IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN CIRCUIT BENCH, DEHRADUN

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 1570/Del/2015
Assessment Year: 2007-08

Salim Ali, vill. Ajabpur Kalan, Post Ajabpur, Dehradun. **PAN:BAPBA5312H** (Appellant)	Versus	Income-tax Officer, Ward 2(1), Dehradun. (Respondent)

ITA No. 1572/Del/2015
Assessment Year: 2007-08

Azad Ali, vill. Ajabpur Kalan, Post Ajabpur, Dehradun. **PAN:AZVPA8477F** (Appellant)	Versus	Income-tax Officer, Ward 2(1), Dehradun. (Respondent)

ITA No. 1574/Del/2015
Assessment Year: 2007-08

Shahzad Ali, vill. Ajabpur Kalan, Post Ajabpur, Dehradun. **PAN:AZOPA9077A** (Appellant)	Versus	Income-tax Officer, Ward 2(1), Dehradun. (Respondent)

Assessees by : Sh. Saurabh Gupta, CA &
Sh. Rishabh Gupta, CA
Revenue by : Sh. A.S. Rana, CIT/DR

Date of hearing : 19.06.2023
Date of pronouncement: 23.06.2023

ORDER

Captioned appeals are by three different assessees against three separate orders of learned Commissioner of Income-tax (Appeals), Dehradun pertaining to the assessment year 2007-08.

The common controversy arising in these appeals relates to the validity of initiation of proceedings u/s. 147 of the Income-tax Act, 1961 and the assessment orders passed in consequence thereupon.

2. Briefly, the facts, more or less common in these appeals are, the assessees are resident individuals. A search and seizure operation under section 132 of the Act was conducted in case of R.B. Enterprises, a firm belonging to Shri Rakesh Batta group, on 04.03.2009. On examination of materials seized, it was found that M/s. R.B. Enterprises had purchased lands from certain persons through registered sale deeds dated 26.12.2006, 06.02.2007 and 12.03.2007 for a total consideration of Rs.52,43,720/-. From the information found in course of search and seizure operation, it was noticed that the lands purchased belonged to five co-owners having shares as under:

(i) Sh. Meer Hasan : 25%
(ii) Sh. Ali Hasan : 25%

(iii) Sh. Salim Ali : 16.67%
(iv) Sh. Shahzad Ali : 16.67%
(v) Sh. Azad Ali : 16.66%

3. Based on such information, assessments in cases of the sellers of land, including the present assessees, were reopened under section 147 of the Act and ultimately, assessment orders were passed in respect of the co-owners of the land adding back various amounts of income on account of capital gain. Against the assessment orders so passed, the assessees preferred appeals before learned Commissioner (Appeals), inter alia, on the ground that the assessment orders passed under section 147 read with section 143(3) of the Act are invalid, as the proper course of action for the Assessing Officer was to initiate proceedings u/s. 153C of the Act. However, learned commissioner (Appeals) did not find merit in the submissions of the assessee and the appeals were dismissed.

4. Before us, learned counsel appearing for the assessee submitted that the issue is squarely covered by the decision of the coordinate Bench in cases of two of the co-owners, wherein, the Tribunal has quashed the proceedings initiated under section 147 of the Act. In this

context, learned counsel for the assessee placed on record order dated 28.02.2019 passed in ITA No. 1571 & 1573/Del/2015.

5. Though, learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned first appellate authority, however, he could not controvert assessee's contention that the issue is squarely covered by the aforesaid decision of the coordinate Bench.

6. We have considered rival submissions and perused materials on record. The facts on record clearly reveal that in course of a search and seizure operation conducted in case of M/s. R.B. Enterprises, documentary evidences were found indicating sale of land by five persons including present assessees to M/s. R.B. Enterprises. Admittedly, based on such seized materials found in course of search and seizure operation conducted in case of a third party, the Assessing Officer has initiated proceedings under section 147 of the Act. The short issue arising for consideration before us is, whether the proceedings under section 147 of the Act have been validly initiated. It is the contention of the assessee before us that since, the assessments have been based on incriminating/seized materials found

in course of search and seizure operation conducted in case of M/s. R.B. Enterprises, the Assessing Officer should have initiated proceedings under section 153C of the Act instead of section 147 of the Act. We find, while dealing with exactly identical nature of dispute in case of two other co-owners of the land, allegedly sold to M/s. R.B. Enterprises, the coordinate Bench in the order, referred to earlier, has held as under :

> "16. Bare perusal of the provisions contained u/s 153C which is non-obstante provision shows that when the assessment order shows that the assessment proceedings were to be initiated on the basis of incriminating material found in search of a third party, as in the present case, the provisions contained u/s 153C are applicable which specifically excludes application of sections 147 & 148 of the Act.
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> 17. In the instant case, undisputedly, originally assessment proceedings were initiated against the present assessees u/s 153C read with section 153A of the Act which was completed vide order dated 30.12.2011 but the same were annulled by ld. CIT (A) vide order dated 28.08.2012 on the ground that proper course in this case was to initiate proceedings u/s 147 of the Act and make assessment accordingly. The said assessment u/s 153C read with section 153A was completed on the basis of some seized material/document LP-103 A-1 pages 30, which is a memorandum of understanding alleged to have been entered into between the assessees and M/s. R.B. Enterprises.
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> 18. So, we are of the considered view that when provisions contained u/s 153C are applicable in this case to initiate assessment proceedings on the basis of seized material seized in case of some third party, notice issued u/s 148 of the Act and subsequent assessment framed u/s 147 of the Act is void ab initio and as such, assessment framed u/s 147/143(3) of the Act is liable to be quashed.
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> 19. Identical issue has been decided by the coordinate Bench of the Tribunal in case cited as Rajat Shubra Chatterji vs. ACIT – ITA

No.2430/Del/2015 order dated 20.05.2016 by returning following findings :-

"7. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), we find that in that case as in the present case before us, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). In the present case before us, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information received from the Directorate of Income-tax (Inv.) on the basis of search & seizure operation conducted at the premises of Rock Land Group of Cases and the documents related to the assessee found during the course of search were made available to the Assessing Officer of the present assessee. We thus respectfully following the decision of Co-ordinate Bench of the ITAT in the case of ACIT vs. Arun Kapur – 140 TTJ 249 (Amritsar) hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act, hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. The reassessment in question is accordingly quashed. The ground No.1 is accordingly allowed."

20. Similarly, coordinate Bench of the Tribunal in case cited as ITO vs. Arun Kumar Kapoor – (2011 140 TTJ 249 has upheld the reassessment order quashed by the ld. CIT (A) by returning following findings :-

> "Reassessment-Validity-Reassessment on the basis of incriminating material found in search of third party-Provisions of s. 153C are applicable which exclude the application of ss. 147 and 148 – Hence notice issued under s. 148 and proceedings under s. 147 are illegal and void ab initio – AO having not followed procedure under s. 153C, reassessment order was rightly quashed by the CIT (A)."

> 21. Following the mandate of section 153C and orders passed by the coordinate Bench of the Tribunal in cases of Rajat Shubra Chatterji vs. ACIT and ITO vs. Arun Kumar Kapoor (supra), we are of the considered view that assessment framed in this case u/s 147/143 (3) of the Act on the basis of incriminating material unearthed in case of a third party is not sustainable, hence ordered to be quashed without entering into the merits of the case. So, other grounds of appeal raised by the assessee have become infructuous. Consequently, both the appeals filed by the assessees are allowed."

7. The materials placed on record clearly reveal that factual position in the present appeals are identical to the cases of Shri Meer Hasan and Ali Hasan decided by the coordinate bench (supra). In case of the present assessees as well, the Assessing Officer had initially initiated proceedings under section 153C of the Act and completed the assessments under the said provision. However, learned Commissioner (Appeals) has quashed the assessment orders passed under section 153C of the Act by holding that assessment proceedings should have been initiated under section 147 of the Act. That being the factual position emerging on record, respectfully following the decision of the coordinate Bench, as referred to above, we hold that initiation of proceedings u/s. 147 of the Act in case of the present assessees are invalid. Consequently, the assessment orders passed in pursuance thereto are also invalid. Accordingly, we quash the assessment orders.

As a natural corollary, the orders passed by the learned Commissioner (Appeals) are set aside.

8. In view of our decision on the legal issue, as above, grounds raised on merits, having become academic, do not require adjudication.

9. In the result, appeals are partly allowed as indicated above.

Order pronounced in the open court on 23/06/2023.

Sd/-	Sd/-
(M. BALAGANESH) **ACCOUNTANT MEMBER**	**(SAKTIJIT DEY)** **VICE-PRESIDENT**

Dated: 23.06.2023
*aks/-