

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'E': NEW DELHI**

**BEFORE, SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**And**

**SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA Nos.7562 to 7565/DEL/2017**

**[Assessment Years: 2008-09, 2010-11, 2011-12 & 2012-13]**

M/s Malik Network & Computer, Pvt. Ltd. B-4/71A, Lawrence Road, Delhi-110035	Vs	Income Tax Officer, Ward-16(2), New Delhi
<b>PAN-AACCM2552Q</b>		
Assessee		Revenue

Assessee by	Sh. Rajeev Saxena, Adv. & Sh. Shyam Sunder, Adv.
Revenue by	Sh. Ashish Mohanty, CIT-DR

<b>Date of Hearing</b>	<b>13.12.2023</b>
<b>Date of Pronouncement</b>	<b>21.12.2023</b>

**ORDER**

**PER BENCH,**

These appeals of the assessee arise against the order of Learned Commissioner of Income Tax (Appeals)-33 [hereinafter referred to as 'Ld. CIT(A)', in short], New Delhi in Appeal Nos.282/16-17, 283/16-17, 284/16-17 and 285/16-17, all dated 31.03.2017 for the Asst. Years 2008-09, 2010-11, 2011-12 and 2012-13 respectively, against the order of assessment passed u/s 153C of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') all dated 30.03.2015 by the ITO Ward-16(2), New Delhi, (hereinafter referred to as 'Ld. AO').

2. Both the parties mutually agreed that the appeal of the assessee for Assessment Year 2008-09 may be taken as the lead case and the decision rendered thereon shall apply with equal force for other Assessment Years also.

3. Though the assessee has raised several grounds of appeal before us, the ground No.2 raised by the assessee is challenging the validity of assumption of jurisdiction u/s 153C of the Act. We deem it fit to address this preliminary legal ground first.

4. We have heard both the parties and perused the material available on record. The return of income for the Assessment Year 2008-09 was filed by the assessee company on 17.09.2008 u/s 139(1) of the Act declaring income of Rs.1350/-, which was duly processed u/s 143(1) of the Act. A search and seizure action u/s 132 of the Act was conducted in PNC group of Agra on 25.08.2011. Along with this search, the premises of Sh. Ashok Kumar Jain and his wife Smt. Meena Jain were also covered at New Delhi. From the seized documents of Sh. Ashok Kumar Jain and Smt. Meena Jain vide Annexure A-1 at page 122, the Assessing Officer of Sh. Ashok Kumar Jain and Smt. Meena Jain recorded a satisfaction that the said seized documents belongs to assessee herein. The said seized documents i.e. Annexure A-1, page 122 was forwarded to the Id. Assessing Officer of the assessee on 21.03.2014. Pursuant to the receipt of this seized document together with the satisfaction note recorded by the Assessing Officer of the searched party, a satisfaction note was recorded in the case of the

assessee herein on 22.09.2014 and proceedings u/s 153C of the Act were initiated in the hands of the assessee.

5. It would be relevant to understand the contents of the seized documents that were forwarded to the Ld. Assessing Officer of the assessee i.e. Annexure A-1 page 122, page-124 and page-116 thereon. All these seized documents only represent the various cheques issued by the assessee in favour of certain parties, which are detailed as under:-

<b>Sl. No.</b>	<b>Cheque No.</b>	<b>Date of issuance of Cheque</b>	<b>Amount (in Rs.)</b>	<b>Issued in favour of</b>	<b>Seized document reference</b>
<b>1.</b>	<b>000009</b>	<b>04.07.2009</b>	<b>5,00,000/-</b>	<b>M/s Akshay Commercial Pvt. Ltd,</b>	<b>Annexure A-1 page 116</b>
<b>2.</b>	<b>000010</b>	<b>04.07.2009</b>	<b>10,00,000/-</b>	<b>M/s Akshay Commercial Pvt. Ltd,</b>	<b>Annexure A-1 page 116</b>
<b>3.</b>	<b>000011</b>	<b>04.07.2009</b>	<b>10,00,000/-</b>	<b>M/s Akshay Commercial Pvt. Ltd,</b>	<b>Annexure A-1 page 116</b>
<b>4.</b>	<b>000017</b>	<b>04.07.2009</b>	<b>10,00,000/-</b>	<b>M/s Om Vijya Nivesh P.Ltd.</b>	<b>Annexure A-1 page 122</b>
<b>5.</b>	<b>000018</b>	<b>30.10.2009</b>	<b>25,00,000/-</b>	<b>M/s Brainwave Computers Pvt. Ltd.</b>	<b>Annexure A-1 page 124</b>

6. It could be noticed that all the aforesaid seized documents references only contain cheques issued by the assessee in favour of certain parties through regular banking channels. We have gone through the satisfaction note recorded by the Ld. Assessing Officer of the assessee for assuming jurisdiction u/s 153C of the Act, wherein, there is absolutely no effort made by the Ld. Assessing Officer to even make a preliminary enquiry to the fact that as to whether the aforesaid

cheques issued were encashed by the concerned parties from the assessee. In any event, there is absolutely no taxable event or these materials/information having any bearing on the determination of total income of the assessee for assuming jurisdiction u/s 153C of the Act. For the sake of convenience, the satisfaction note recorded by the Ld. Assessing Officer for assuming jurisdiction u/s 153C of the Act is reproduced hereunder:-

<b><u>SATISFACTION NOTE</u></b>	
22.9.2014	<p><b><u>MIS MALIK NETWORK &amp; COMPUTERS PVT. LTD. (AACCM2552Q)</u></b></p> <p>1: A letter F.No. DCIT/CC/Agra/PNC/153C/2013-14/1502 dated 05-03-2014 of the DCIT, Central Circle, Agra has been received in this office on 13.3.2014 through ITO ward 10(1), New Delhi. This letter contains the following documents:-</p> <p style="padding-left: 40px;">a) Photocopy of seized material, i.e page No. 124 of Annexure-A-1 seized during search operation u/s 132 of PNC Group on 25.8.2011. This is a copy of Cheque No.000018 dated 30.10.2009 for Rs.25,00,000/- issued by M/s Malik Network &amp; Computers P. Ltd. issued in favour of M/s Brainwave Computers Pvt. Ltd., drawn on Bank of India, MGF Plaza Branch, Gurgaon.</p> <p>2. Another letter F. No. DCIT/CC/Agra/PNC/153C/2013-14/1513 dated 05-03-2014 of the DCIT, Central Circle, Agra has been received in this office on 10.3.2014. This letter contains copy of two pages of seized documents seized during search operation u/s 132 of PNC Group on 25.8.2011 which are as under:</p> <p style="padding-left: 40px;">a) Photo copy of seized material, i.e. page 116 of Annexure-A-1 is a copy of following three cheques issued by M/s Malik Network Computers P. Ltd. to M/s Akshay Commercial Pvt. Ltd.</p> <p style="padding-left: 40px;">Cheque No.000009 dated 04/07/06 for Rs.5,00,000/-</p> <p style="padding-left: 40px;">Cheque No.000010 dated 04/07/09 for Rs. 10,00,000/-</p> <p style="padding-left: 40px;">Cheque No.000011 dated 4/7/09 for Rs. 10,00,000/-</p> <p style="padding-left: 40px;">All the three drawn on Bank of India, MGF Plaza Branch, Gurgaon.</p> <p style="padding-left: 40px;">b) Photo Copy of seized material i.e. page No. 122 of Annexure-A-1 which is a copy of cheque No.000017 dated 9.10.2009 for Rs.25,00,000/-issued by M/s Malik Network &amp; Computers P. Ltd. in favour of M/s Om Vijya Nivesh P.Ltd. drawn on Bank of India, MGF Plaza branch, Gurgaon</p> <p>3. Another letter F. No.DCIT/CC/Agra/PNC/153C/2013-14/1557</p>

	<p>dated 21-03-2014 of the DCIT, Central Circle, Agra has been received in this office on 24.3.2014. This letter contains a "Satisfaction note in the case of M/s Malik Network &amp; Computers P. Ltd, which is signed by the DCIT Central Circle, Agra. This note states as under:-</p> <p>"A Search u/s 132 of the I. T. Act was conducted in the PNC group of Agra on 25.8.2011 including the premises of Shri Ashok Kumar Jain (PAN-AEMPJ6616F) &amp; his wife Smt. Meena Jain (PAN-ADMPJ) at P-7, Green Park Extension, New Delhi. These two cases have been centralized with the undersigned (DCIT CC Agra). During the course of assessment proceedings of Shri Ashok Kumar Jain and Smt. Meen Jain, it is noticed from the seized documents that page No. 122 of Annexure-A-1 belongs to M/s Malik Network &amp; Computers Pvt. Ltd.(PAN AACCM2552Q). I am satisfied that action u/s 153C of the I. T. Act is necessary in the case of M/s Malik Network &amp; Computers Pvt. Ltd".</p> <p>As per letter of DCIT, Central Circle, Agra, a search &amp; seizure operation was conducted on 25.8.2011 in PNC Group at Agra and also at the premises of Shri Ashok Kumar Jain (PAN-AEMPJ6616F) &amp; his wife Smt. Meena Jain (PAN-ADMPJ) at P-7, Green Park Extension, New Delhi, wherein incriminating documents were found and seized as per the appraisal report of Joint Director of Income-tax (Inv) Agra.</p> <p>In respect of aforesaid seized material the AO, has been asked to take necessary action u/s 153C of the I. T. Act.</p> <p>I have examined the above documents and I am satisfied that the above seized material belongs to M/s Malik Network &amp; Computers Pvt. Limited, alphabetical jurisdiction over which is existed with Ward 6(2), New Delhi. Hence, notice u/s 153C may be issued in the case of M/s Malik Network &amp; Computers Pvt. Limited accordingly for the AYs 2006-07</p>
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7. From the above, it could be noticed that there is absolutely no material available with the Ld. AO of the assessee to legally assume jurisdiction u/s 153C of the Act based on the seized materials received from the Ld. Assessing Officer of PNC Group. Hence, we have absolutely no hesitation to hold that there is no satisfaction that could be construed as being recorded in the case of the assessee based on the seized materials received from the Ld. Assessing Officer of the searched party, which have a bearing on the determination of total

income of the assessee *qua* the assessment year under consideration. Hence, we uphold that the assumption u/s 153C of the Act in the case of the assessee is illegal and *void ab initio*.

8. The decision rendered by us hereinabove for Assessment Year 2008-09 shall apply with equal force for other Assessment Years also as jurisdiction was assumed u/s 153C of the Act for those years also based on the very same satisfaction note reproduced supra.

9. Since, the entire assessment years framed u/s 153C of the Act are quashed as void ab initio for the years under consideration, the other grounds raised by the assessee raising certain legal issues as well as on merits need not be gone into and they are left open.

10. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 21<sup>st</sup> December, 2023.

Sd/-  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**  
**Dated: 21.12.2023**

*Shekhar*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI