

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 16 to 21/Asr/2023
Assessment Years: 2014-15 to 2019-20

Sh. Pawan Kumar,
H. No. 40, Mohalla No. 32,
Jalandhar Cantt. Jalandhar
144005, Punjab

[PAN: BGIPK8643Q]
(Appellant)

Vs. Dy. C. I. T.,
Central Circle -1,
Jalandhar

(Respondent)

Appellant by : Sh. Rohit Kapoor, CA &
Sh. V.S. Aggarwal, ITP

Respondent by: Sh. Digvijai Kumar Chaudhary, Sr. DR

Date of Hearing: 08.08.2023

Date of Pronouncement: 23.08.2023

ORDER

Per Bench:

This bunch of appeals is filed by the assessee against the orders of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana even dated

09.12.2022 in respect of Assessment Years: 2014-15 to 2019-20 wherein the assessee has challenged the confirmation of penalty u/s 271(1)(c) of the Act.

2. At the outset, the LD. Counsel submitted identical facts, the case in ITA No. 16/Asr/2023 may be taken as a lead case. There was search and seizure proceedings u/s 132 on 25.09.2019 conducted on the premises of M/s AIRWINGS SERVICES PVT. LTD in which the appellant is an employee. A search was also conducted separately at the residential premises of the appellant. In this regard, the LD. AR filed the copy of Panchnama [Refer page no. 4-9] from which it is evident that there was an independent search on the appellant. Subsequently, the proceedings u/s 153C were initiated on the basis of material seized from Cambridge International Foundation school that the documents seized pertain to noting of salary in respect of school and includes the salary 'paid to maids' amounting to Rs. 205390/- which pertain to M/s Pal Enterprises for which the appellant is a proprietor. The said noting pertains to 06.08.2019 based on which, the whole proceedings u/s 153C have been initiated. The Ld.AR argued that the assessment in the case of Pawan Kumar was framed u/s 153C because certain incriminating

documents were found and seized from the premises of Cambridge international School which belongs to Pawan kumar alias Lucky [Please refer para 4.1 on page no 17 of paper book and internal page no 7 of the CIT(A) order for AY 2014-15]. It was also submitted before the CIT(A) that the provisions of section 153C were not relevant in the instant case as the notice u/s 153C is to be issued to a person other than the persons referred to in section 153A. It is a matter of record that the appellant was also subjected to search on 25.09.2019 and as such the appellant cannot be referred to as a person other than the person referred in section 153A. In the present case, the AO has himself admitted that the appellant was searched and as such, the proceedings-initiated u/s 153C were without jurisdiction. The said issue was also raised in the appellate proceedings before CIT(A) and as a consequence of the same, report was called from the AO vide letter no 1575 dated 15.11.2022. In the said letter, the AO has admitted the fact that the appellant was searched but he has pointed out that certain incriminating material was found from the premises of Cambridge International School out of which a sum of Rs. 205390/- was paid as 'salaries paid to maid' to M/s Pal Enterprises in

cash. The facts that the AO has admitted that the appellant was searched are summarized as under: -

Para No of CIT(A) order	Relevant text	Remarks
4.1 on page no 17 of paper book and internal page no 7 of the CIT(A) order for AY 2014-15	On the perusal of the warrant of authorization u/s 132 of IT Act 1961, it is noted that authorization as issued in the case of Airwings Services Pvt. Ltd and its directors and to cover and search the premises of Pawan Kumar H. No Mohali Jalandhar.	The AO in the letter dated 15.11.2022 has accepted the fact that search was initiated in the case of the appellant.
2 on page no 20 of paper book and internal page no 10 of the CIT(A) order for AY 2014-15	Further the following has also been unearthed during the search at the premises of Sh. Pawan Kumar	The CIT(A) at page no 10 has reproduced the reasons as to why the proceedings u/s 153C have been initiated in the case of the appellant.

3. The AO in report CIT(A) has pointed out that the assessment in the case of Pawan Kumar was framed u/s 153C since there are certain, incriminating documents were found and seized from the premises of Cambridge International School which belongs to Pawan kumar alias Lucky [Please refer para 4.1 on page no 17 of paper book and internal page no 7 of the CIT(A) order for AY 2014-15]. It was submitted before the CIT(A) that the provisions of section 153C were not relevant in the instant case as the notice u/s 153C is to be issued to a person other than the persons referred in section 153A. It is a matter of record that

the appellant was also subjected to search on 25.09.2019 and as such the appellant cannot be referred to as a person other than the person referred in section 153A. In the present case, the AO has himself admitted that the appellant was searched and as such, the proceedings were initiated u/s 153C were without jurisdiction.

4. The Ld AR argued that It was brought to the knowledge of the worthy CIT(A) that the second condition to section 153C has also not been complied with that the provisions of section 153C can only be invoked where the information pertains to period of 6 years immediately preceding the AY relevant to PY in which search/ requisition is made. In the present case, the material seized pertains to the year of search and not to any of the 6 years immediately preceding the AY relevant to PY in which search/ requisition is made.

5. It is seen that Ld. CIT(A) confirmed the action of the AO in respect of penalty levied u/s 271(l)(c) and 270A on the ground that the AO has rightly framed the assessment u/s 153C. The CIT(A) has mentioned that the section 153C was initiated by the AO based on documents pertaining to/ belonging to the appellant from a premises different to the premises of the appellant. The CIT(A) has also relied upon section

153C(b) by placing reliance upon certain case laws which are distinguishable on the peculiar facts of the present case. In support of contentions the Ld. AR filed a brief synopsis which reads as under:

"1. There was search and seizure proceedings u/s 132 on 25)09.2019 conducted on the premises of M/s AIRWINGS SERVICES PVT. LTD in which the appellant is an employee. That search was also conducted separately at the residential premises of the appellant. In this regard, we are enclosing herewith the copy of Panchnama [Refer page no. 4-9] from which it is evident that there was an independent search on the appellant.

2. That the proceedings u/s 153C were initiated on the basis of material seized from Cambridge International Foundation school. That the documents seized pertain to noting of salary in respect of school and includes the salary 'paid to maids' amounting to Rs. 205390/- which pertain to M/s Pal Enterprises for which the appellant is a proprietor. The said noting pertains to 06.08.2019 on the basis of which, the whole proceedings u/s 153C have been initiated.

3. Thereafter, notice u/s 153C of the Act was issued for the AY 2014-15 to 2019-20 on 16.04.2021 by taking into consideration the documents seized from the premises of M/s Cambridge International Foundation School. In response to the said notice the appellant filed return of income on year to basis. However, for several AY the returns could not be filed due to technical glitch in the income tax portal.

4. Subsequent to the said proceedings, the appellant as issued notice u/s 142(1) from time to time and the assessment was completed vide order passed u/s 153C for the AY 2014-15 to 2019-20. During the assessment proceedings, it was noticed that certain salary income were not considered while filing the original return of income. However, the same were considered by way of filing revised computation on year to year basis. The appellant in order to avoid litigation with the department has duly offered the same and has paid tax on such income. The total addition made in all the years is tabulated as under: -

AY	Amount of addition
2014-15	
2015-16	188620
2016-17	216000
2017-18	216000
2018-19	240000
2019-20	332000
	1330370

5. That subsequent to the order passed u/s 153C, the notice u/s 274 r.w.s 271(l)(c)/ 270A were issued and the appellant submitted the reply that the penalty initiated u/s 271(l)(c)/270A is bad in law as the assessment order passed u/s 153C is without jurisdiction. The said objection was raised in the pursuit of the fact that the appellant was subjected to search and seizure operation and as such, the assessment proceedings ought to have been initiated by issuing notice u/s 153A. Therefore, the re-assessment framed u/s 153C is bad in law and consequently, the penalty order passed u/s 271(l)(c)/270A is required to be quashed.

2. Submissions in respect of Ground No. 1-4

Ground No. 1 That the order passed by Ld. CIT(A)-5 Ludhiana u/s 250(6) of the income tax act 1961 confirming the penalty of Rs. 11440/- u/s 271(l)(c) levied by the AO; is against the fact of the case and bad in law.

Ground No. 2 That the Ld. CIT(A) has erred in confirming the penalty u/s 271(1)(C) without considering the fact that the premises of the assessee were subject to search u/s 132 on 25.09.2019 and as such the assessment proceedings had to be initiated vide notice u/s 153A. That the CIT(A) has erred in stating at page no 14 that the AO had 'sufficient grounds to assume jurisdiction u/s 153C' in view of the fact that even the premises of the assessee were subject to search. That the jurisdiction u/s 153A/ 153C cannot be assumed differently for every document and notice ought to have been issued based upon totality of facts of the case

Ground No. 3 That the Ld. CIT(A) has erred in confirming the penalty u/s 271(1)(C) on enhancement income by Rs. 137750/- as voluntarily offered in the revised computation of income in response to notice u/s 153C

without considering the fact that the premises of the assessee were subject to search u/s 132 on 25.09.2019 and as such the assessment proceedings had to be initiated vide notice u/s 153A particularly in view of the fact that the salary income of Rs. 137750/- was offered in the revised computation of income on the basis of the credit entries in the bank account of the assessee and not on the basis of any incriminating material found from the premises of other person who was search.

Ground No. 4 *That the Ld. CIT(A) has erred in confirming penalty levied by the AO by stating on page no 13, that the assessee had not challenged the assessment made u/s 153C since the assessee had duly raised the said objection in the replies filed in response to show cause notice*

e) In view of the above, the order passed u/s 153C is bad in law since at the very outset, the notice u/s 153C is bad in law since, since the appellant is the searched person in which case the appellant ought to have been issued notice u/s 153A. As such, the notice u/s 153C is invalid and suffers from infirmity.

f) From the aforesaid sections, following bullet points emerge: -

- i) For the application of section 153C, two conditions need to be fulfilled: -*
 - a) The person to whom the notice u/s 153C is to be issued should be a person other than the person referred to in section 153A, and***
 - b) that, Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person 76[for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A];]***
- i. From the above, it is submitted that the premise of the appellant was also subject to search on 25-09-2019. As such, the appellant cannot be referred to as 'person other than the person referred to in section 153A'.*

Since the section 153A refers to a person whose premises have been search u/s 132 of the income tax act, 1961. As such, the first condition marked as 'a' as mentioned in Para 'e' of point no 2 above is not fulfilled in the case of the assessee.

(iii) Furthermore, as regard the second condition marked as 'b¹' as mentioned in Para 'e' of point no 2 above, it is most respectfully submitted that no document related to six assessment years immediately preceding the assessment year in which search was conducted, was found. As such, even the second condition is not satisfied in the case of the assessee. That in the remand report AO has referred to document dated 06.08.2019 which is related to current year and moreover no addition has been made for this document in the FY 2019-20.

(iv) Furthermore, the condition of incriminating is required qua years and cannot be applied uniformly to all years. This position has been upheld by Apex Court in the matter of **Commissioner of Income-tax-III, Pune v. Sinhgad Technical Education Society reported in [2017] 184 taxmann.com 290 (SC) Section 153C of the Income-tax Act, 1961 - Search and seizure -**

Assessment of income of any other person (Validity of notice) - Assessment years 2000-01 to 2003-04- **Whether as per provisions of section 153C, incriminating material which was seized had to pertain to assessment years in question - Held, yes** - Whether where loose papers found and seized from residence of President of assessee, an educational institution, indicating capitation fees received by various institutions run by assessee did not establish co-relation document-wise with assessment years in question, notice issued under section 153C had rightly been quashed and set aside - Held, yes [Paras 16,18 & 19][In favour of assessee]

2.1 In view of the facts that none of the conditions are satisfied in the case of the assessee, as such the assessee ought to have been issued notice u/s 153A. Hence, the issue of notice u/s 153C to the assessee for the AY 2014-15 to 2019-20 is bad in law. In this regard reliance is being placed upon the following case laws: -

a) Judgment of ITAT Hyderabad in the case of **T. Nanda Kishore and ORS. Vs Dy. Commissioner of Income Tax, centralcircle-3 reported in 2021 (7) TMI 155-ITAT HYDERABAD**" in which it has been stated as under: -

Validity of proceedings u/s 153C - HELD THAT:- Assessing Officer had first of all issued his notice dt. 13-01-2012 u/s. 153A of the Act an admitted fact that the department had also conducted the search in assessee's case as well. And also that Assessing Officer had issued Section 153C notice on 13-01-2012 only. Meaning thereby that the crucial date herein i.e., 13-01-2012 witnessed the Assessing Officer's twin folded action initiating both the 153A as well as 153C proceedings culminating in the impugned assessment u/s. 153C of the Act.

We hold in this clinching factual backdrop that the impugned assessment suffers from a patent legal defect at the threshold itself since the Assessing Officer ought to have initiated the same u/s. 153A in case of the searched assessee than a third party. We thus adopt stricter construction going by hon'ble apex court's full bench decision Commissioner of Customs Vs. Dilip Kumar [2018 (7) TMI 1826 - SUPREME COURT] and quash the impugned assessment itself as 'invalid'.

(i) 2023 (4) TMI 268 - ITAT KOLKATA BENI PRASAD LAHOTI VERSUS DEPUTY COMMISSIONER OF INCOME TAXCENTRAL CIRCLE-2 (2). KOLKATA

Penalty u/s 271(l)(c) - difference between the amounts available in the return filed originally, vis-a-vis return filed in response to notice under section 153A - case of the Revenue is that had the search not carried out, then the assessee would have not disclosed the income, which has been disclosed under section 153A - HELD THAT:- We have noticed break-up of the amounts disclosed by the assessee in the return filed under section 139, vis-a-vis in response to notice 153A. We have also taken note of the income disclosed under section 132(4) - Assessee has made disclosure under section 132(4) that does not mean some money, bullion, jewellery or valuable was found and seized. The extra income disclosed has not been demonstrated as representing that money, bullion or jewellery.

*The case of the assessee that Explanation 5A to section 271(l)(c) could only be invoked if during the course of search, any money bullion, jewellery or document, notings found during the course of search on the basis of which addition in the hands of the assessee are being made is correct. **If an assessee enhanced his income voluntarily, then no penalty would be imposed upon the assessee.***

Assessee has relied upon the decision of Neeraj Jindal f2017 (2) TMI 1002 - DELHI HIGH COURT] has also considered the scope of Explanation 5A and held that unless money, bullion, jewellery or asset found during the course of search representing the extra income disclosed by an assessee in response to section 153A. vis-a-vis the income filed under section 139(1). the assessee cannot be visited with penalty.

We allow all these appeals of the assessee and delete the penalties.

4. *In view of the aforesaid judgment, it is clear and an established fact that the income offered pursuant to notice u/s 153C would replace the income offered in return filed u/s 139(1). Furthermore, the notice u/s 153C is a second chance given to the assessee and in which case, the revised income has to be considered for the purpose of initiating penalty proceedings. As such, in view of the fact that no objection was raised in respect of the income offered by the assessee in response to notice u/s 153C, hence, the penalty levied vide order passed u/s 271(1)(C) are bad in law."*

6. Per contra, the Ld. DR stands by the Impugned orders.

However, he has not disputed the facts on record and failed to controvert the Ld. AR.

7. We have heard the rival contentions, perused the material on record, impugned orders, and case law cited before us. Admittedly, a search was also conducted separately at the residential premises of

the appellant assessee and as such the assessee ought to have been issued notice u/s 153A. In our view, under the facts and circumstances, that none of the conditions are satisfied in the case of the assessee, for the issue of notices u/s 153C to the assessee in respect of the AY 2014-15 to 2019-20 and hence, the proceedings u/s 153C of the Act, *per se* is bad in law.

8. Similar view is taken by ITAT Hyderabad in the case of T. Nanda Kishore and ORS. Vs Dy. Commissioner of Income Tax, central circle-3 reported in 2021 (7) TMI 155-ITAT HYDERABAD" wherein it has been held as under: -

Validity of proceedings u/s 153C - HELD THAT: - Assessing Officer had first of all issued his notice dt. 13-01-2012 u/s. 153A of the Act an admitted fact that the department had also conducted the search in assessee's case as well. And also that Assessing Officer had issued Section 153C notice on 13-01-2012 only. Meaning thereby that the crucial date herein i.e., 13-01-2012 witnessed the Assessing Officer's twin folded action initiating both the 153A as well as 153C proceedings culminating in the impugned assessment u/s. 153C of the Act.

We hold in this clinching factual backdrop that the impugned assessment suffers from a patent legal defect at the threshold itself since the Assessing Officer ought to have initiated the same u/s. 153A in case of the searched assessee than a third party. We thus adopt stricter construction going by hon'ble apex court's full bench decision Commissioner of

*Customs Vs. Dilip Kumar [2018 (7) TMI 1826 - SUPREME COURT] and
quash the impugned assessment itself as 'invalid'.*

9. The Hon'ble DELHI HIGH COURT in case of Neerai Jindal (Supra) has considered the scope of Explanation 5A and held that unless money, bullion, jewellery or asset found during the course of search representing the extra income disclosed by an assessee in response to section 153A. vis-a- vis the income filed under section 139(1). The assessee cannot be visited with penalty.

10. From the above, it is evident that the premise of the appellant was also subject to search on 25-09-2019. Therefore, the appellant cannot be referred to as a 'person other than the person referred to in section 153A'. Since the section 153A refers to a person whose premises have been search u/s 132 of the income tax act, 1961. As such, the first condition marked as in clause 'a' to section 153C as above is not fulfilled in the case of the assessee. Similarly, the second condition marked as clause 'b' above that no document related to six assessment years immediately preceding the assessment year in which search was conducted, was found. As such, even the second condition is not satisfied in the case of the

assessee. The AO in the remand report has referred to document dated 06.08.2019 which is related to current year and moreover no addition has been made for this document in the FY 2019-20. Meaning thereby that the decision of the learned CIT appeal suffered by infirmities and perversities to the facts on record.

11. Considering the factual matrix and judicial precedent, we are of the considered view that the impugned assessments suffers from a patent legal defect at the threshold itself since the Assessing Officer ought to have initiated the Assessment Proceedings u/s. 153A in case of the searched assessee. We thus adopt stricter construction going by hon'ble apex court's full bench decision in case of "Commissioner of Customs Vs. Dilip Kumar", (Supra) and quash the impugned assessment itself as 'invalid'. Thus, when the assessment itself is held invalid, the penalty levied u/s 271(1)(c) is not maintainable and as such same is dismissed as void ab initio.

12. On Identical facts our findings and observation given in ITA No. 16/Asr/2023 shall be applicable to the other appeals in ITA Nos. 17 to 21/Asr/2023 in *mutatis mutandis*.

13. In the result, the bunch of appeals are allowed.

Order pronounced in the open court on 23.08.2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

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