

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND

SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA no.1153/Mum./2020

(Assessment Year : 2008-09)

Dinesh Shah

Flat no.434, Shabri Shikhar

R.C. Marg, Chembur (West)

Mumbai 400 071 PAN – AAEPS1245F

..... Appellant

v/s

Dy. Commissioner of Income Tax

Central Circle-3(4), Mumbai

..... Respondent

Assessee by : Shri Rasesh Shah a/w

Shri Himanshu Gandhi

Revenue by : Smt. Sanyogita Nagpal

Date of Hearing – 16/10/2023

Date of Order – 17/10/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/11/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-51, Mumbai, [*learned CIT(A)*], for the assessment year 2008-09.

2. The present appeal has been listed for hearing before us pursuant to the common order dated 05/01/2023, passed by the Co-ordinate Bench of the Tribunal in Dinesh Shah v/s DCIT, M.A. no.287/Mum./2022 (in ITA no.1153/Mum./2020, for the assessment year 2008-09), whereby, the earlier order

dated 15/09/2022, passed under section 254(1) of the Act was recalled and the appeal was directed to be re-fixed for hearing.

3. In the larger interest of justice, the slight delay of 10 days in filing the appeal by the assessee is condoned.

4. In this appeal, the assessee has raised the following grounds:-

"The honourable CIT(A) has, erred in upholding the addition of Rs.69,00,000/- u/s 68 of the Income Tax Act, respect of the unsecured loan alleged as not genuine ignoring the fact that:

a) The appellant discharged its onus to prove the genuineness of the parties and transactions by filing confirmations of the parties wherein the name address and Permanent account number have been provided and also bank statements of the lender parties evidencing the alleged transactions;

b) The appellant filed a written statement during the post-search assessment proceedings retracting the forceful declaration taken from him regarding the genuineness of the unsecured loans transactions aggregating to Rs.69,00,000/- appearing in the books of the appellant firm;

c) The appellant had sought cross examination of the said parties alleged to have provided accommodation unsecured loan entries which was not granted;

d) There were no incriminating evidence, documents or material to corroborate to the allegation that the unsecured loans appearing in the books of the appellant were not genuine loan transactions and were unexplained credits.

2) The honourable CIT (A) has erred in upholding the addition arbitrarily of Rs.2,07,000/- on account of commission presumed to have been paid in respect of the unsecured loan ignoring the fact that:

a) The assessing officer is not justified in making an addition arbitrarily of Rs.2,07, 000/- on account of commission presumed to have been paid in respect of the unsecured loans alleged to be not genuine loans.

3) The appellant craves leave to make addition, deletion or alteration to the above ground of appeal."

5. Vide application dated 21/01/2023, the assessee raised the following additional ground of appeal:-

"On the facts and in circumstances of the case as well as law on the subject, learned Assessing Officer has erred in issuing notice under section 153C and passing assessment order under section 143 (3) r.w.s. 153C."

6. As per the assessee, since the satisfaction under section 153C of the Act was recorded on 20.01.2016, no action under the aforesaid section can be taken for the assessment years prior to the assessment year 2010-11. As the issue raised by way of additional ground is a legal issue, which can be decided on the basis of material available on record, we are of the view that the same can be admitted for consideration and adjudication in view of the ratio laid down by the Hon'ble Supreme Court in NTPC v/s CIT, [1998] 229 ITR 383 (SC).

7. The brief facts of the case pertaining to the issue raised vide additional ground, as emanating from the record, are: The assessee is an individual and for the year under consideration filed his return of income on 20/03/2009, declaring a total income of Rs.22,98,040. Subsequently, a search and seizure action under section 132 of the Act was conducted in the case of Ankur Shubham Group covering the group concerns and individual entities on 10/12/2013. The information pertaining to the search action was forwarded by the Directorate of Investigation, Mumbai to the AO of the assessee and on the basis of the information, notice under section 153C of the Act was issued on 15/03/2016. As per the assessee, as per the first proviso to section 153C(1) of the Act, the reference to the date of search under section 132 or making of requisition under section 132A, in the second proviso to section 153A(1), has to be construed as the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. Thus, in the present case, as per the assessee satisfaction under section 153C of the Act was recorded on 20/01/2016, therefore, the

relevant assessment year is the assessment year 2016-17 and the six assessment years for which the income can be assessed or reassessed under section 153C of the Act are assessment years 2010-11 to 2015-16. Therefore, as per the assessee, since the year under consideration does not fall within the 6 years prior to the relevant assessment year, no proceedings under section 153C of the Act can be initiated in the case of the assessee.

8. We find that a similar issue came up for consideration before the coordinate bench of the Tribunal in assessee's own case for the assessment year 2009-10 in Dinesh Shah v/s DCIT, in ITA No. 1152/Mum./2020. While deciding the issue in favour of the assessee, the Co-ordinate Bench, vide order dated 26/04/2023, found that the assessment year 2009-10 is beyond the 6 assessment years reckoned from the date of recording of satisfaction and therefore, the assessment year 2009-10 is outside the scope of section 153C of the Act and the AO has no jurisdiction to make any assessment under the aforesaid provision. The relevant findings of the Co-ordinate Bench, in the aforesaid decision, are reproduced as under:-

"4. Since, the facts and the law are the same in the both the appeals, we take the appeal of individual assessee as lead case and the result of which will be followed in the other appeal of Assessee/HUF. Brief facts pertaining to the legal issue is that the pursuant to a search on 10-12-2013 in the case of Ankur Shubham Group, it was found that the assessee was key person of the said group, and since no search warrant was executed in the name of both the assessee's, the AO initiated proceedings u/s 153C of the Act after issuing statutory notice in 2016; and since, the assessee being not the "searched person" for the purpose u/s 153A of the Act, for the purpose of section 153C of the Act, the reference to date of search has to construed as the date of recording satisfaction, which in this case is 15.03.2016 [AY 2016-17]. Consequently, six (6) assessment years for which assessment/re- assessment could be made u/s 153C of the Act would also have to be construed with reference to date of handing over of documents to AO of assessee/recording of satisfaction by AO of Assessee i.e, 15.03.2016. In this view, the assessment made u/s 153C of the Act for AY 2009-10 would be beyond the six assessment years as reckoned with reference to the date of recording of satisfaction viz

15.3.2016. We therefore, accept the contention that the relevant assessment year i.e, AY 2009-10 were outside the scope of section 153C of the Act; and the AO had no jurisdiction to make an assessment of assessee's income for AY 2009-10. For this proposition we rely on the decision of the Hon'ble Delhi High Court in the case of Ld. CIT(A) v/s RRJ Security Ltd. (2013) 62 taxmann.com 391 (Delhi), M/s Pavitra Relater Pvt. Ltd. v/s ACIT (87) taxmann.com 142,"

9. We find that recently the Hon'ble Supreme Court in CIT v/s Jasjit Singh, [2023] 155 taxmann.com 155 (SC) held that the intent of the legislature to enact the proviso to section 153C(1) of the Act is also to compute the six-year period, in respect of which the returns are required to be filed by the third-party under section 153C of the Act. The relevant observations of the Hon'ble Supreme Court in the aforesaid decision, are reproduced as under:-

"9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement.

10. This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials – of the search party, under Section 132 – would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of Section 153-C supports the interpretation which this Court adopts."

10. Therefore, in view of the above-settled position, we are of the considered view that the relevant assessment year, i.e. 2008-09 is outside the scope of proceedings under section 153C of the Act in the present case and the AO had

no jurisdiction to make an assessment/reassessment of assessee's income for the year under consideration under the aforesaid section. Accordingly, the assessment order dated 31/10/2016, passed under section 143(3) read with section 153C of the Act is set aside and additional ground raised by the assessee is allowed. Since the relief is granted to the assessee on this short issue, the other grounds raised in the present appeal on merits are rendered academic and thus are kept open.

11. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 17/10/2023

Sd/-
GAGAN GOYAL
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 17/10/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai