

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

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

ITA No.7988/Del/2018
Assessment Year: 2015-16

Hazi Nawab,
764/6, Mohalla Rehmat Nagar,
Muzaffarnagar,
Uttar Pradesh – 251 001.

Vs ITO,
Ward-1(2),
Muzaffarnagar.

PAN: ACUPN3993R

(Applicant)

(Respondent)

Assessee by	: Shri Suresh K. Gupta, CA
Revenue by	: Shri Waseem Arshad, CIT, DR
Date of Hearing	: 06.11.2023
Date of Pronouncement	: 23.01.2024

ORDER

PER ANUBHAV SHARMA, JM:

The appeal is preferred by the Assessee against the order dated 28.09.2018 of Commissioner of Income Tax (Appeals), Muzaffarnagar (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.6047-7642-1280-117 arising out of an appeal before it against the order dated 29.12.2016 passed u/s 143(3)/153AC of the Income Tax Act, 1961 (hereinafter referred to as

‘the Act’) by the ITO, Ward 1(2), Muzaffarnagar (hereinafter referred as the Ld. AO).

2. The brief facts of the case as conveniently picked from the assessment order are that cash of Rs.80,77,500/- was seized from the appellant by the Punjab Police at Sirhind, District Fatehgarh Saheb, Punjab. The said information was made available to the Investigation Wing of the Department at Patiala. The statement of the appellant was recorded u/s 131(1A) of Act on 30-08-2014 by the ADIT (Investigation), Patiala. In the said statement it was stated by the appellant on oath that he was a supplier of live stock to M/s M.K. Overseas, Dera Basi and the cash had been given to him by the accountant of M/s M.K. Overseas. Subsequent enquiries were made by the ADIT(Investigation) in the case of M/s M.K. Overseas. Statement of Shri Shah Nawaz Ahmad, Senior Manager (Purchase) was record on 01-09-2014 u/s 131(1A) of the Act under oath in which he denied of making any cash payment to Shri Hazi Nawab in his individual capacity or on behalf of the company. The ADIT also verified the cash book of M/s M.K. Overseas for the relevant period and found that no such cash payment was given to the appellant. The statement of Shri Shah Nawaz was confronted to the appellant on 01-09-2014 in which he admitted under oath that the seized cash belonged to him. He further admitted that the said cash was out of unexplained sources and disclosed the said amount for taxation. The said cash has been seized by the ADIT u/s 132A of the Act on 03-09-2014. In compliance to the notice

issued by the AO the appellant filed his return on 05-11-2016 for AY 2015-16. However, no such income on account of unexplained cash of Rs.80,77,500/- has been reflected therein. During the assessment proceedings the appellant vide letter dated 21-12-2016 stated that the said cash has been given to him by 8 different persons for the purchase of animals. The AO after considering the complete facts of the case as discussed in the assessment order had come to the conclusion that the appellant has taken contradictory stand to avoid the taxation on account of unexplained cash seized from him. The AO has thus made addition of Rs.80,77,500/- u/s 69A of the Act.

3. The Id.CIT(A), in appeal, dismissed the grounds as raised and the assessee is in appeal before us wherein the following grounds have been raised:-

“1. The assessment order passed was bad in law and against the facts of case involving factual contradiction in averments of AO.

2. The CIT [A] has erred to sustain and AO had erred to complete assessment u/s 153C without recording any satisfaction thereby against the circular no.24/2015, therefore, assessment be annulled.

3. The CIT [A] has erred to sustain and AO has erred to add Rs.8077500/- in the income of the “A” without any corroboration or independent evidence but on the basis of statement which was retracted/modified.

4. The AO has without any basis or evidence disregarded the affidavits and recorded statements of eight persons who had deposed before AO accepting that cash belonged to them respectively.

5. The AO has erred to add Rs. 8077500/- u/s 69A based on whim and fancy and conjectures loaded with suspicion & doubt and disregarding the evidence put forth by 'A'.

6. *The AO has erred to add amount u/s 69A against the principals of natural justice.*

The above grounds of appeal are without prejudice to each other.

The appellant craves leave to add, amend, modify and delete any of the grounds at the time of hearing.”

4. The assessee subsequently raised additional grounds as follows:-

“Additional Ground No.1:

“The impugned assessment proceedings and consequent assessment order both are bad in law and void-ab-initio being undertaken sec 153A of IT Act ignoring the fact that the above section has no application qua the assessment for assessment year AY 2015-16 and therefore, the resultant proceedings needs be quashed.

Additional Ground No.2:

“Without prejudice to Additional Ground No.1, the impugned assessment order passed u/s 143(3)/153C of IT Act is bad in law and void-ab-initio for the reason that no notice u/s 153C has been issued in the present case through which jurisdiction to make assessment u/s 153C could be assumed.”

Additional Ground No.3:

“The impugned assessment order passed is bad in law and void-ab-initio as the same has been passed with complying provisions of sec. 153D of IT Act thereby the resultant proceedings needs be quashed.

Additional Ground No.4:

“The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with mandatory legal requirements of the provisions of the Income Tax Act therefore such assessment is void ab initio and liable to be quashed. ”

5. Heard and perused the record.

5.1 The Id. AR, pressing the additional grounds, has submitted that since, based on the requisition u/s 132A of the Act of 30.08.2014, a notice u/s 153A of the Act was issued on 23.09.2016, the assessment proceedings were initiated u/s 153A of the Act. He submitted that the permission from competent authority was also taken for assessment u/s 153A of the Act while the assessment order has been passed u/s 153C of the Act. He also submitted that the requisition u/s 132A was for F.Y. 2014-15 relevant to AY 2015-16. Therefore, in view of the provisions of section 153A r.w. sub-clauses (a) and (b) of the Act, the assessment proceedings for the assessment year under consideration, i.e., AY 2015-16 being search year, could not be completed u/s 153A of the Act and the option available with the AO was to complete the assessment of the search year u/s 143(3) of the Act without the aid of any section pertaining to post search assessment u/s 153A/153C and, for that purpose, he relied on the bare Act provisions of section 153A and the CBDT Circular No.7 of 2003.

6. The Id. DR, however, defended the exercise of jurisdiction u/s 153A by relying on the judgement of the Hon'ble Delhi High Court in the case ***CIT vs. Anil Kumar Bhatia, decided on 7th August, 2012*** and submitted that the Circular relied on by the Id. AR has been considered by the Hon'ble Delhi High Court while holding that section 153B(2) of the Act is integral to search. He submitted that in the title there is an inadvertent mistake of showing the order as passed u/s 153C and while order was passed under section 153A only.

7. We have given our thoughtful consideration to the matter on record and when we appreciate the facts, it comes up that there is no denial from the Revenue that approval u/s 153D of the Act was given in the case of the assessee by Addl. Commissioner of Income-tax, Range-1, Muzaffarnagar by letter dated 29.12.2016 for assessment completed u/s 143(3)/153C of the Act. However, the Ld. AO had issued notice u/s 153A dated 23.03.2016, as made available at page 1 of the paper book. The assessment order dated 29.12.2016, stands passed u/s 143(3)/153C of the Act. The ld.CIT(A) also in para 2 and the title of the appeal refers that the impugned appeal before the ld. First Appellate Authority was against order u/s 143(3)/153C of the Act dated 29.12.2016. Even the ld. DR has submitted that the same is a case of a clerical error. However, the matter of fact is that the assessee had taken up a very specific plea that assessment was completed u/s 153C without recording of satisfaction note and, accordingly, before us, the additional grounds questioning the assessment order, being invalid on the basis of invoking wrong provisions of jurisdiction have been raised and deserves to be admitted for hearing.

8. In this context, it comes up that the ld.CIT(A) observes that the cash was seized by ADIT u/s 132A of the Act on 03.09.2014. The appraisal report is made available by the ld. AR at page 7-10 of the paper book and the same shows that when the local police at Siran had accidentally seized cash of Rs.8,77,500/- and local tax authorities were informed, the statement of the assessee was recorded

u/s 131(1A) of the Act and based upon that further statements were recorded of Shri Shahnawas Ahmed u/s 131(1A) of the Act. The appraisal report shows that information was forwarded along with the statement of the assessee and the statement of Shri Shahnawas Ahmad by Assistant Director of Income-tax (Investigations), Patiala and had requested that in case of other persons i.e., persons who are not covered under the search, the AO may apply the provisions of section 153C or section 147 as the case may be.

8.1 It appears that there upon the Ld. AO issued notice u/s 153A to the assessee. Now, the first thing is that admittedly, this seizure was on 30.08.2014 and if same is considered as date of requisition for the purpose of Section 132A of the Act, the financial year relevant to it will be 2014-15, falling with assessment year 2015-16. Thus, in view of the provisions of section 153 r.w. clauses A and B, the assessment proceedings for the assessment year under consideration i.e., AY 2015-16 being search year were abated assessments and could not be completed u/s 153A or even 153C.

8.2 In any case, the assessment could not have been completed u/s 153C as the assessee is the alleged person searched himself and for that reasons the assessment was initiated by issuance of notice u/s153A. Admittedly revenue does not rely any satisfaction note to assess the assessee u/s 153C as other person.

8.3 In this context, the argument of the ld. DR that section 153C may have been mentioned inadvertently have been rebutted duly by ld. AR by bringing forth copies of order sheets of the assessment proceedings. The noting dated 23/09/2016 shows that notice was issued u/s 153A. Then the noting of 26/12/2016 shows draft assessment was forwarded to competent authority for approval. As mentioned above the approval dated 29/12/2016 was for assessment u/s 143(3)/153C of the Act. Then on 29.12.2016 while passing the impugned order, the ld. AO specifically mentions in the order sheet that the assessment has been completed u/s 143(3)/153C of the Act.

9. The legislative intent of Section 153D is to introduce a higher degree of scrutiny and approval for assessment orders following search or survey operations. Same cannot be considered merely a procedural step but a substantive mandate of law. The Hon'ble Delhi High Court's decision in the case of **PCIT vs. Anuj Bansal in ITA 368/2023, vide order dated 19/09/2023**, reaffirms the importance of a thorough and well-reasoned approval process under Section 153D of the Act.

9.1 The aforesaid discussion firmly established that the approval granted by the ld. Addl. CIT, Range-1, Muzaffarnagar u/s 153D, on 29.02.2016, was without application of mind and can be very much construed to be given in mechanical way. In fact the assessment order opens by narrating a fact that case of assessee was selected for scrutiny. There seems to have been no endeavor to appreciate as

to under what provisions of law the AO intended to initiate the assessment, proceed or conclude the assessment. Ld. CIT(A) has not cared to discuss a word on the averment of assessee that assessment could not have been u/s 153C of the Act. Thus, we are of firm view that additional grounds raised deserve to be sustained. Having held so the remaining grounds become academic in nature.

10. In the result, the appeal of the assessee is allowed and the impugned assessment order is set aside.

Order pronounced in the open court on 23.01.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23rd January, 2024.

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Copy forwarded to :

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi