

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'E' NEW DELHI]**

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 1218/DEL/2019 (A.Y. 2012-13)

Narendra Kumar 35, Krishna Kunj Colony, Laxmi Nagar, New Delhi PAN No. AMVPK0536G (APPELLANT)	Vs.	ITO Ward-44(2) New Delhi (RESPONDENT)
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Assessee by :	Sh. Alok Kumar Jain, Adv & Sh. Anchit Jain, CA
Department by:	Sh. Arvind Kumar Bansal, Sr. DR

Date of Hearing	08.06.2023
Date of Pronouncement	19.07.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 20/12/2018 passed by the Commissioner of Income-tax (Appeals)-15, Delhi (hereinafter referred to 'CIT(A)' for assessment year 2012-13.

2. The assessee has raised the following Concise grounds of appeal:-

“1. That the Ld. CIT (A) has erred in not appreciating that the proceedings could not be valid, as assessment could have been made only under section 153C on the basis of the documents/Information found during the course of a search.

2. That the Ld. CIT (A) has erred in not appreciating that the proceedings initiated u/s. 147/ 148 are invalid and illegal as the reasons recorded do not reflect any tangible material on the basis of which the Assessing Officer could have reasons to believe that any income has escaped assessment.

3. That the Ld. CIT (A) has erred in not appreciating that the proceedings initiated u/s 147/148 are invalid and illegal as the reasons recorded do not reflect any satisfaction of the Assessing Officer regarding escapement of income but are based upon borrowed satisfaction of the Investigation Wing of the department.

That the Learned CIT(A), failed to acknowledge that nothing has been done by the AO to prove that any capitation fee was actually paid by the assessee.

4. That the Ld. CIT (A) has erred on facts and in law in upholding the addition of Rs. 7,00,000/- on account of alleged payment to M/s. Santosh Medical College. That the statement recorded does not corroborate any fact of any transaction of capitation fee being paid by the assessee.

5. That the Ld. CIT (A) has erred in not appreciating that the assessment is invalid and illegal as the principles of natural justice have been completely violated and no opportunity of cross

examination was provided to the appellant.

6. Each of the grounds are independent of and without prejudice to all others. The appellant craves leave to add to or modify or amend and withdraw all or any of the above grounds.

3. Brief facts of the case are that, the assessee filed return declaring income of Rs. 9,05,470/- for Assessment Year 2012-13. The case was taken up for scrutiny and the assessment u/s 148/147 of the Act was completed on 23/03/2016 determining income at Rs. 16,05,470/- by making addition of Rs. 7,00,000/- u/s 68 of the Act treating the same as unexplained income. Aggrieved by the assessment order dated 23/03/2016, the assessee preferred an Appeal before the CIT(A), the ld. CIT(A) vide order dated 20/12/2018 dismissed the Appeal filed by the assessee. As against the order of the CIT(A) the assessee filed the present Appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the order of the Lower Authorities are not sustainable as the assessment should have been made only u/s 153C of the Act since the reopening has been done on the basis of 'documents/information found during the course of search'. By placing reliance on the various judicial pronouncements the Assessee's Representative submitted that the assessment order and the order of CIT(A) deserves to be set aside.

5. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

6. We have heard both the parties and perused the material available on record. The A.O. recorded the following reasons u/s 147 of the Act for reopening the assessee's assessment.

“The information has been received from DDIT (Inv) Unit- 5(1) dated, 05.03.2015 that during the course of search & Seizure U/s 132 was conducted on 27.06.2013 at Santosh Medical Group of Medical Institution Ghaziabad. During the Search & Seizure an amount of Rs. 19,57,14,500/- has been seized from the premises of the assessee. During the course of confessional statement recorded U/s 132(4) Sh. P. Mahalingam, chairman of the institute has admitted of accepting the donation /capitation fees in cash and offered the unaccounted money so received as his unaccounted money. He has further admitted that the cash was paid by the parents of the students for seeking admission in the MBBS stream in the institution during the year under consideration:

As; per detail available the Narendra Kumar S-83, Upper Ground Floor Parampuri Uttam Nagar New Delhi has paid cash in the form of donation/capitation fees amounting to Rs.7,00,000/- during the FY 2011-12 relevant to AY 2012-13.

*(Sangeeta Kapoor)
Income Tax officer
Ward 44(2),
New Delhi*

Issue notice u/s148 for the A.Y 2012-13.”

7. On going through the above reasons recorded, it is found that a search was carried out on 27/06/2013 on Santosh Group of Medical Institution,

Ghaziabad and as per the details available, the assessee has paid cash in form of donation/capitalization fees amounting to Rs.7,00,000/- during the Financial Year 2011-12 relevant to Assessment Year 2012-13, the said fact has been admitted by the Chairman of the Group in a concession recorded u/s 132(4) of the Act. The A.O. initiated reassessment proceedings u/s 147 of the Act on the basis of information received based on material qua, the assessee found during the search conducted on 27/06/2013 on Santosh Group of Institution, Ghaziabad.

8. It is the specific ground of the assessee that as per provision of Section 153C of the Act, person relating to whom some material is found in the search of some 'other person', should be assessed u/s 153C of the Act but the A.O. has invoked provision of Section 147 of the Act. The Co-ordinate Bench of the Tribunal in the case of Sushil Gaur Vs. ITO, Ward-2(3), Ghaziabad in ITA No. 1500/Del/2017 the case involved in the very same college held as under:-

"8. I have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, 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 ob initio. It was held that Assessing Officer having not followed procedure under sec 153C, reassessment order was rightly quashed by the Learned CIT(Appeals) I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of ITO vs. Arun Kumar Kapoor (supra). In the present case before me, 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 available with the AO. I thus respectfully following the decision of Co-ordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kapur - 140 TTJ 249 vs. (Amritsar) and the ITAT, Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No 2430/Del/2015 dated 20.5.2016 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 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. Hence, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds.”

9. The similar views have been taken in following cases:-

- ❖ *Rajat Shubra Chatterji Vs. ACIT in ITA No. 2430/Del/2015 for A.Y 2007-08 vide order dated 20/05/2016o. 86/Agra/2017 for A.Y 2007-08 vide order dated 31/08/2018*
- ❖ *G. Koteswara Rao Vs. DCIT, in ITA Nos. 400 to 407 (Vizag. Of 2014) for A.Ys 2008-09 and 2009-10 order dated October 29, 2015*
- ❖ *Income Tax Officer Vs. Arun Kumar Kapoor in ITA No. 147 (ASR) of 2010 for A.Y 2006-07 vide order dated June 21, 2011.*

10. In view of the above settled position of law, considering the fact that the incriminating material was found and seized during the search carried out of ‘some other person’ that a sum of Rs. 7,00,000/- had been paid by the assessee during the Financial Year 2011-12 to Santosh Medical College,

Ghaziabad, and since the assessee was not assessed u/s 153C of the Act, which provision specifically exclude the operation u/s 147 of the Act, in our considered opinion, the A.O erred in invoking provision to Section 147 of the Act instead of those of Section 153C of the Act. In view of the above, the reasons recorded u/s 147 of the Act and all proceedings pursuant to thereto, cumulative the order under Appeal are quashed.

11. In the result, Ground No. 1 of the assessee is allowed. Consequently assessment order and the order of the CIT(A) are quashed. In the result, Appeal of the assessee is partly allowed.

Order pronounced in the open court on : **19/07/2023**.

Sd/-
(Dr. B. R. R. KUMAR)
ACCOUNTANT MEMBER

Dated : 19/07/2023

R.N, Sr. PS

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

