

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.3632/Del/2019
Assessment Year: 2013-14

DCIT Central Circle –II, Noida	Vs.	MG Metalloy Pvt. Ltd. (Formerly Apple Iron Enterprises Pvt. Ltd.) B-16, Sec-02, Noida U.P. 201301 PAN No.AAHCA8642G
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Subhra Jyoti Chakraborty, CIT DR
Respondent by	Sh. Amit Goel, CA

Date of hearing:	16/01/2024
Date of Pronouncement:	16/01/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-4, Kanpur dated 07.01.2019 pertaining to A.Y. 2013-14.

2. The grievance of the revenue read as under :-

“1. Whether on facts is and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C without

appreciating that while recording the satisfaction for issue of notice 153C the test for 'incriminating material' has to be only in nature of prima facie belief based on some material having live nexus and not in the nature of absolute evidence established after detailed investigation of facts or law.

2. The Ld. CIT(A) relied upon the submission made by the Appellant ignoring the Department findings during the search u/s 132(1) of the Act and information contained in the seized documents.

3. Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in applying the decision of the Hon'ble Supreme Court in the case of M/s Sinhgad Technical Education Society, which was distinguishable on the facts of the present case as the same pertained to prior period to 01.04.2005 whereas after 01.04.2005 153C notice can be issued when AO is satisfied that seized material has a bearing on the assessment of income of other person.

4. That the Ld. CIT(A) did not appreciate the facts and material on record.

5. The order of the Ld CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.

6. That the appellant craves leave to add or amend any other more ground of appeal as state above as and when needs for doing so may arise.”

3. Briefly stated the facts of the case are that a search and seizure operation was carried out on the premises of the assessee comprising of Apple Group of cases on 11.11.2014. The statutory notices were issued and served upon the assessee. In response to which the assessee filed its return of income. Vide order dated 31.12.2016 assessment was framed u/s. 143(3) r.w.s. 153C of the

Act. The returned income of Rs.17,604/- was assessed at Rs.40,84,32,396/-.

4. The assessment was challenged before the CIT(A) on the ground that the additions have been made without there being any incriminating material found at the time of search. Strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 344. The CIT(A) was convinced with the contention of the assessee and deleted the impugned additions.

5. Aggrieved by which the revenue is in appeal before us.

6. We find that the CIT(A) while allowing the appeal of the assessee by way of a consolidated order considered the appeal for A.Y. 2012-13 also. In A.Y. 2012-13 the revenue approached the Tribunal raising identical issues and this Tribunal in ITA No.3631/Del/2019 by order dated 01.11.2023 has dismissed the appeal of the revenue. The relevant findings read as under :-

“7. We have heard the Ld. Representative of the parties, considered their respective arguments and perused the records. We observe that the Lat. CIT(A) has reproduced in para 5.6 of his appellate order the satisfaction note dated 14.12.2016 recorded by the Ld. AO. On analysis of the said satisfaction note the Ld. CIT(A) found that no satisfaction note is recorded by the Ld. AO of searched person to establish the fact that specific seized document indeed

belonged to the assessee company. On detailed study of the seized material at Annexure LP-26 Page No. 1 to 144 mentioned in the satisfaction note the Ld. CIT(A) found that it is ledger print out of tally books containing confirmation of various parties in the ledger account of Apple Commodities Ltd. Further, page No. 21 and 12 of LP-12 is trial balance printout of Manohar Metalloys Pvt. Ltd. and Apple Buildtech Pvt. Ltd. from 01.04.2014 onwards. Page No. 136 of LP-21 is the ledger account of tally print out of Apple Commodities Ltd. and not the assessee company. Perusal of these documents, according to Ld. CIT(A), reveals that neither they belong to the assessee company nor they are of incriminating nature and that the Ld. AO has not made any addition on the basis of these seized documents.

The Ld. CITA) therefore recorded the finding that there does not exist any incriminating documents, as a result of search which belong to the assessee company. The addition made by the Lat. AO is from balance sheet already on the records of the Ld. AO for which no incriminating document was found and seized during search operation. Accordingly, in absence of incriminating seized material relating to AY under consideration notice issued under section 153C of the Act to the assessee is held to be invalid in the eye of law by the Ld. CIT(A) which we uphold.

8. It is abundantly clear from reading of the provision of section 153C of the Act that the satisfaction of the Ld. AO of the person searched that (a) any money, bullion, jewellery or other valuation article or thing seized or requisitioned, "belongs to"; or (b) any books of account, or documents, seized or requisitioned, pertains to or any information contained therein, relates to a person other than the person referred to in section 153A namely, the assessee is sine qua non for issue of notice under section 153C for the relevant AY. The Ld. CIT(A) recorded the finding that the Ld. AO could not

*demonstrate that seized documents belonged to the assessee company. It could also not be established that any seized document as a result of search had any bearing on the determination of total income of the assessee. Nexus between issue of notice under section 153C and the incriminatory material found as a result of search must exist as held by the Hon'ble Supreme Court in *Sinhgad Technical Society (supra)*. We, therefore do not find any legal substance in the contention of the Revenue that while recording the satisfaction for issue of notice under section 153C the test for 'incriminating material' has to be only in the nature of prima facie belief based on some material having live nexus. It is the ratio decidendi of the Hon'ble Supreme Court's decision in *Sinhgad Technical Society (supra)* which applies to the assessee and not the factual matrix of that case.*

9. For the reasons set out above, we uphold the finding of the Ld. CIT(A) that in order to re-open the assessment of other person under section 153C of the Act for the AY earlier to the year of search, direct co-relation must exist between existence of incriminating material and relevant AY. Such is not the position in the case of the assessee under consideration. Addition is not based on any incriminating document found as a result of search, We therefore concur with the findings and decision of the Ld. CIT(A) and reject the appeal of the Revenue.

10. In the result, appeal of the Revenue is dismissed.”

7. As no distinguishing decision / facts brought before us respectfully following the decision of the coordinate bench (supra). This appeal by the revenue is dismissed.

8. Decision announced in the open court on 16.01.2024.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

NEHA

Date:- .01.2024

Copy forwarded to:

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

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
NEW DELHI