relation to Cement plant at Kotputali Rajasthan. In support of services of M/s Taral for infrastructure work of land development and leveling at the site of the assessee's cement plant, the assessee submitted a comparative sheet of quotations invited, decision for awarding contract, ledger account of the party, invoices, management sheet, bank payment vouchers, certificate of lower deduction of tax, TDS return etc . It



was claimed by the assessee that the transaction was genuine and properly disclosed in the books of accounts. The assessee company further submitted that there was no failure on the part of the assessee company to disclose all material facts necessary for assessment fully and truly. The assessee company contended that proviso to section 147 is applicable in the case of the assessee and therefore notice under section 148 of the Act is bad in law. The objections raised by the assessee company against the notice under section 148 of the Act were disposed off by the Assessing Officer on 17/06/2014, wherein he stated that the fact of entry of professional work being bogus entry was not available with the Assessing Officer at the time of the completion of the assessment and it was received subsequently. As per the information no work was carried out by M/s Taral, as the said entity had no resources and manpower except for issuing bogus bills. Relevant part of the statement of Mr Praveen Agrawal was provided along with the reasons recorded to the assessee company. In this manner the Assessing Officer rejected the objection of the assessee that there was no failure on the part of the assessee company to disclose all material facts truly and fully.

5.1 Subsequently, the Assessing Officer issued notice under section 133(6) of the Act to M/s Taral for verifying whether actual work was carried out, however the notice returned unserved with the remark ' not known'. Accordingly the Assessing Officer



requested the assessee company on 18/06/2014 to produce the said party alongwith the books of accounts as witness of the assessee company and explain the genuineness of the transaction. However no compliance was made on the part of the assessee. On the other hand, the assessee submitted that the object clause of 'memorandum of association' of M/s Taral include the business of development of sites. It was submitted by the assessee, the department had no documents or evidences or any corroborating material, therefore, bald statement of sh Praveen Agrawal might be ignored. The assessee company furnished certificate from an independent structural engineer to support that actual work was carried out by the said party. The assessee requested the Assessing Officer to produce sh Praveen Agrawal or any authorised person of M/s Taral for cross examination.

5.2 During the process of the reassessment proceedings under section 147 of the Act, the Assessing Officer of the assessee received information from the Assessing Officer of the 'ABMPCL' that material pertaining to the assessee was found and seized in the search of 'ABMPCL'. The Assessing Officer of the assessee accordingly, following due procedure of law, issued notice u/s 153C of the Act,

5.3 Thereafter, vide letter dated 23/11/2015, the assessee submitted that the reassessment proceeding commenced under notice under section 148 of the Act dated 3/01/2014 got abetted in



view of the second proviso to the section 153A(1) of the Act. It was submitted that the reassessment proceeding are no more valid and any order passed with reference to notice under section 148 of the Act would be bad in law.

5.4 The Assessing Officer accordingly, treated the proceedings u/s 147 of the Act as got abated under second proviso of section 153A(1) of the Act. Thereafter, during proceedings under section 153C of the Act, the Assessing Officer again questioned the assessee vide notice under section 142(1) dated 29/12//2015, as why the alleged professional fee of ₹10,53,83,193/- shown to have been paid to M/s Taral is treated as bogus expenditure and why the same should not be disallowed. The assessee vide submission dated 18/01/2016 relied on its submissions made earlier and further submitted that payment of ₹10,53,83,193/- to M/a Taral was accounted in the books of account under the head “ Capital Work-in-Progress” and disclosed as asset in the balance sheet for financial year 2007-08, thus there was no impact on the profit of the assessee company for the assessment year under consideration on account of that transaction. The Assessing Officer rejected the contention of the assessee observing as under:

- (i) The notice issued under section 133(6) of the Act issued to M/s Taral returned unserved with the remark ‘ not known’ and thereafter the assessee was asked to produce the said party, however the assessee failed in producing so.



- (ii) The evidences gathered by the Investigation wing of the Kolkata established that said party had no resources to carry out the professional work, for which bills of accommodation entry were issued to the assessee.
- (iii) Sh Praveen Kumar Agrawal admitted that he was engaged in issuing accommodation entry bills through M/s Taral.
- (iv) Making payment through banking channel was in itself not sufficient that actually work was carried out

5.5 The Assessing Officer accordingly reduced the amount of capital work-in-progress by ₹10,53,83,193/-and held that the assessee company would not be entitled to claim depreciation of the said amount in subsequent years, observing as under:

“35.9 It is therefore held that the payment of professional fee of Rs. 10,53,83, 193/- by the Assessee Company to M/s Taral is an accommodation entry and no actual work was carried out by M/s Taral. The Assessee Company has not claimed this payment as deduction in the AY 2008-09 and is carrying the payment as "capital work in progress" in its Balance Sheet. In subsequent years when this amount is capitalized it is added to the block of assets which has resulted in higher depreciation allowance to the Assessee Company. Therefore the amount of "capital work in progress" incurred and carried forward to next year is reduced by the amount of Rs. 10,53,83,193/- and the Assessee Company will not be entitled to claim depreciation allowance in the said amount or part of it in the subsequent years.”

6. On further appeal, the Ld. CIT(A) with reference to grounds raised by the assessee for rejection of capital work-in-progress of Rs.10,53,83,193/- as accommodation entry, held as under:



“22.17 In Para 35.4 of the assessment order, the A.O. has clearly noted that a notice u/s 133(6) of the Act was issued to M/s Taral Vincom P. Ltd. / Link Infrastructure P.Ltd. to verify, whether any actually work was carried out or not. However, the Notice was received un-served with remarks "not known". Accordingly, the Appellant Company was requested by the A.O., vide letter ref. DCIT6(3) / Mumbai/ notice/2014-15 dated 18.06.2014 to produce the said Party along with books of account to explain the genuineness of the transaction. However, the Appellant Company has failed to produce, the said party for examination, before the A.O.

22.18 Also, the findings of the AO are duly buttressed by the statement of Mr. m Praveen Aggarwal recorded by the Investigation Wing, which revealed that the transaction was just an accommodation entry. It is also noted that the copy of the said statement of Mr. Praveen Aggarwal was duly provided to the Appellant along with the reasons recorded for comments. Hence, there is no violation of the principles of natural justice during the course of the assessment proceedings, on this issue.

22.19 In view of these facts and circumstances of the case, this ground of appeal is decided in favour of Revenue and thus, the action of the AO is upheld. Accordingly, the Ground of Appeal No. 3 of the Appellant Company is dismissed.”

7. Before us, the Ld. Counsel of the assessee referred to the details/documents filed during the course of the assessment proceedings, a copy of which is available on page 92 to 464 of the factual paper book. A copy of the statement of Mr. Pravin Aggarwal was also referred in the reason recorded, available on page 85 of the factual paper book. The Ld. Counsel of the assessee submitted that the assessee sought cross examination of Mr. Pravin Aggarwal, however, no such cross examination was provided to the assessee and therefore, no addition could survive in absence of opportunity for cross examination. Further, the Ld. Counsel of the assessee



submitted that the reopening was resorted based on the statement of sh Praveen Agarwal, however, except the statement, no other material/evidence has been provided to the assessee. Regarding the contention of the Assessing Officer in the form of notice u/s 133(6) of the Act issued to concerned company M/s Taral returned unserved, the Ld. Counsel of the assessee submitted that producing Mr. Pravin Aggarwal was onus of the Department, since he was the witness of the Department. The Ld. Counsel further relied on the following decisions in support of preposition that additions cannot be made merely on the basis of notices u/s 133(6) returned unserved:

(a) Tribunal decision in the case of ITO V Shri Sanjay V Dhruv (ITA No. 5089/Mum/2014)

(b) Tribunal Decision in the case of M/s Singhal Exim P Ltd Vs ITO (ITA No. 6520/De/2018)

7.1 In support of the proposition that failure to produce parties cannot be fatal to the assessee, the learned counsel relied on following decisions:

(a) CIT Vs Nikunj Eximp Enterprises P Ltd 372 ITR 619 (Bom HC)

(b) CIT Vs M/s Nangalia Fabrics P Ltd (ITA No. 689 of 2010) (Guj HC)

(c) ITO Vs Shri Takhtmal Bhuralal Piccholiya (ITA No. 4525 to 4528 /Mum/2014) Tribunal



(d) DCIT Vs M/s CMI PPE Ltd (ITANo. 2316/Mum/2019)
Mumbai Tribunal.

7.2. Further, before us, the Ld. Counsel of the assessee has filed additional evidences in the form of data of the company downloaded from the site of the Ministry of Corporate Affairs. The Ld. Counsel submitted that this document might be admitted as additional evidence. He submitted that according to the website of Ministry of corporate affairs, the said party is active and it has filed its balance sheet up to 31/03/2022.

8. On the other hand, the Ld. DR referred to the various pages of the paper book which includes invoices/bills issued by the concerned company M/s Taral. He submitted that in all those bills identical amount of quotations based on the identical measurement have been shown and which is impossible under the normal circumstances. He submitted that the documents in the case along with bills/invoices are without any proper verification by the field staff and genuineness is doubtful. The learned DR referred to page 94 and 95 of the assessee's factual paper book and submitted that one of the quotations is even handwritten. The learned DR further submitted that there is no reference of VAT number or works contract tax number on said invoices. The learned DR further referred to pages 101, 102 of the assessee's paperbook and submitted that those papers only represent approval for road construction/leveling and there was no work completion certificate



,therefore the documents submitted by the assessee do not subscribe to genuineness of the work by the said party.

9. We have heard rival submission of the parties and perused the relevant material on record. As far as merit of the additions is concerned, we find that the Assessing Officer has mainly held the party as non-verifiable in view of the reason that notice u/s 133(6) issued remained unserved and the assessee also failed to produce the said parties for verification of the claims of work carried out by it. Since, before us, the assessee has filed current details/address of the party appearing on the website of the Ministry of Corporate Affairs. The Assessing Officer can make effort for issuing summon to the said party at the current address provided by the assessee. Since the assessee has claimed the said expenses, the primary onus is on the assessee to produce the said party and also to substantiate by way of evidences that actually work was carried out by the said party. The additional evidence filed by the assessee is crucial and goes to the root of the matter. The learned Counsel has submitted that the party is alive on the address provided on the website of the Ministry of corporate affairs, therefore, it is imperative to verify from the records of the said party whether any work was actually carried out. Therefore, we feel it appropriate to restore this issue back to the file of the Id CIT(A) for deciding on the merit of the addition. If required, he may call for a remand report from the assessing officer on the said additional evidence. The Id



CIT(A) or the AO in remand proceeding are it liberty to carry out the inquiries as deemed fit for verification of the work done by the said party. The ground No. 2 of appeal of the assessee is accordingly allowed for statistical purposes.

9.1 Regarding the ground No. 1 of the assessee's appeal, the Ld. Counsel of the assessee submitted that assessment u/s 153C of the Act is in respect of completed assessment because assessment u/s 143(3) of the Act was completed on 25.03.2010, whereas notice u/s 153C of the Act is dated 26.11.2014. On the contrary, according to the Revenue this is case of abated (pending) assessment, because reassessment proceedings u/s 147 of the Act were initiated by the Assessing Officer by way of issue of notice u/s 148 of the Act and at the time of issue of notice u/s 153C of the Act, said reassessment proceedings were pending and same got abated by way of issue of notice u/s 153C of the Act.

9.2 Before us, the Ld. Counsel of the assessee has contended that the notice u/s 148 of the Act issued itself is invalid and consequently in view of no valid proceedings u/s 148 of the Act pending, it was a case of completed assessment. The Ld. Counsel of the assessee has given two reasons for above contentions.

9.3 **Firstly**, according to him, the assessee has been requesting for a copy of approval granted of the Commissioner of Income-tax u/s 151 for issuance of notice u/s 148 of the Act. He submitted



that assessee has requested for the same before the Assessing officer in the course of 153C proceedings and also before the Ld. CIT(A). He referred to page No. 90, 459, 460 465 631 and 676 of the factual Paper Book. The learned Counsel relied on the decision of the Hon'ble High Court of Allahabad in the case of **Deepak Gupta Vs ACIT reported in (2020), 120 taxmann.com 431 (Allahabad)** , wherein it is held that the assessee is fully entitled to a copy of order passed under section 151 of the Act and correspondingly, Assessing Officer is obliged to hand over a copy of the same, as and when, the assessee seeks for it. He submitted that in absence of approval u/s 151, the proceedings u/s 147 are invalid and hence assessment for the year would not abate, thus, no addition could have been made without aid of incriminating material.

9.4 **Secondly**, the Ld. Counsel of the assessee referred to the reasons recorded for issuance of notice u/s 148 of the Act available on page 85 to 86 of the factual paper book and submitted that reopening was resorted pursuant to the search conducted at the premises of one Mr. Pravin Agarwal and statement recorded by Investigation wing of Income-tax department. The Ld. Counsel submitted that reassessment pursuant to the search conducted on the premises of third party can be made only u/s 153C of the Act and not u/s 148 of the Act and therefore, the reassessment proceedings u/s 148 of the Act on the basis of a search conducted at the premises of Shri Pravin Aggarwal is invalid in law. In support



of this contention, the Ld. Counsel relied on the following decisions of the Tribunal:

- **Smt. Samanthapudi Lavanya v. ACIT (189 ITD 401) (Vizac T.)**
- **ITO v. Arun Kumar Kapoor (50 SOT 87) (Amritsar T.)**
- **Mr. Nilesh Bharani v. DCIT (ITA No. 612/Mum/2020)**

9.5 The Ld. Counsel of the assessee accordingly contended that since notice u/s 148 of the Act is bad in law, the consequent assessment proceedings u/s 153C of the Act being in respect of a completed assessment, therefore, no addition could have been made in the order u/s 153C of the Act on any new issue other than the issue arising out of incriminating material. He submitted that neither the addition of Rs.10,53,83,193/- for disallowance of capital work in progress nor the disallowance in relation to additional depreciation of Rs.24,35,82,219/- is arising out of any incriminating material.

9.6 The Ld. Counsel of the assessee assailed the assessment order on one more ground i.e. **third ground or reason**. He submitted that despite several request made by the assessee, the Department never furnished a copy of the satisfaction note which is essential for invoking the provisions of section 153C of the Act. He referred to the assessee's letter dated 17.12.2014 requesting for copy of satisfaction and material based on which notice 153C was served on the assessee. He also referred to page 64 of the factual Paper Book, which is a letter dated 10.03.2013 requesting for providing



copy of satisfaction note. The Ld. Counsel further referred to page 67 of the factual Paper Book which is letter dated 08.07.2015 of the assessee where the same request was reiterated. On the other hand, the Assessing Officer in para 8 of the impugned assessment order observed that there was no requirement in law to provide a copy of satisfactory note to the assessee. The Ld. Counsel of the assessee on the other hand, relied on following decisions to support the contention that satisfaction note ought to be furnished to the assessee:

- **Karthik Krishna v. DCIT (146 taxmann.com 466) (Kar HC)**
- **M/s Chirchind Hydro Power Ltd. v. ACIT (I.T.(SS).A. Nos. 171, 172 and 174/Ind/2008)**
- **Janki Exports International v. UOI (278 ITR 296) (Del HC)**

9.7 The Ld. Counsel of the assessee submitted that in absence of a copy of the satisfaction note and a copy of the Commissioner's approval being not furnished to the assessee, adverse inference should have been drawn against assessment completed u/s 153C of the Act.

10. On the other hand, the Ld. DR submitted that the fact of approval of the relevant authority taken for the purpose of issuing notice u/s 148 of the Act is already mentioned in the said notice itself. He further submitted that while filing objection to the 148 proceedings, the assessee nowhere challenged this fact that notice issued was without any approval under section 151 of the Act. He further submitted that it is the assessee, who asked the Assessing



Officer to treat the reassessment proceeding under 147 of the Act as abated. The DR also submitted that at the stag of issue of notice u/s 153C of the Act, the proceedings u/s 148 were pending before the AO and he can't visualize at that stage it might be challenged as invalid. It was also submitted that validity of notice u/s 148 of the Act on issue of approval letter u/s 151 has been challenged for the first time before the ITAT and not adjudicated by the ld CIT(A), therefore, the matter should be sent back to the ld CIT(A). The Ld. DR without prejudice to the above, further submitted that he had requested the field authorities for tracing a copy of such approval u/s 151 of the Act granted.

10.1 Secondly, on the issue of appropriate remedial action on the basis of the information received in respect of search at the premises of Mr. Pravin Aggarwal, submitted that since no material pertaining to the assessee was found during the course of the search at the third party i.e. Mr. Pravin Aggarwal, therefore, remedial action had been taken validly invoking section 147 of the Act only. He accordingly submitted that proceedings u/s 147 of the Act being validly initiated and being pending as on the date of issue of notice u/s 153C of the Act, the assessment order passed by the Assessing Officer u/s 153C of the Act is a valid assessment order. On the issue of copy of the satisfaction note u/s 153C of the Act, the Ld. DR produced a photocopy before the Bench and provided the same to the Ld. AR.



11. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the assessee has raised three grounds or reasons challenging the validity of the impugned assessment order passed u/s 153C of the Act. We take up the third reason or ground of challenge first for adjudication.

12. As far as 3rd reason of challenge to assessment proceedings by the Ld. Counsel of the assessee is concerned, in view of copy of the satisfaction note provided by the Ld. DR, the issue no longer survives and accordingly. We reject the challenge to validity of proceedings u/s 153C of the Act on this ground.

13. Now, we take up second reason for challenge to validity of assessment proceedings under section 153C of the Act.

13.1 As far as the second reason for challenge to validity of assessment proceedings under section 153C of the Act is concerned, the Ld. Counsel of the assessee submitted that on the basis of information received from Shri Pravin Aggarwal, reassessment could have been initiated only u/s 153C of the Act and not u/s 148 of the Act. We find that 153C proceedings could be initiated only when during search at third party, any cash jewellery or any valuable article is found to be belonging to assessee or any material documentary evidence or other material found to be pertaining to the assessee or any information contended therein is



found related to the assessee. The Hon'ble supreme court in the case of ITO vs Vikram Sujitkumar Bhatia in Civil Appeal No. 911 of 2022 held the amendment brought to section 153C of the Act by way of finance Act, 2015 as retrospective. Since, the information received from search at the Shri Pravin Aggarwal was based on his statement and other material , which were pertaining to Shri Pravin Aggarwal only and therefore, proceedings u/s 153C of the Act could not have been initiated/invoked in the hands of the assessee on said material. The challenge of the Ld. Counsel of the assessee for invalidating the present proceedings u/s 153C on this reasonis accordingly rejected. In our opinion on such information from Pravin Aggarwal only valid recourse was to issue notice u/s 148 of the Act. The decisions relied upon by the learned counsel are distinguishable as same are on the facts of the specific case where any asset belonging to an assessee or material pertaining to an assessee is found during the search of the third party.

14. Now, we take up the first reason of challenge by the Ld. Counsel of the assessee to validity of the assessment proceedings under section 153C of the Act.

14.1. The first reason of challenge is that *in absence of providing copy of the approval for reassessment granted by the appropriate authority u/s 151 of the Act, notice u/s 148 of the Act is invalid, and thus assessment was no longer abated and hence no addition could have been made otherwise than the aid of the incriminating material.*



In the case dispute is regarding abatement of assessment and not on the issue of existence of incriminating material qua the addition. We find that the assessee has requested before the lower authorities from time to time for providing of copy of such approval letter u/s 151 of the Act. However, assessee has not been provided such copy of the approval. The Bench also specifically asked the Ld. DR to provide the copy of the approval granted u/s 151 of the Act. Before us, the learned department representative submitted that this being a very old matter, relevant records of the Department of not at place, hence some more time was required. He was allowed a period of more than one month, still he could not produce copy of such approval letter. He made an alternative plea that matter may be restored back to the file of the Ld. CIT(A), who may call for a remand report from the Assessing Officer asking him to produce a copy of the approval letter issued under section 151 of the Act. He submitted that assessment may not be knocked out only for the technical reason that approval granted under section 151 of the Act could not be readily traced due to matter being old and change of jurisdiction of the case from one Commissioner of income tax to another. He submitted that copy of the approval letter might be available in the office of the additional Commissioner of income-tax (i.e Range head) or in the Commissioner of the Income-tax (Administrative) , which will be traced out and submitted before the Ld. CIT(A) , if matter is restored back . He reiterated that he was confident of availability of such approval.



14.2 In our opinion, the matter cannot be deferred for an indefinite period before us. This issue of challenge of validity of notice u/s 148 of the Act has been raised for the first time before us and not raised before the lower authorities. We note that in view of the additional evidence furnished by the assessee on the issue of the merit, we have restored the matter back to the file of the Id.CIT(A), therefore in the interest of the substantial justice, we feel it appropriate to restore this issue, which is a matter of determination of fact, to the file of the Ld. CIT(A) for adjudication. He may call for a report from the assessing officer and verify copy of the approval granted under section 151 of the Act. If such an approval is found to be in existence, then he shall provide a copy of the same to the assessee. If no such approval for issue of notice under section 148 of the Act is found, then Ld. CIT(A) may decide validity of the assessment proceedings under section 153C of the Act in accordance with law.

15. In view of our discussion, ground No. one of the appeal of the assessee is partly allowed for statistical purposes.

16. The ground No. 3 and 4 of the appeal were not pressed by the assessee and therefore same are dismissed as infructuous.

17. The Revenue in its appeal in ground No. 1 and 2 raised the issue that no disallowance u/s 153C of the Act can be made in case of unabated assessment without aid of any incriminating material. The relevant finding of the Ld. CIT(A) is reproduced as under:



“18.30 In view of the aforesaid detailed discussion and judicial precedents, I am of the view that assessments which are completed Us 1430) do not abate. Further, proceedings U/. 153C r.w.s. 153A do not empower the AO to re-adjudicate the same issues again, unless fresh material is found in the course of search which has some connection with the said issues. The assessing authority cannot disturb the assessment order which has attained finality, unless the material gathered during the course of search, establishes that the income computed in the finalized assessment was not in accordance with the facts unearthed during the course of search.

18.31 Respectfully following these binding decisions, it is held that the completed proceedings us 143(3) will not abate and the AQ is directed to follow the order of the CIT(A) and consider the same, while computing taxable income us 153C. The proceedings u/s 153C are not parallel proceedings and do not give power to the AO to re-adjudicate the issues. Accordingly, this ground of appeal is decided in favour of the Appellant.”

18. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is settled law that in case of unabated assessment no addition could have been made by the Assessing Officer without aid of the incriminating material found during the course of the search as held by the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation Ltd.(370 ITR 643). Since, the issue in the case of assessment abetted or not, has been restored back to the file of the Ld. CIT(A), therefore, ground No. 1 and 2 and of the appeal of the Revenue are accordingly restored back to the file of the Ld. CIT(A) for deciding afresh. The ground No. 1 and 2 of the appeal of the revenue are accordingly allowed for statistical purposes



19. In the ground No. 3 and 4, the Revenue has challenged deletion of the addition made by the Ld. CIT(A) relying on the decision of the Hon'ble Bombay High Court in the case of CIT v. Continental Warehousing Corporation (supra) mainly due to the reason that revenue had filed SLP before the Hon'ble Supreme Court. We find that the Hon'ble Supreme Court has already adjudicated and upheld the finding of the Hon'ble Bombay High Court in the case of CIT v. Continental Warehousing Corporation (supra), in the decision in the case of **PCIT Vs AbhisarBuildwell P Ltd (149 taxmann.com 399)**. But as far as applicability of the decision of the Hon'ble Bombay High Court is concerned, same depends on the factual finding of whether the assessment was abetted or not. Since said issue has already been restored by us to the file of the Ld. CIT(A), while adjudicating appeal of the assessee, therefore, the ground No. 3 and 4 of the appeal of the Revenue are accordingly allowed for statistical purposes.

20. The other grounds raised by the Revenue are general in nature and therefore same are dismissed as infructuous.

21. Both the parties agreed that the grounds raised by the assessee and Revenue in cross appeals for assessment year 2009-10 and 2010-11 are identical or consequential to assessment year 2008-09 and therefore, same are decided mutatis mutandis.



22. In the result, the appeals of the Revenue are dismissed whereas appeal of the assessee are allowed partly for statistical purposes.

Order pronounced in the open Court on 31/05/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/05/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai