

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: C: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.334/Del/2023
Assessment Year: 2014-15

Kirtimaan Buildtech P. Ltd., 130, Avtar Enclave, Pashim Vihar, New Delhi 110063 PAN AADCK 5559 N	vs.	The DCIT, Central Circle 16, New Delhi
(Appellant)		(Respondent)

For Assessee:	Shri R.K Gupta, CA
For Revenue :	Mr. Waseem Arshad, CIT(DR)

Date of Hearing :	10.08.2023
Date of Pronouncement :	30.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-28, New Delhi dated 26.12.2022 for A.Y. 2014-15.

Application of assessee seeking additional grounds.

2. The Id. Assessee Representative (AR) submitted written submissions/application to support legal contention and seeking admission of additional grounds of assessee wherein it has been stated that the legal grounds are pure legal issues which goes to the root of the matter and all material facts and documents are already available on record for adjudication of legal additional grounds. The Id. AR placed reliance on the judgment of Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society 398 ITR 344 (SC) and Gedore Tools Pvt. Ltd. 238 ITR 268 (Del.)

3. The Id. CIT(DR) opposed to the admission of additional grounds. On careful consideration of above submissions, we note that the additional ground no. 1 to 3 of assessee are pure legal grounds which are relevant and goes to the root of the controversy and thus even if the same were not raised before authorities below the same can be agitated belatedly before the Tribunal. Hence respectfully following the

judgments of Hon'ble Supreme Court and Hon'ble Jurisdictional High Court of Delhi (supra) the additional grounds raised by the assessee are admitted for consideration and adjudication. Application is allowed.

4. The assessee filed concise grounds of appeal along with additional grounds of appeal is as under:-

2. *That under the facts and circumstances the impugned asstt. Is barred by limitation in view of 1st proviso to Sec 153C(1) as the date of receiving the records by the Assessing Officer of the assessee is 29.10.20, hence the date of search in case of assessee is 29.10.20 i.e. AY 21-22, accordingly period of 06 years for Sec153C lies only from AY 15-16 to 20-21, so AY 14-15 is barred by limitation.*

5. The Id. AR has submitted following written submissions in support of additional ground no. 2:-

Brief Factual Relevant Dates And Contentions For Issue Of - Barred By Limitation

<i>Date</i>	<i>A.Y.</i>	<i>Event</i>	<i>Pg. No.</i>
15.12.16	17-18	Date of search on Hemant Kr. Sharma, U/s.132.	1
03.08.20	21-22	Date of recording of satisfaction by A.O. of searched person.	3
29.10.20	21-22	Date of receiving the records by A.O. of assessee.	3
Oct./Nov 2020	21-22	Month of recording of satisfaction by A.O. of assessee. (For 06 + 01 year for A.Y.11-12 to 17-18)	3
11.11.20	21-22	Issuance of notice U/ S.153C.	

-06 Dyears U/s.153A in the case of searched person is from A.Y.11-12 to A.Y.16- 17.

- The A.O. of the assessee also recorded satisfaction U/S.153C for same 06 years as in the case of searched person i.e. from A.Y.11-12 to A.Y.16-17. Thus, A.O. also do not dispute that 153C asstt. in the case of 3rd person should be only for 06 years.

- Hence, the issues relevant for deciding the contention of "barred by limitation" are as under:-

A. Whether, the asstt. years eligible for 153C proceedings are to be calculated w.r.t. the date of search on main person (i.e. 15.12.16/ A.Y.17-18) or w.r.t. the date of receiving the record by the A.O. of the assessee (i.e. 29.10.20/ A.Y.21- 22)?

B. Whether, in view of amendment to Sec.153C(1), w.e.f. 01.04.17, where the search in the main case has taken place on 15.12.16/A.Y.17-18 and in a case of a 3rd person records are reed, after 01.04.17, then for the purposes of Sec.153C the period shall be whether 06 years or extended period w.e.f. date of receiving records i.e. 29.10.20/ A.Y.21-22.

Issue - A

- There is no amendment in 1st proviso to Sec.153C (1) and this proviso is absolutely identical.
- This proviso specifically provides that in case of a 3rd person, the date of search shall be the date of receiving the records by the A.O. of the 3rd person.
- There is no ambiguity in this proviso.
 - Hence in the case of a 3rd person, date of receiving the records shall be the date of search for the purposes of Sec.153C, prior as well as subsequent to amendment.
- Therefore, in the present case the eligible period of 06 years for 153C should be calculated w.r.t. 29.10.2020 (A.Y.21-22) and same will calculate from A.Y 2015- 16 to 2020-21.
- This issue is squarely covered by following decisions of Hon'ble Delhi High Court:-
 - Sarwar Agency Pvt. Ltd. ITA No.42^2017 - Dtd.17.08.17 (DHC)
 - RRJ Securities Ltd. 62 taxmann 391 (Del.).
 - Ojjus Medicare Private Limited Vs ACIT, Circle-5, New Delhi - ITA 20yDel/2021 -A.Y 2012-13 - 29.07.2022

Issue - B

- At the outset, the question of extended period w.r.t. amended Act is not arising out of impugned asstt. order for the simple reason that the A.O., himself, in the satisfaction note, has taken a period of 06 years only for the purposes of Sec.153C.
- Hence, in case this 06 years period if calculated w.r.t. 29.10.20 (A.Y.21-22), then, A.Y.14-15 will obviously be outside the period of 06 years (06 years period will be from A.Y.15-16 to A.Y.20-21 and A.Y.21-22 will be the search year).
- Without prejudice,

In any case issue-B as a whole also stands adjudicated recently by Delhi IT AT in the following case:-

- Ojjus Medicare Private Limited Vs ACIT, Circle-5, New Delhi - ITA 202/Del/2021 -A.Y 2012-13 - 29.07.2022

(By Hon'ble C.M. Garg and Hon'ble A. N. Mishra)

The facts of this case are similar as under:-

- 07.04.16 - Date of search (A.Y.17-18)
- 15.05.19 -Date of recording satisfaction by A.O of 3rd person (A.Y.20-21)
- 06 years period w.r.t. 15.05.19 are from A.Y.14-15 to 15.05.19 -Date of recording satisfaction by A.O of 3rd person (A.Y.20-21)
- A.Y.12-13 -In dispute - Held barred by limitation.

- "In this case, the complete law on this issue w.r.t. amended Sec. w.e.f. OIT-r 17 has been discussed with the support of other similar authorities i.: .: has been held that a period of 06 years has to be calculated w.r.t. A.Y.20-21, thus the A.Y.12-13 is barred by limitation.

Ojjus Medicare... has taken heavy support and strongly relied upon:-

- *Karina Airlines International Limited Vs ACIT Circle -5, -ITA 203/Del/2021 -A.Y 2012-13 - Dated 09.06.2021*

(By Hon'ble Prashant Mehershhi and Hon'ble K. N. Charr.

- *Karina Airlines International Limited Vs ACIT Circle -5. -ITA 204/Del/2021 -A.Y 2011-12 - Dated 28.02.2022*

(By Hon'ble G. S. Pannu and Hon'ble Saktiit Dev

Facts of Karina Airlines Cases

07.04.2016 - Search on Sh. Harvansh Chawla. (A.Y. 17-18).

15.09.2019 - A.O. of the assessee recorded the satisfaction. (AY 20-21)

A.Y.13-14 to A.Y.18-19 - w.r.t. date of recording satisfaction 15.09.2019

A.Y. 11-12 & A.Y. 12-13- in dispute- held barred by limitation

In Karina... and/or Ojjus Medicare..., relying upon large No. of following authorities, in crux it has been held that:-

- *That in case of 3rd person the period of 153C is to be counted w.r.t. date of receiving of records/recording of satisfaction.*
- *The amended Sec.153C(I) [which do not amend 1st proviso to Sec.153C(I)], is applicable prospectively only i.e. in case where search is U/s.153A has taken place on or after 01.04.17 and not in cases where search is prior to 01.04.17.*
- *The period for 153C in cases where search U/s.153A has taken on the main person prior to 01.04.17 shall be only 06 years.*

Cases and CBDT Circulars etc. relied upon in Ojjus Medicare... and Karina...

- *Explanatory Notes to the provisions of the Finance Act, 2017 issued by the Central Board of Direct Taxes (CBDT) through Circular No. 2/2018, dated 15th February, 2018 explaining the amendment made to the provisions of sections 153A and 153C of the Act.*
- *CIT v RRJ Securities Ltd. (supra) (DHC)*
- *ARN Infrastructure India Ltd v ACIT 394 ITR 569 (Del.)*
- *MIKADOREALTORS P. LTD. VERSUS PR. CIT (CENTRAL) GURUGRAM. 2021 (5)TMI 722 - ITAT DELHI I.T.A. No.50/DEL/2021*
- *PCIT vs. Dreameity Buildwell (P) Ltd. 417 ITR 617 (Del)*

Memorandum explaining the said amendment to the Finance Bill (it provides that the amended provisions of Sec.153C(1) shall be applicable only in case of searched on or after 01.04.17.

6. In addition to above submissions the Id. AR also placed reliance on the judgment of Hon'ble Jurisdictional High Court of Delhi in the case of PCIT vs. Sarwar Agency P Ltd. dated 17.08.2017 in ITA 422/17 to submit that since the date of search was 15.12.2016, hence the amendment to section 153C(1) of the Act is applicable from 1.7.2017 and thus applicable to the cases where search took place on or after 01.04.2017. Therefore impugned assessment order dated 27.12.2021 passed u/s. 153C r.w.s 143(3) dated 27.12.2021 is barred by limitation as the date of receiving record by the Assessing Officer of assessee was 29.10.2020 (AY 2021-22) hence the preceding six block assessment years would be AY 2015-16 to 2020-21 and present AY 2014-15 is out of scope of block assessment u/s. 153C of the Act.

7. Replying to the above, the Id. CIT(DR) strongly supported the orders of the authorities below but did not disputed the factual position stated by the assessee in the written submissions and contentions of AR before us. Finally, we note that the date of search in the case of Shri Hemant Kumar Sharma was 15.12.2016 and date of recording satisfaction by the Assessing Officer of searched person was 29.10.2020 hence the amended provision of sec. 153C(1) are not applicable to the present case as per proposition rendered by Hon'ble High Court of Delhi in the case of Sarwar Agency P. Ltd. (supra) and thus the block period would be AY 2015-16 to 2020-21. Since the present AY 2014-15 is out of ambit of six years of block assessment u/s. 153C of the Act then impugned assessment order (supra) is barred by limitation and thus vitiated. Accordingly, additional ground no. 2 is allowed.

8. Since no arguments has been placed on other legal and grounds on merits therefore in absence of any arguments we don't deem it proper to adjudicate the same. Accordingly, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30.08.2023.

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

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 30th August, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi