

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

[THROUGH VIRTUAL HEARING AT
INCOME TAX APPELLATE TRIBUNAL : PUNE BENCHES : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK RIPOTE, ACCOUNTANT MEMBER

I.T.A.Nos.551 & 552/NAG./2016
Assessment Years 2006-2007 & 2007-2008

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| Shri Padmakar Rambhau Somwanshi, Sanyukta Hospital, Near Commissioner Bungalow, Camp, Amravati - 444 601 Maharashtra. PAN ACGPS5466A | vs. | The ACIT, Central Circle, Aaykar Bhavan, Civil Lines, Akola. Maharashtra. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri Lalit Tambi, C.A. |
| For Revenue : | Shri Kailash Kanojiya, Sr. DR. |

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| Date of Hearing : | 31.08.2023 |
| Date of Pronouncement : | 12.10.2023 |

ORDER

PER SATBEER SINGH GODARA, J.M. :

These assessee's twin appeals for assessment years 2006-07 and 2007-08 arise against the CIT(A)-3, Nagpur's as many lower appellate orders, both dated 29.07.2016, passed in case no.CIT(A)-3/592/09-10 and no.CIT(A)-3/593/09-10, in proceedings u/sec.143(3) r.w.s.153A of the Income Tax Act, 1961 (in short "the Act"); respectively.

Heard both the parties at length. Case files perused.

2. We note at the outset that this assessee has pleaded the following identical substantive grounds in the instant appeal :

1. *"In law and in the facts and circumstances of the appellant's case, the learned CIT (A) has grossly erred in dismissing Ground of Appeal No.1 of the appellant's appeal before him challenging the validity of the assessment order impugned before him, inter alia, for the reasons that it had been passed pursuant to a Notice under Section 153A which was itself issued on the erroneous assumption that the appellant had been subjected to search under Section 132 in his individual capacity.*

He ought to have appreciated inter alia that

(a) it was not open to him to uphold the validity of the Notice under Section 153A and, in turn, of the assessment order impugned before him, by merely observing in Para 8 of his Order as under (emphasis supplied):

"The assessee has argued that the proceedings u/s 153A undertaken by the AO were without jurisdiction. The issue is considered carefully and it is seen that the authorization on the basis of which search was conducted contained the name of the assessee. The assessee has also argued that

the search u/s 132 was actually conducted in the case of Society, namely, T5ffivajr Education Society which runs PDMMC (Dr. Punjabrao Deshmukh Memorial Medical College, Amravati). The assessee has given number of arguments in favour of this statement which are considered. However, it is seen that the assessments made in the case of Shivaji Education Society have been made by the Department by issuing notice u/s 153C of the I.T. Act. Therefore, it is clear that Shivaji Education Society was treated as “other person” whereas Dr. Padmakar Somwanshi was actually the person searched by the Department u/s.132 of the I.T. Act. The assessee’s argument does not have merit. In the result, it is held that notice issued by the A.O. u/s 153A was valid and was very much within his jurisdiction.”

(b) considering the facts and circumstances of the case and the warrant of authorization and the Panchnama, it is clear that the warrant of authorization was issued in the name of the assessee being the Dean of the College run by the Society. Even in the warrant of authorization, the address of the place to be searched is not the address of the assessee individual. Thus, no warrant of authorization issued in the name of assessee in his individual capacity and no warrant of authorization is executed in the

individual case of the assessee. Thus, assessee has no individual liability in the present case.

(c) that it was not possible to suggest that an assessee in his individual capacity has been subjected to proceedings under Section 132 of the Income-tax Act, 1961, as the manner of conduct of search is also material.

2. The assessee prays for leave to add, amend or alter these or other grounds of appeal that may be raised at the time of hearing.”

3. Suffice to say, the assessee's case all along in light of his above extracted pleadings is that the learned lower authorities have wrongly invoked sec.153A proceedings against him despite the fact that he does not happen to be the “searched party”. And also that it was M/s. Shivaji Education Society running Dr. Punjabrao Deshmukh Memorial Medical College, Amravati which was the “searched” assessee and not this appellant who had worked as Dean of the college only. Learned counsel next submitted that the only recourse to assess a third person than the searched assessee, in furtherance to sec.132 search action, is provided u/sec.153C of the Act and therefore, the impugned assessment(s) have been wrongly framed against him.

4. The Revenue has derived strong support from the learned lower authorities action framing both these assessments u/sec.153A of the Act after treating the appellant herein as the searched party himself.

5. We have given our thoughtful consideration to the foregoing vehement rival contentions and perused the case files. We find no merit in the assessee's arguments. We make it clear that this is not the assessee's case that no search warrant had been issued against him or he had not been "searched" as his stand all along is that the learned lower authorities have wrongly treated him as the "searched" assessee despite the fact that sec.132 action had been carried out against him as Dean of the foregoing educational institution. We see hardly any merit in the assessee's instant legal arguments once his name is included as the "searched" person even as per the paper book before us. We also wish to reiterate that the clinching statutory expression in sec.153A "in the case of a person where "a search is initiated" duly takes care of such an objection. It makes clear that what triggers sec.153A proceedings is mere initiation of a sec.132 search action regardless of an assessee's capacity or status; as the case may be. Faced with the situation, we adopt stricter interpretation u/sec.153A as per Commissioner of Customs (Imports), Mumbai vs. M/s. Dilip Kumar And Co. & Ors.

[2018] 9 SCC 1 (SC) (FB) and conclude that the learned lower authorities have rightly proceeded against the assessee u/sec.153A of the Act thereby treating him as the “searched” person. His instant sole substantive ground in both these appeals stands rejected therefore.

No other ground or argument has been pressed before us.

6. These assessee’s twin appeals are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 12.10.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 12th October, 2023

VBP/-

Copy to

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| 1. | The applicant |
| 2. | The respondent |
| 3. | The CIT(A)-3, Nagpur. |
| 4. | The CIT (Central), Nagpur. |
| 5. | D.R. ITAT, Nagpur Bench, Nagpur. |
| 6. | Guard File. |

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.