

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI NARENDER KUMAR CHOUDHRY, JM

ITA No. 2253/Mum/2021

(Assessment Year: 2009-10)

DCIT Central Circle, 7(2)
Room No.655,
Aaykar Bhavan
M.K. Road,
Mumbai-400 020

(Appellant)

M/s Glamour Health Care Pvt.
Ltd.

Vs. 4, Kiran Villa,
34 Ram Mandir Road,
Danda, Khar(W)
Mumbai-400 052

(Respondent)

PAN No. AAACN2617F

Assessee by : Shri Neelkanth Khandelwal, AR

Revenue by : Shri Dr. Kishor Dhule, CIT DR

Date of hearing: 28.08.2023

Date of pronouncement : 30.10.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Dy. Commissioner of Income Tax, Central Circle 7(2), Mumbai, (the learned Assessing Officer) against the appellate order passed by the learned Commissioner of Income-tax (Appeals)-49, Mumbai [the learned CIT (A)] for A.Y. 2009-10 dated 24th August, 2021, wherein the appeal filed by the assessee against the assessment order dated 28th December, 2019, passed under Section 143(3) read with section 153C of the Income Tax Act, 1961 (the Act) by the Asst. Commissioner of Income tax, Central Circle 7(2), Mumbai, (the learned

Assessing Officer) was allowed, holding that there is nothing on record to hold the view that the addition were made on the basis of any incriminating material found during the course of search.

02. Learned Assessing Officer is aggrieved and has preferred this appeal before us raising following grounds of appeal:-

"1. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in deciding that AO did not have jurisdiction to make additions in an assessment u/s 153C of C the Act in the case of the assessee by ignoring the fact that there was incriminating material/ evidence.

2. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) is justified in deciding that the assessment u/s 153C was done solely on the basis of statement recorded under section 132(4) of the Act by ignoring the fact that incriminating material was available with AO which was duly recorded in the satisfaction note.

3. On the facts and the circumstances of the case and in law, the Ld. CIT(A) has failed to discuss the merits of the case wherein the assessee has brought its unaccounted income Rs.4,51,86,000/- into its books of account.

The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary."

03. At the time of hearing on 13th July, 2023, as per the order sheet entry, the assessee also challenged the satisfaction note prepared by the learned Assessing Officer stating that
- a. it is unsigned and
 - b. that there is no satisfaction note for A.Y. 2009-10,

Therefore, the assessment order is not sustainable. It was the claim of the learned Authorized Representative on recording of satisfaction note under Section 153C of the Income-tax Act, 1961 (the Act) that the satisfaction note is for A.Y. 2012-13 to A.Y. 2017-18 only. Thus, there is no satisfaction note available for A.Y. 2009-10 and therefore, the assessment order passed without satisfaction note by the learned Assessing Officer is not sustainable.

04. Ld AR further submitted that even otherwise, for A.Y. 2009-10, there is no incriminating material found during the course of search with respect to impugned addition made by the learned Assessing Officer and therefore, the decision of the Hon'ble Bombay HC in case of CIT Vs. Sinhgad Technical Education Society 63 Taxman.com 14, upheld by the Hon'ble Supreme Court in **[2017] 84 taxmann.com 290 (SC)** covers the issue.

05. The learned CIT Departmental Representative produced before us the communication of the learned Assessing Officer extracting the noting in ITBA portal stating that on ITBA portal the learned Assessing Officer has mentioned that satisfaction is proper. He submitted that the learned Assessing Officer has made the addition of ₹4,51,86,000/-

in the hands of the assessee on the basis of several information available and therefore, there is an incriminating material found during the course of search.

06. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact in this case shows that

- i. Assessee originally filed its return of income on 3rd June, 2010, declaring total income of ₹ Nil.
- ii. Subsequently, search under Section 132 of the Act, was conducted in case of Thakkar and Ashar Group on 5th July, 2017.
- iii. Thus, Ay 2009-10 is a concluded assessment which can only be disturbed on the basis of incriminating material and any other material available with Id AO.
- iv. A notice under Section 153C of the Act, on 26th September, 2019.
- v. In response, assessee filed return of income on 11th December, 2019 at ₹ Nil.
- vi. During the course of search, it was noticed that registered address of the company is a residential premise. It was further noted that other shareholders company of the assessee were searched, which were also found to be non-existing on their respective registered address and which were mere paper

companies. One of the Directors of the share holder companies stated that he is not aware about the financial transactions as well as the existence of these companies. The learned Assessing Officer noticed that assessee has received share capital from 11 different companies along with premium of ₹4.5 crores and thereafter, he proceeded to make the addition of ₹4.50 crore on account of share capital and premium and unsecured loan of ₹1,86,000/-.

- vii. Assessment under Section 153C of the Act read with section 143(3) of the Act at ₹4,51,86,000/- was passed on 28/12/2019.
- viii. The assessee challenged the assessment order on the ground that notice under Section 153C of the Act fails to demonstrate the satisfaction of the learned Assessing Officer and further in absence of any incriminating material, the addition has been made in a concluded assessment.
- ix. The learned CIT (A) asked the learned Assessing Officer to clarify whether the additions were made on the basis of any incriminating material or document found during the course of search. No such material or documents were brought on record by the learned Assessing Officer and therefore, the

learned CIT (A) deleted the addition. These facts are recorded in para no 5.4 of the appellate order.

07. We do not find any infirmity in the order of the learned CIT (A) in deleting the addition in absence of any incriminating material found during the course of search. This is so because the Hon'ble Supreme Court in 397 ITR 344 and Hon'ble HC in the case of PCIT vs. Sinhgad Technical Education Society [63 taxmann.com 14 (Bombay)], has categorically held that in absence of any incriminating material qua the assessment year concluded assessment cannot be disturbed.
08. With respect to the claim that there is no satisfaction note for issuing notice under Section 153C of the Act along with the impugned assessment order, whether on perusal of the satisfaction note produced before us are convinced that A.Y. 2009-10, no satisfaction note was produced.
09. Only satisfaction note produced before us clearly shows that the learned Assessing Officer has recorded the satisfaction only with respect to the assessment year 2012-13 to A.Y. 2017-18. Thus, in absence of any satisfaction note for A.Y. 2009-10, the assessment order is not sustainable.
010. Thus the assessment made by the Id AO fails on two counts (i) absence of any incriminating material in concluded assessment year and (ii) absence of satisfaction note for the impugned assessment year.



011. However as the Id CIT (A) has quashed assessment order only on the issue of absence of incriminating material, which is the subject matter of appeal, we also restrict ourselves to uphold his order on this count only.

012. Accordingly, we find no infirmity in the order of the learned CIT (A) and dismiss appeal of the learned Assessing Officer.

013. In the result, the appeal of the learned Assessing Officer is dismissed.

Order pronounced in the open court on 30.10.2023.

Sd/-

(NARENDER KUMAR CHOUDHRY)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated:30.10.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai