

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)**

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

**ITA No:- 364/Del/2018
(Assessment Year: 2013-14)**

Consortium Vyapar Ltd., Kolkata.	Vs.	ACIT, Central Circle-13, New Delhi.
PAN No: AABCC0369C		
APPELLANT		RESPONDENT

Assessee by : Shri Salil Aggarwal, Adv.
Shri Madhur Aggarwal, Adv. and
Shri Shailesh Gupta, CA
Revenue by : Shri T. James Singson, CIT(DR)

Date of Hearing : 11.09.2023
Date of Pronouncement : 13.09.2023

ORDER

PER N.K. BILLAIYA, AM

This appeal by the Assessee is preferred against the order of the CIT(A)-XXVI,
New Delhi, dated 20.11.2017 pertaining to AY 2013-14.

2. The grievance of the assessee read as under:

"1. The order of the Honble Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

2. *The Honble Commissioner of Income Tax (A) has failed to consider that the issuance of notices u/s 153C/142(1)/143(2) of the Income Tax Act, 1961 by the learned Assessing officer and the proceedings conducted there under are against the provisions contained in the Income Tax Act, 1961 and is bad in law and hence liable to be quashed.*

3. *The Honble Commissioner of Income Tax (A) has erred in confirming addition of Rs. 14, 49,742/- u/s 68 of the Income Tax Act without going through the facts of the case, statutory provisions as well as explanation filed during the course of assessment proceeding as well as during appellate proceeding and order so passed shows lack of application of mind.*

4. *The Honble Commissioner of Income Tax (A) while confirming the addition of Rs. 14, 49,742/- made by the learned Assessing officer has failed to consider the fact that during the course of search no incriminating documents in respect of transaction appearing in the bank account have been found and as such addition made by the Assessing officer while passing the order u/s 153C/ 143(3) is against the provision contained in the Income Tax Act, 1961.*

5. *The appellant herein craves its right to alter, amend, add and / or withdraw any grounds of appeal and/or to take any additional grounds of appeal.*

3. Representatives of both the sides were heard at length. The case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of Rule 18(6) of the ITAT Rules.

4. Briefly stated the facts of the case are that a search and seizure operation U/s 132 of the Act was conducted in the J.P. Minda Group of cases on 20.09.2013. During the search and seizure operation documents belonging to the assessee alleged to be incriminating materials were found and seized from the business and residential premises of the J.P. Minda group.

5. Taking a leaf out of the alleged incriminating materials, Satisfaction Note was drawn which reads as under:

Satisfaction Note for issue of notice u/s 153C of the Income Tax Act

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Name of the assessee: Consortium Vyapaar Ltd.

A.Y. : 2008-09 to 2013-14

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PAN : AABCC0369C

Search and seizure action u/s 132 of the Income Tax Act was carried out on 20.09.2013 in the case of Minda Group of cases. During the course of pendency of assessment proceedings in the case of Minda Group of cases for A.Y. 2008-09 to 2013-14 (u/s 153A/143(1)) the material seized from the premises of the assessee has been examined. After examining such seized material, I am satisfied that the following seized documents belong to persons other than Minda Group of cases. The details of such paper is as under

Party No / Annexure No / seized from	Page No. of Annexure	Brief description of documents	Person to whom the documents belongs	F.Y. involved
O-2/A-1 JAY USHIN LTD. GP14, SECTOR 18, GURGAON	72-84	Balance Sheet of M/s Consortium Vyapaar Ltd for the financial year 2011-12.	Consortium Vyapaar Ltd	2011-12
O-2/A-4 JAY USHIN LTD. GP14, SECTOR 18, GURGAON	85	Details of amounts invested by M/s Consortium Vyapaar Ltd	Consortium Vyapaar Ltd	2012-13
O-2/A-9 JAY USHIN LTD. GP14, SECTOR 18 GURGAON	66-67	Statement in respect of investment and dividend received From M/s JAY USHIN LIMITED by M/s Commitment Finance Ltd. and M/s Consortium Vyapaar Ltd.	Consortium Vyapaar Ltd	2007-08, 2008-09, 2009-10, 2010-11, 2011-12
O-2/A-11 JAY USHIN LTD. GP14, SECTOR 18, GURGAON	68	Extract of List of Shareholder of M/s Consortium Vyapaar Limited.	Consortium Vyapaar Ltd	Period not known
K-4/PMEC/2 Rajesh Shiv & Associates, M/s Panchmukhi Management Services Pvt. Ltd., M/s Electricals & Electronics (I), Ltd, M/s Manish Merchants Pvt. Ltd., M/s Consortium Vyapaar Pvt. Ltd. Business Communication Centre, 21 Parsi Charch Street Opp. 18 Ezra Street, Kolkata-12	1-16	Bank account statement of M/s Consortium Capital Pvt. Ltd.	Consortium Vyapaar Ltd	2009-10.

ms

I have examined the above mentioned documents/papers and as the undersigned is the jurisdictional assessing officer of M/s. Consortium Vyapaar Ltd. I am satisfied that the provisions of section 153C are invokeable in this case for A.Y. 2008-09 to 2013-14 and these documents seized have a bearing on the determination of the total income of such person u/s. 153C of the IT Act. Issue notice u/s. 153C for A.Y. 2008-09 to 2013-14. This satisfaction note is placed in the file before issuing notice u/s. 153C

[Signature]

ACIT, New Delhi

Dated: 25/1/2016

6. Annexure referred as page no. 85 is as under:

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CONSORTIUM VYAPAR LIMITED	
Details of Amount Invested As on 01/01/2013	
Particulars	Amount
Investments	24,931,254.09
Jay Yushin Ltd. (5,26,097 nos.)	6,481,254.09
Anu Auto Ind.(P) Ltd (40,500 nos.) 825 nos	8,650,000.00
Brilliant Jewels P. Ltd. (20,000 nos.) 42 nos	7,00,000.00
Dwarka Electro Inv. P.Ltd. (1,50,000 nos.)	7,500,000.00
JNS Instruments Ltd. (40,000 nos.)	1,600,000.00
J.R.M. Auto Industries Pvt. Ltd (17,350 nos.)	2,050,000.00
JPM Automobiles Pvt. Ltd. (12,000 nos.)	1,200,000.00
Mew Tools Pvt. Ltd. (16,000 nos.)	1,600,000.00
Nehal Foods Product Pvt Ltd (6,000 nos.)	6,00,000.00
Shree Vinayak Tr. Co. Pvt Ltd (6,000 nos.)	6,00,000.00
Inventory	
ITC Ltd (100 nos.)	73,000.00
Loans & Advances (Asst)	9,378,797.00
Anu Industries Ltd	1,812,364.00
Commitment Finance Ltd	480,000.00
JAY USHIN LTD.	29,763.00
Lizer Cylinders Ltd.	6,331,989.00
Punchmukhi Management Services PV. Ltd	624,681.00
Share Application Made	40,000.00
Janasis InfoTech Ltd.	40,000.00
Sundry Creditors	(300,000.00)
Manish Merchants P. Ltd.	(300,000.00)

7. The assessment was framed vide order dated 31.03.2016 framed U/s 143(3) read with Section 153C of the Act. The concluded part of the assessment order reads as under:

"11.1 Till the completion of the assessment proceedings the assessee company could not explain the credits appearing in its bank accounts. Considering this fact as well as the facts and circumstances of the case I am left with no other option but to treat all such unexplained credits as the income of assessee and accordingly the same are added to the total income of assessee company u/s 68 of the IT Act. This would result in an addition of Rs. 14,49,742/- to the declared income of the assessee."

8. We have given a thoughtful consideration to the aforementioned conclusion drawn by the Assessing Officer. Keeping in mind, the Satisfaction Note exhibited elsewhere. We are of the considered view that the additions made by the AO has no bearing with the alleged incriminating material a referred in a Satisfaction Note which triggered the assessment proceedings U/s 153C of the Act.

9. The Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 344 has held that when the seized documents did not establish any co-relation document wise with the assessment years in question, then the validity of the assessment so framed was legally unsustainable.

10. It would be pertinent to understand the scheme of assessment u/s 153C of the Act. Relevant provisions of the Act read as under:

"Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that>

(a) any money, bullion jewellery or other valuable article or thing, seized or requisitioned, belongs to or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to

'a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person 3 and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, 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 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.

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to 6 sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made⁴ and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year-

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

11. The above provision needs to be read with the Circular No. 1/2015 dated 21.01.2015 by the CBDT being Explanatory Notes to the Provisions of the Finance [No. 2] Act, 2014 and the same reads as under:

"45. Assessment of income of a person other than the person who has been searched
45.1 Section 153C of the Income-tax Act relates to assessment of income of any person other than the person in whose case search has been initiated or requisition is made. The provisions contained in sub-section (1) of section 153C of Income-tax Act, before its amendment by the Act, provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A of the said Act, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A of the Income-tax Act. Page 50 of 59.

45.2 Section 153C of the Income-tax Act has been amended to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person referred to in section 153A of the said Act, then books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A if he 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 for the relevant assessment year or years referred to in subsection (1) of section 153A of the Income-tax Act.

45.3 Applicability:-This amendment takes effect from 1st October, 2014."

12. In light of the above, we are of the considered opinion that, even after the amendment, the Assessing Officer can proceed only on the basis of incriminating material which has a bearing on determination of the total income of such other person. Nowhere in the Satisfaction Note it has been mentioned that the said description of

shares is related to alleged business of providing accommodation entries by the captioned assessee.

13. In the light of the decision of the Supreme Court (supra) read with CBDT Circular (supra) we are of the considered view that the additions made by the AO has no bearing with any incriminating materials found during the course of search and such action of the AO cannot validate the assessment order framed u/s 153C of the Act which deserves to be quashed.

14. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case. The appeal of the assessee is allowed qua Ground No. 2.

Order pronounced in the Open Court on 13 .09.2023

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 13/09/2023.
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	11/9/23
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	