

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA Nos.8178 & 8179/Del/2018
Assessment Years: 2009-10 & 2010-11

KS Ultratech Pvt. Ltd. C/o, M/s. RRA TAXINDIA D-28, South Extension, Part-I, New Delhi-110049 (PAN: AADCK4329C)	vs .	Deputy Commissioner of Income-tax, Central Circle, Noida, Uttar Pradesh.
(Appellant)		(Respondent)

For Assessee:	Dr. Rakesh Gupta, Advocate & Shri Somil Agarwal, Advocate & Shri Deepesh Garg, Advocate.
For Revenue :	Shri Waseem Arshad, CIT, DR

Date of Hearing :	18.09.2023
Date of Pronouncement :	19.10.2023

ORDER

PER GIRISH AGRAWAL, Accountant Member:

Both these appeals filed by the assessee are against the separate orders of Ld. CIT(A)-IV, Kanpur dated 23.10.2018 against the separate assessment orders passed by DCIT, Central Circle, Noida u/s. 153C r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AYs 2009-10 and 2010-11 dated 28.12.2016.

2. Since both the appeals are on identical issues except variance in amount, and heard together, we dispose of the same by this consolidated order for the sake of brevity and convenience. In both these appeals, ld.

Counsel has raised the jurisdictional issue pursuant to sec. 153C of the Act. Assessee has taken eight grounds of appeal in Form No. 36. However, in the course of hearing before the Tribunal, Ld. Counsel emphasized on the jurisdictional condition not met u/s. 153C pertaining to period for which the assessee was required to file the return and that the period would commence only from the date when materials were forwarded to the jurisdictional AO which leads to exclusion of the two impugned assessment years i.e. AYs 2009-10 and 2010-11 from the six year period dealt in by sec. 153C.

2.1. On a question by the Bench to the Ld. Counsel, on pointing out specific ground raised in the appeal memo, Ld. Counsel submitted that this contention relating to jurisdictional condition stipulated u/s. 153C is well covered by ground nos. 1 and 2 raised in the appeal Memo. Ld. Counsel for the assessee strongly proposed for dealing with this jurisdictional issue raised by him. Accordingly, we first deal with this issue by taking note of relevant facts from the material placed on record.

3. Brief facts of the case are that a search and seizure operation u/s. 132 of the Act was conducted on 27.11.2014 in the case of Maconns, Meenu and Yadav Singh Group, Noida covering its business premises and residences of directors and their family members and other business associate concerns and key persons. Assessment in the present case is formed u/s. 153C read with sec. 143(3) for which notice u/s. 153C was issued on 27.06.2016. Assessee filed its return in response to the said notice after which assessment was completed at an assessed total income of Rs.91,23,490/- for AY 2009-10. Before the Ld. CIT(A), assessee had agitated on the legal issue that Ld. AO had wrongly assumed jurisdiction u/s. 153C since there was no incriminating

material found for the year under consideration for which addition has been made and that no satisfaction in terms of requirement of section 153C has been recorded by the Ld. AO in the case of searched person, assessee being the other person. Ld. CIT(A) turned down the legal contentions of the assessee for both the years.

3.1. Before us, Ld. Counsel for the assessee, asserted that the date of search is 27.11.2014 as noted by the Ld. AO in the opening para of the impugned order. He also pointed out to the fact that notice u/s. 153C was issued on 27.06.2016. According to Ld. Counsel, by taking note of the date of issue of notice u/s. 153C, period of six years was to be reckoned from this date. By considering so, six years which will be available for exercising the jurisdiction by the Ld. AO u/s. 153C will be from AYs 2011-12 to 2016-17. He thus, strongly contended that the impugned years under consideration before the Hon'ble Tribunal i.e. AYs 2009-10 and 2010-11 are out of the jurisdiction of the Ld. AO for exercising his authority u/s. 153C read with sec. 143(3) of the Act. Accordingly, assessment orders passed for both the years are illegal, bad in law, void ab initio and liable to be quashed.

4. Per contra, Ld. CIT, DR strongly contended that the period of six years to be reckoned for applying the provisions of sec. 153C/153A have always been in relation to date of search. Ld. CIT, DR placed a detailed submission containing 11 pages to record his contentions.

5. Before we delve into the issue raised by the Ld. Counsel, we refer to the provisions contained in sec. 153C of the Act which is reproduced as under:

Assessment of income of any other person.

153C. (1) 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 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 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 rules⁶⁹ 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 made 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 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](#).

⁷⁰[(3) Nothing contained in this section shall apply in relation to a search initiated under [section 132](#) or books of account, other documents or any assets requisitioned under [section 132A](#) on or after the 1st day of April, 2021.]

5.1. From the above section, we note that the books of account or documents or assets seized or requisitioned are required to be handed over by the AO of the searched person to the AO having jurisdiction over such other person where the books of account or documents or assets relates/pertains to the other person. Under the said section, after the handing over to the AO of the other person i.e. assessee is the 'other person' in the present case, he is required to proceed and issue notice to the assessee, after recording satisfaction that the books of account or document of assets seized or requisitioned have a bearing on the determination of total income of the other person. Thus, it is important to take note of the date of handing over of books or accounts or documents or assets seized or requisitioned to the AO having jurisdiction over the assessee as well as the date of recording of satisfaction as required under the said section.

6. We have gone through the records to take note of these vital dates. On perusal of the impugned assessment order, the only date stated therein is in respect of issue of notice u/s. 153C which is stated as 27.06.2016. In the order of Ld. CIT(A), copy of satisfaction note recorded by the AO of the assessee is extracted. On carefully going through it, date of recording of the satisfaction is not discernible. Also, Ld. CIT(A) had called for a remand report from the Ld. AO, copy of which is also extracted therein. On carefully going through the scanned copy of remand report, there is nothing mentioned about the two vital dates referred by us above. Even in the written submission furnished by the assessee, there is nothing specific mentioned about the relevant dates. When we refer to the written submission furnished by the Ld. CIT, DR in

that also there is nothing mentioned about these dates except for detailed narration on the provisions of the law.

6.1. We note that in order to reckon the period of six years as contested by the Ld. counsel the two dates referred to us above are important which would relate back to the date of handing over of books of account or documents or assets seized or requisitioned to the AO of the assessee by the AO of the searched person and recording of satisfaction thereon. Since these dates are not discernible from the material placed on record, in the interest of justice and fair play, we find it proper to remit the matter back to the Ld. CIT(A) to adjudicate on the contention raised by the Ld. Counsel, after ascertaining the exact date as to handing over of the seized material to the AO of the assessee and recording of satisfaction. Based on this finding, Ld. CIT(A) may pass an appropriate order taking into account the provisions of law. Needless to say that assessee be given reasonable opportunity of being heard and is at liberty to make any further submissions which it wants to, in support of its claim on the jurisdictional issue raised before us. Accordingly, contentions raised by the assessee in ground nos. 1 and 2 seeking exclusion of the impugned two assessment years i.e. AYs 2009-10 and 2010-11 from the purview of section 153C are allowed for statistical purposes.

6.2. Since we have remitted the matter back to the file of Ld. CIT(A) on the jurisdictional issue, other grounds taken by the assessee, therefore, are not adjudicated upon, more particularly when no submissions were been made by either party on the same. Accordingly, both the appeals of the assessee are allowed for statistical purposes.

7. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 19.10.2023.

Sd/-
(Chandra Mohan Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 19th October, 2023.

JD. Sr. P.S

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A) -IV, Kanpur
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi