

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 6202/DEL/2017 [A.Y 2009-10]
ITA No. 6203/DEL/2017 [A.Y 2010-11]

The A.C.I.T
Central Circle -18
New Delhi

Vs.

Shri Gaurav Aggarwal
D-31, Pushpanjali Enclave
Pitampura, New Delhi

PAN : AGLPA 2867 N

CO No. 11/DEL/21
ITA No. 6202/DEL/2017 [A.Y 2009-10]
&
CO No. 12/DEL/21
ITA No. 6203/DEL/2017 [A.Y 2010-11]

Shri Gaurav Aggarwal
D-31, Pushpanjali Enclave
Pitampura, New Delhi

Vs.

The A.C.I.T
Central Circle -18
New Delhi

PAN : AGLPA 2867 N

(Applicant)

(Respondent)

Appellant by : Shri Salil Aggarwal, Sr. Adv
Shri Shailesh Gupta, CA

Department By : Shri Waseem Arshad, CIT-DR

Date of Hearing : 30.08.2023
Date of Pronouncement : 04 .09.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned two separate appeals by the Revenue and Cross Objections by the assessee are directed towards two separate orders of the Id. CIT(A) - 27, New Delhi dated 21.07.2017 pertaining to Assessment Years 2009-10 and 2010-11. As the issues are common in the captioned appeals and the captioned cross objections, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. Grievances of the Revenue in A.Y 2009-10 read as under:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions of Rs. 10,41,31,932/- without appreciating the fact that the evidence of transaction of this amounts was found during the course of search and the assessee had surrendered this amounts during the course of statement recorded before the A.a. from his own free will.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 10,41,31,932/- made by the AO. on protective basis without appreciating the fact that the shares allotted to paper companies of Sh. S.K. Jain & Sh. V.K. Jain at Rs. 400/ - per share were buy back by the persons connected with Jagat Group for a price ranging from Rs. 10 to 12 per share. The fact itself is evident that the transaction of transfer of shares was a sham transaction.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that in some cases payment for purchase of shares had been made to the paper companies even prior to the allotment of shares.

4. The Ld. CIT(A) has erred in holding that the A.O. has made the whole addition on the basis of suspicion and that no evidence was placed on record by the A.O. In fact, the A.O. has placed enough evidence on record to justify the addition made by him.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions made by the AO without verifying and appreciating the seized records on the basis of which the additions were made by the AO. The Ld.

CIT(A) has erred in non verification of seized record even then allowing relief to the assessee obviating the entire search operation which is not justified and against the law.

6. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

3. Grievances of the Revenue in A.Y 2010-11 read as under:

"1. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 5,08,55,400/- made by the A.O. on protective basis without appreciating the fact that the assessee has purchased 5,70,000 shares of M/s. Index Securities & Research Pvt. Ltd. @ Rs. 2.25/ - per share and a payment of Rs. 12,82,500/- was made on this account while the book value of shares considering the capital and accumulated profit were Rs. 91.47/- per share. The fact itself is evident that the transaction of transfer of shares was a sham transaction.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 5,08,55,400/- made by the AO. on protective basis

without appreciating the fact that during the course of search of Sh. S.K. Jain an Sh. V.K. Jain modus operandi of buying shares of M/s. Index Securities & Research Pvt. Ltd for the purpose of securing accommodation entries by the Jagat Group were found and Shri Satish Pawa and the assessee did not reply satisfactorily in respect of such transactions.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in overlooking the fact that no prudent person would book heavy losses while selling the shares, as such, takeover of the company was to pump unaccounted income in the grab of purchase of shares and the AO. was correct in making the addition on protective basis of the amount of difference between the book value and purchase value i.e. Rs. 5,08,55,400/- as unexplained investment which was not recorded in the books of the assessee.

4. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 23,40,000/- made by the AO. without appreciating the fact that the shares of M/s. Vidya Shankar Investment Pvt. Ltd. standing in the names of various investors who allegedly given share capital/share premium were

transferred during F.Y. 2009-10 to persons connected and controlled by Jagat Group including the assessee for a consideration of Rs. 87,44,750/- while the capital and reserve & surplus of this company was Rs. 22,54,99,727/- at the time of transfer of shares.

5. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in admitting the additional evidence without giving opportunity to the AO to rebut the additional evidence produced by the appellant, clearly violating the provisions of Clause(3) of Rule 46A of I.T. Rules, 1962.

6. The Ld. CIT(A) has erred in holding that the AO has made the whole addition on the basis of suspicion and that no evidence was placed on record by the AO. In fact, the A.O. has placed enough evidence on record to justify the addition made by him.

7. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions made by the AO without verifying and appreciating the seized records on the basis of which the additions were made by the AO. The Ld. CIT(A) has erred in non verification of seized record

even then allowing relief to the assessee obviating the entire search operation which is not justified and against the law

8. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

4. Quantum may differ, but the underlying facts in the impugned issues are identical for both the Assessment Years.

5. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules. Judicial decisions wherever relevant, were duly considered.

6. Briefly stated, the facts of the case are that a search and seizure, and survey operation u/s 132/133A of the Income-tax Act, 1961 [the Act, for short] was conducted by the Directorate of Income-tax, Investigation - 2, New Delhi in Jagat Group of cases, its directors, other individuals and connected associates at the business and residential premises on 14.09.2010.

7. Seized documents contained details of transactions and during the course of recording of satisfaction, when these documents were confronted to Shri Sant Lal Aggarwal, he admitted that the payments recorded on these two pages were made in cash to farmers for procurement of paddy and surrendered the amount in the hands of M/s Gaurav Enterprises, a proprietorship concern of his son Shri Gaurav Aggarwal [the assessee under consideration] as these payments were made by Shri Gaurav Aggarwal.

8. Shri Gaurav Aggarwal also confirmed that the payments were made by him as advance to farmers for procurement of paddy in cash and offered the amount for taxation in the name of his proprietorship concern, M/s Gaurav Enterprises.

9. Taking a leaf out of the seized documents and statements of Shri Nand Lal Aggarwal and Shri Gaurav Aggarwal, a Satisfaction Note was drawn in the case of the assessee on 04.01.2013, which reads as under:

Satisfaction u/s 153C of the Income Tax Act, 1961
In the case Sh. Gaurav Aggarwal S/o Sh. Sant Lal Aggarwal,
Prop. M/S Gaurav Enterprises PAN : AGLPA2867N
R/o D-31, Pushpanjali Enclave, Pitampura, Delhi.

During the course of assessment proceedings in the case of Sh. Sant Lal Aggarwal, it was noticed that during the search and seizure operation u/s 132 undertaken on 14.09.2010 in the case of Sh. Sant Lal Aggarwal at D-31, Pushpanjali Enclave, Pitampura, Delhi, documents incriminating to Sh. Gaurav Aggarwal Prop. M/s Gaurav Enterprises were found and seized from the above premises. Page No. 13 and 14 of Annexure A-13 were seized. The seized documents contain details of transactions amounting to Rs.32.252 crores. During the course of recording of statement, these documents were confronted to Sh. Sant Lal Aggarwal. Sh. Sant Lal Aggarwal, in answer to question No. 15, admitted that the payments recorded on these two pages were made in cash to farmers for procurement of paddy and surrendered this amount of Rs.32.252 crores in the hands of M/s Gaurav Enterprises, a proprietorship concern of his son Gaurav Aggarwal as these payments were made by Gaurav Aggarwal.

2. Statement of Sh. Gaurav Aggarwal was recorded. In answer to Q. No. 2, Sh. Gaurav Aggarwal confirmed that the payments were made by him as advance to farmers for procurement of paddy in cash. He offered it for taxation in the name of Gaurav Enterprises.

3. Later on, the disclosure was retracted merely by filing two letters dated 20.09.2010 on the ground that the surrender was not voluntary and it was taken under pressure.

4. However the fact remains that these documents were found and seized during the course of search and seizure operation u/s 132 of the Income-tax Act 1961. The retraction is merely after thought and is not supported by any evidence to show the exact nature of transaction. Sh. Saurav Aggarwal categorically admitted in his statement recorded during search operation that the documents contained payments in cash and was unable to adduce evidence to show that the same were recorded in the books of accounts.

5. The case of Sh. Gaurav Aggarwal has been centralized to this Circle vide letter F.No. CIT-IX/ITO(H.Q)/127/2011-12/1556 dated 16.11.2011.

I am therefore satisfied that the documents referred to above belong to Sh. Gaurav Aggarwal, warranting action u/s 153C in his case.

04.01.2013

(Sumesh Swani)
 Deputy Commissioner of Income Tax
 Central Circle-09, New Delhi

Notices u/s 153C of the Income-tax Act, 1961 are hereby issued for the assessment years 2005-06 to 2010-11.

(Sumesh Swani)
 Deputy Commissioner of Income Tax
 Central Circle-09, New Delhi

Certified True Copy

Dy. Commissioner of Income Tax
 Central Circle-18, Room No. 269B
 New Delhi



10. Since the Satisfaction Note was drawn on 04.01.2013, therefore, as per the decision of the Hon'ble Delhi High Court in the case of RRJ Securities 380 ITR 612 wherein the Hon'ble High Court held that in the case of the "other person" [person other than the searched person], date of search shall be the date of recording of satisfaction and in the case of the assessee, it is 04.01.2013. Therefore, the block of six years would be 2007-08 to 2012-13 and the impugned A.Ys in appeal before us fall in the block of six years.

11. The relevant findings of the Hon'ble High Court in the case of RRJ Securities [supra] read as under:

"In terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made

under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment years 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C (1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee: the Page 5 of 8 seized assets/documents

belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the assessee's income for that year.

12. The Hon'ble High Court reaffirmed its view in the case of ARN Infrastructure India Ltd 81 Taxmann.co, 260 held as under:

"The decision in RRJ Securities Ltd. (supra) is categorical that under Section 153C of the Act, the period of six years as regards the person other than the searched person would commence only from the year in which the satisfaction note is prepared by the AO of the searched person and a notice is issued pursuant thereto. The date of the Satisfaction Note is 21st July, 2014 and the notice under Section 153C of the Act was issued on 23rd July 2014. The previous six AYs would therefore be from AY 2009-10 to AY 2014-15. This would therefore not include AYs 2007-08 and 2008-09. The decision in RRJ Securities Ltd. (supra) is also an authority for the proposition that for the proceedings

under Section 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person. The Court also stated that - This position again stands settled by the decision in RRI Securities Ltd (supra). The fact that the Revenue's SLP against the said decision is pending in the Supreme Court does not make a difference sine the operation of the said decision has not been stayed."

13. In the case of Raj Buildworth Pvt Ltd 113 Taxmann.com 600, the Hon'ble High Court observed as under:

"The Assessing Officer of the search party and the respondent assessee was the same. In such a factual matrix, the Assessing Officer could not have been initiated and passed an Assessment Order under Section 153C of the Act for the Assessment Year 2007-08 as the same was beyond the period of six years from the end of Page 6 of 8 the financial year in which the satisfaction note was recorded by the Assessing Officer."

14. And in the case of Sarwar Agency Pvt Ltd 85 Taxmann.com 269, the relevant findings read as under:

"Mr. Ashok Manchanda, learned Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in RRJ Securities (supra). The Court declines to do so for more than one reason.

First, for reasons best known to it, the Revenue has not challenged the decision of this Court in RRJ Securities (supra) in the Supreme Court. The said decision has been consistently followed by the authorities under this Court as well as by this court. Thirdly, the recent amendment to Section 153 C(l) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.

14. This proposition has also been upheld and followed by this Tribunal in catena of judgment as cited by the Id. Counsel. Thus, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court we hold that is a terminal date for determining of six preceding assessment years for the purpose of Section 153C r.w.s. 153A would be the date of handing over the documents or the dated of recording of the satisfaction. Admittedly, the six preceding assessment years in the case of the assessee is from Assessment Year 2009-10 and ending on 2014-15. Accordingly, we hold that Id. CIT (A) was correct in law that no assessment u/s.153C was made in respect of Assessment Year 2007-08 and is barred by limitation.

15. Similarly in Assessment Year 2008-09 also we need the same fate which is also beyond the limitation period of six years as stated above. Accordingly, the order of the Id. CIT(A) is upheld and the Revenue's Appeal is dismissed."

15. Keeping in mind the afore-mentioned judicial decisions, as per the decision of the Hon'ble Jurisdictional High Court of Delhi [supra], let us now consider the seized document alleged to be incriminating which are as under:

→ for Party

राजेश	2/6/10	0.88
प्रीति	4/6/10	1.20
अशोक	6/6/10	1.10
विनय	7/6/10	0.90
राम	9/6/10	0.70
तनील	12/6/10	1.30
अनिल	15/6/10	1.40
पंकज	17/6/10	0.65
गणेश	20/6/10	0.95
विनय	22/6/10	1.35
अनिल	25/6/10	1.05
प्रीति	27/6/10	1.20
		<hr/>
		12.602 (✓)

(13)

Amount to farmers:- (For Paddy) 14

रामपाल सिंह	1/7/10	0.80
श्री जीपाल	4/7/10	1.40
रामनाथ	14/7/10	2.25
श्रीधरलाल	16/7/10	0.60
रामनिवास	18/7/10	1.80
श्रीधर शर्मा	29/7/10	1.45
रामकुमार	30/7/10	1.75
श्रीधर	5/8/10	1.15
देवेंद्र	9/8/10	1.35
पुष्प	14/8/10	1.40
श्रीधर	18/8/10	0.90
पुष्प	19/8/10	1.25
श्रीधर	23/8/10	1.60
रामलाल	27/8/10	0.80
श्रीधर	29/8/10	0.25
श्रीधर	30/8/10	0.90

19.65 Cr
12.602 Cr

32.252 Cr

19. Assuming that the allegation of the Revenue that the impounded seized documents pertain to the assessee, even then, if we look at the transactions recorded in the alleged incriminating documents as exhibited hereinabove, we see that none of the dates fall within the A.Ys under consideration, which means that the alleged incriminating documents do not pertain to the A.Ys under consideration.

20. Therefore, the ratio laid down by the Hon'ble Bombay High Court in the case of Singhad Educational Society 378 ITR 84 which has been affirmed by the Hon'ble Supreme Court in 397 ITR 344 squarely apply as no document pertaining to the A.Ys under consideration was found.

21. Therefore, initiation of proceedings u/s 153C of the Act qua the Satisfaction Note mentioned elsewhere is unsustainable in law. On the given facts in light of the decision of the Hon'ble Bombay High Court in the case of Singhad Educational Society [supra] affirmed by the Hon'ble Supreme Court [supra], the findings of the ld. CIT(A) read as under :

“6 In view of the aforesaid, it is held that addition made by the AO is beyond the scope of section 153C of the Act, as page No. 13 and 14 of Annexure A - 13 found from the premises of Shri. Sant Lal Aggarwal is a rough document and no corroborative material was brought on record to suggest that any such alleged advance of Rs. 35.252 crores was given. Even otherwise, no document pertaining to this year was found. As such, in any case, initiation of the proceeding for this year is unsustainable in law. Accordingly this ground of the appeal of the appellant is allowed.”

22. We could not find any reason to interfere with the above findings of the ld. CIT(A). Both the appeals are accordingly dismissed and the cross objections become infructuous.

23. Before parting, the ld. DR has placed reliance on several judicial decisions in the form of synopsis, but none of the decisions is on the issues before us as all the decisions are relevant to reopening of assessment u/s 147 of the Act, therefore, not found to be relevant.

24. In the result, the appeals of the Revenue in ITA No. 6202 & 6203/DEL/2017 as well as the cross objections of the assessee in CO No. 11 and 12/DEL/2021 are dismissed.

The order is pronounced in the open court on 04.09.2023.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 04th September, 2023.

VL/

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	