

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.63/Del/2022
Assessment Years: 2010-11

ITA No.2041/Del/2021
Assessment Year : 2012-13

DCIT,
CC-8,
New Delhi.

Vs BJN Holdings (BD) Ltd.,
Rehan Basera,
6, Sultanpur Farms,
Mehrauli,
Delhi – 110 030.

PAN: AAFCB9063L

ITA No.1260/Del/2020
Assessment Year : 2011-12

CO No.189/Del/2022
(ITA No.2041/Del/2021)
Assessment Year : 2012-13

BJN Holdings (BD) Ltd.,
Rehan Basera,
6, Sultanpur Farms,
Mehrauli,
Delhi – 110 030.

Vs. DCIT,
CC-8,
New Delhi.

PAN: AAFCB9063L

(Appellant/Cross Objector)

(Respondents)

Assessee by

: Shri Pradeep Dinodia, CA &
Shri R.K. Kapoor, CA

Revenue by

: Shri Zafarul Haque Tanweer, CIT, DR

Date of Hearing : 07.11.2023

Date of Pronouncement : 22.11.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeals preferred by the Revenue against the order dated 13.02.2020, & 31.01.2020 of the Commissioner of Income Tax (Appeals)-24, New Delhi, hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal Nos.CIT(A), Delhi-24/10112/2019-20; and 24/10114/2019-20, respectively, arising out of the appeals before it against the orders dated 24.10.2018 passed u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, CC-8, New Delhi (hereinafter referred to as the Ld. AO). The assessee preferred appeal against the order dated 31.01.2020 of the Ld. FAA in Appeal No.24/10113/2019-20 arising out of the appeal before it against the order dated 24.10.2018 passed u/s 153C r.w.s. 143(3) of the Act by the Ld. AO. The assessee has also preferred Cross Objection for AY 2012-13.

2. Heard and perused the record. The background giving rise to these appeals is that a search took place on two individuals, namely, K.S. Dhingra and Shri G.S. Dhingra on 16.09.2011. A common satisfaction note was recorded for six assessment years, i.e., AY 2006-07 to AY 2011-12. No satisfaction was recorded for AY 2012-13. Thus, relying on the judgement of the Hon'ble Delhi

High Court in **CIT vs. RRJ Securities Ltd., 380 ITR 682**, it was submitted by the ld. AR that the block period of six years for making assessment u/s 153C were the six previous year prior to the years in which satisfaction note was recorded. In the case in hand, the satisfaction was recorded on 08.10.2013. Therefore, the block period of six years would comprise AY 2008-09 onwards till 2013-14 and the assessment for AY 2014-15 should have been completed u/s 143(3) of the Act.

3. Thus as with regards AY 2012-13, for which there is appeal of the revenue and the CO of assessee, the assessment should have been u/s 153C, but, neither satisfaction was recorded nor notice u/s 153C was issued. These facts as coming up from record could not be disputed by the ld. DR. The ld.CIT(A) has taken into consideration these aspects to set aside the assessment. Thus, we have no hesitation in sustaining the same on this grounds.

4. Furthermore, in regard to department's appeal ITA Nos.63/Del/2022 for AYs 2010-11, it comes up that the ld. AO and ld. CIT(A) both have made a factual observation that during the relevant assessment years no income was earned by the assessee. What the ld. AO has done was that an assumption was made of the income on the basis of investments held. Admittedly, no incriminating document was found during the search establishing such investment or income during the year.

5. The ld. AR has pointed out that the assessee had, for all these AYs, approached the Hon'ble High Court by way of Writ Petitions challenging the validity of section 153C proceedings in the absence of incriminating evidences relying on the judgement of the Hon'ble Delhi High Court in the case of **CIT vs. Kabul Chawla, 380 ITR 573**. It comes up that the Hon'ble Delhi High Court by order dated 02.05.2018 taking note of judicial pronouncements in regard to the settled proposition of law arising out of the judgement in the case of **Kabul Chawla (supra)**, directed the AO to complete the assessment within six months from 02.05.2018.

6. As we appreciate the impugned assessment orders, it comes up that the ld. AO has taken note of the Writ Petition filed by the assessee and the order dated 02.05.2018. However, the ld. AO instead of examining the issues within limited scope of enquiry permitted by Hon'ble High court, further went into the question of the residency of the assessee and the question of liability to pay tax on its global income in India.

7. At the same time, the Revenue, not satisfied with the order of the Hon'ble High Court, went before the Hon'ble Supreme Court and the Hon'ble Supreme Court, by order dated 25.04.2023, taking into account the judgement in the case of **Abhisar Buildwell Pvt. Ltd., in Civil Appeal No.6580/2021**, accepted the plea of the assessee that there was no incriminating material found in the case of

the assessee. The order dated 25.04.2023 as provided to us show that before the Hon'ble Supreme Court, a prayer was made on behalf of the Revenue to permit them to initiate the re-assessment proceedings which was allowed by the Hon'ble Supreme Court in accordance with the law and if it is permissible under the law.

8. The Id. AR has pointed out that as regards assessment years 2011-12 and 2012-13, reopening notices u/s 148A(b) have been issued on 29.09.2023. In the light of the aforesaid facts, we are of the considered view that the Revenue is now stands estopped from challenging the order of the Id.CIT(A) on the ground that assessment was rightly concluded u/s 153C of the Act. Thus, no interference is called for in the order of the Id.CIT(A) qua appeals of Revenue.

8.1 As with regard to the appeal of Assessee for AY 2011-12 also we are of considered view that once Revenue has now availed alternative re-assessment afresh vide reopening notices u/s 148A(b) of the Act dated 29.09.2023, the impugned assessment and consequent order of CIT(A) stand non-est.

9. Consequently, the appeals of the Revenue are dismissed and the Cross Objections of the assessee supporting the findings of the Id.CIT(A) to that extent stand allowed and appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.11.2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 22nd November, 2023.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi