

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 3911/Del/2019
(Assessment Year: 2012-13)**

Amit Katyal, C-654, New Friends Colony, New Delhi (Appellant) PAN:AAEPK4669H	Vs.	DCIT, Central Circle-1, Gurgaon (Respondent)
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Assessee by :	Shri V. K. Bindal, CA Ms. Rinki Sharma, ITP
Revenue by:	Shri Safarul Haque Tanweer, CIT DR
Date of Hearing	10/01/2024
Date of pronouncement	08/04/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3911/Del/2019 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-3, Gurgaon [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 43/CIT(A)-3/GGN/2014-15 dated 30.03.2019 against the order of assessment passed u/s 153(1)(b) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 24.03.2014 by the Assessing Officer, DCIT, Central Circle-1, Faridabad (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal:-

"1. The learned CIT(A) erred in law and on facts in confirming the addition of Rs. 5,00,00,000/- to the declared income of the assessee on the basis of an e-mail sent by the assessee just to threaten Mr Juno Madan against putting post-dated cheque issued by the assessee into banking channel for encashment without bringing any material or corroborative evidence on record in complete disregard to the documents filed and explanations given by the assessee. The addition so made is illegal, against the provisions contained in the income-tax Act, bad in law and hence liable to be deleted.

2. *The learned CIT(A) erred in law and on facts in confirming the addition simply on the basis of assessee's statement given during the course of search and seizure operation under coercion and threat without bringing any corroborative / cogent material on record. The addition so made is illegal, against the provisions contained in the income-tax Act, against the principle of natural justice and hence liable to be deleted.*

3. *The appellant craves the leave to add, substitute, modify, delete or amend all or any of the grounds of appeal either before or at the time of hearing."*

3. The assessee has raised additional grounds of appeal vide letter dated 28.12.2022 which reads as under:-

"4. The assessee submits that the impugned assessment order is without valid and legal jurisdiction as the same has been passed u/s 143(3) of the Act whereas the same should have been passed u/s 153A read with the section 153C of the Act as the impugned addition made therein is allegedly based on some incriminating material found in a search in the premises of a third party. Thus, the same must be quashed as illegal."

4. We have heard the rival submissions and perused the material available on record. The assessee is an individual deriving income from salary, house property, business, capital gains and other sources. A search and seizure operation was carried out u/s 132 of the Act at the residence and office premises of M/s. Krrish Group of companies on 09.11.2011. The assessee was a Director of M/s. Frost Flacon Distilleries Pvt. Ltd and M/s. Jasmine Buildmart Pvt. Ltd. The premises of M/s. Frost Falcon Distilleries Pvt. Ltd was also subjected to search where in the panchnama, the name of the assessee was not mentioned. There was an email dated 19.05.2011 sent by Mr. Gulbir (Juno) Madan to the assessee on the email ID krrishinfra@yahoo.com which was found in the computer and seized as an incriminating material u/s 132 of the Act. Notice u/s 153A of the Act was issued for AYs 2006-07 to 2011-12 on 13.08.2013 to the assessee. For the year under consideration i.e. AY 2012-13, being the year of search, notice u/s 143(2) and 142(1) was sought to be issued by the Id AO. The return of income for AY 2012-13 was filed by the assessee u/s 139(1) of the Act declaring total income of Rs. 4,85,22,870/- and paying self assessment tax at Rs. 1,38,83,100/- apart from TDS of Rs. 43,79,136/-. The purported seized material i.e. email sent by Gulbir Madan

to the assessee on 19.05.2011 in the email ID Krrishinfra@yahoo.com was received by the Id AO of the assessee on 26.08.2013 but it was contended by the assessee that this email dated 19.05.2011 was found in the premises of M/s. Frost Falcon Distilleries Pvt. Ltd on 09.11.2011 for which a panchanama was duly drawn. The copy of the said panchanama was duly placed on record before us. Admittedly, the name of the assessee is not reflected in the said panchanama. Hence, any material found and seized in a different premises where the name of the assessee does not figure at all either in the search warrant or in the panchanama could not be considered for the assessment sought to be framed u/s 143(3) of the Act and for that only recourse available to the revenue is to proceed u/s 153C of the Act in the hands of the assessee, if the revenue so desires. In the instant case, no such proceedings u/s 153C of the Act stood initiated for the assessment year 2012-13 in the hands of the assessee. No such satisfaction as mandated in section 153C of the Act has been recorded either by the Id AO of the searched person or by the Id AO of the 153C person in the instant case. This is the essence of the additional ground raised by the assessee before us. Since, it goes to the root of the matter and facts related for this adjudication on the issue are already on record, we deem it fit to admit the said additional ground and take up the same for adjudication.

5. As stated earlier, the only incriminating document which is sought to be relied by the AO for making addition Rs. 5 crores in the hands of the assessee was the email dated 19.05.2011 seized from the computer in the office premises of M/s. Frost Falcon Distilleries Pvt. Ltd. The copy of the said email is enclosed at pages 37 to 39 of the paper book filed before us. On perusal of the said email, it only transpires that there was mutual allegation leveled by the assessee and Mr. M/s. Gulbir Madan and finally in page 39 of the Paper Book, Mr. Gulbir Madan had merely stated that "as far as the amount of Rs. 5 crores is concerned, kindly clarify the exact transaction including details of payment consequent to which the aforesaid amount is owed by him to be made." This clearly goes to prove that the other party i.e. Gulbir Madan had merely denied having received any sum of Rs. 5 crores from the assessee and is instead seeking details of the alleged payment

made by assessee to Gulbir Madan. The Id CIT(A) had observed that this email was confronted to the assessee during the course of search and the assessee had surrendered in the statement recorded u/s 132(4) of the Act to offer the sum of Rs. 5 crores. Later the same was however not honoured by the assessee in the return of income. In fact, the assessee had also requested the Id AO vide reply letter filed on 18.12.2013 to seek a direct confirmation from Mr. Gulbir Madan and latest address of Gulbir Madan was also furnished to the Id AO to ascertain the fact as to whether at all any sum of Rs. 5 crores was paid by the assessee to Mr. Gulbir Madan. This was admittedly not acted upon by the Id AO and the sum of Rs. 5 crores ultimately stood added in the assessment framed in the hands of the assessee for AY 2012-13. This action was upheld by the Id CIT(A).

6. At the outset, we find that the very basis of the addition of Rs. 5 crores is the email exchanged between Gulbir Madan and assessee dated 19.05.2011 which was found in the computer in the office premises of M/s. Frost Falcon Distilleries Pvt. Ltd during the course of search in that office premises on 09.11.2011. Admittedly, the assessee was not subjected to search u/s 132 of the Act on 09.11.2011. The assessee's bank locker No. 235 was searched on 18.11.2011 based on separate warrant of authorization issued in the name of the assessee and nothing was found in the locker. The Id AO had sought to use the search materials seized on 09.11.2011 in Krrish Group of Companies in the assessment framed in the hands of the assessee. In our considered opinion, if at all the Id AO desires to choose any search material seized from the premises of the some other searched person in the assessment of the assessee, then the proper recourse would be to record satisfaction that the said seized materials does not belong/ pertain/ relate to the searched person and indeed belongs/ pertains/ relates to 3rd person (i.e. the assessee herein) and thereafter hand over those seized documents to the AO of the 3rd person (i.e. the assessee herein) in terms of section 153C of the Act. Admittedly, as noted by the Id AO in page 1 of his assessment order, the seized documents were received on 29.08.2013 by the Id AO of the assessee. Hence, the date of search in the hands of the assessee in terms of section 153C of the Act would be 29.08.2013 which falls in AY 2014-15.

Accordingly, the assessment for the AY 2012-13 could at all be framed only u/s 153C of the Act and not u/s 143(3) of the Act as year of search for the assessee would be AY 2014-15 qua the incriminating material in the form of email dated 19.05.2011 which was received by the AO of the assessee only on 29.8.2013. Hence, the assessment framed on the assessee for AY 2012-13 u/s 153B read with section 143(3) of the Act deserves to be quashed as it was based on search conducted in Krrish Group of cases on 9.11.2011 only.

7. We are conscious of the fact that there was a search which had happened on the assessee itself on 18.11.2011 based on a separate warrant of authorization in his bank locker No. 235 for which proceedings u/s 153A of the Act need to be initiated on the assessee. Hence, for AY 2012-13 being the year of search qua the bank locker, the assessment should be framed on the assessee u/s 143(3) of the Act for determination of the total income of the assessee wherein, the regular income of the assessee and the undisclosed income, if any, of the assessee which were found during the course of search on 18.11.2011 could be subject matter of consideration. However, in support of the alleged payment of Rs. 5 crores mentioned in the email dated 19.05.2011 which stood supported by the statement u/s 132(4) of the Act from the assessee, the only recourse available to the revenue is to examine the said veracity of the email and veracity of the statement u/s 132(4) of the Act in the separate and independent proceedings u/s 153C of the Act and the same cannot be done in the regular assessment proceedings u/s 143(3) of the Act for AY 2012-13. There is nothing wrong illegal to frame an assessment u/s 153A of the Act for the same assessment year; and assessment u/s 153C of the Act for the same assessment year and an assessment u/s 143(3) of the Act for the same assessment year. This is so because each section operates on its own separate and distinct procedural requirements. Further, we find that the provisions of section 153C of the Act starts with a non obstante clause making the invocation of the said section mandatory in nature. We find that the similar proposition has been laid down by the coordinate bench of this Tribunal wherein, one of the members of this bench was the author in the case of Anoop Kumar

Gupta VS. ACIT in ITA No. 454/Del/2020 for AY 2015-16 dated 05.10.2023. The relevant operative portion of the said order is reproduced below:-

"26. It would not be out of place to refer to the Notes on Clauses of the Finance Bill 2015 when the legislature thought it fit to amend the provisions of section 153C of the Act w.e.f. 01.06.2015.

Clause 36 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

The existing provisions contained in section 153C provide that in the course of an assessment proceeding, in the case of a person in whose case search action under section 132 or action under section 132A have been conducted, and whether the Assessing Officer is satisfied that the assets or books of account or documents seized belong to another person, then, the assets or books of account or documents seized shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person, if he is that the books of accounts or documents or assets seized have a bearing on determination on the total income of such other person.

It is proposed to amend sub-section (1) of the said section so as to provide that where the Assessing Officer is satisfied that,

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the of account or documents or assets, seized or requisitioned, shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if that Assessing Officer is satisfied that the books of account or documents or assets, seized or requisitioned, have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.

This amendment will take effect from 1st June, 2015.

27. On perusal of the above provision read with relevant Notes on Clause to the Finance Bill 2015, it is clear that any information or entry found in any document seized pertaining / relating to a person other than the person searched from the searched premises as was referred u/s 153A of the Act was to be handed over by the investigation wing to the AO of such other person (searched) and then that AO of the searched person shall handover the same to the AO of the person not searched who thereafter was to proceed against such other non-person by issuing a notice u/s 153C of the Act and then to assess / re- assess income of such other not searched person.

28. Further on perusal of the proviso to section 153C of the Act, it is very clear that the first proviso as it existed then, the deemed date of search for initiation of proceeding u/s 153C of the Act in the case of a non-searched person (assessee here) was the date of receiving the documents by the AO of the assessee. It is pertinent to note that the panchanama was finally closed in the hands of the assessee on 31.3.2016 at 8.40 P.M.

The case of the assessee got centralised only on 5.9.2016, which means the AO could have received any information relating to bogus LTCG based on entry operators statements only on or after 5.9.2016 and certainly not before that date. This is so because absolutely no documents of incriminating nature was found and seized in the premises of the assessee during the course of search on 30.3.2016 which got concluded on 31.3.2016 at 8.40 P.M. Hence even if 5.9.2016 is construed as the date of receipt of information by the AO of the assessee, then that would become the date of search on the assessee in order to proceed on the assessee in terms of section 153C of the Act.

This view of ours is fortified by the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs RRJ Securities Ltd reported in 380 ITR 612 (Del) followed in Pr. CIT vs Raj Buildworth (P) Ltd reported in 113 taxmann.com 600 (Delhi) and the SLP of the revenue dismissed by the Hon'ble Apex Court which is reported in 113 taxmann.com 601 (SC). Consequently, the period relevant to the Asst Year 2015-16 herein, when the impugned incriminating material was found in a search of a third person, got shifted from the scope of an assessment u/s 153A of the Act to the provisions of the sections 153C of the Act being one of the six assessment year preceding the date of search in the case of the other person.

29. Thus, it could be safely concluded that in addition to the assessment order passed u/s 153A of the Act on the basis of an income-tax search conducted on the assessee, the impugned amount assessed in this assessment order as undisclosed / unexplained income, allegedly based on some incriminating material found elsewhere, with respect to the long term capital gain already declared in the return of income filed on 29/11/2015 could not be assessed in the said assessment order passed u/s 153A of the Act but it could be considered for the purpose only and only in a separate assessment order by taking recourse to the mandatory and special non obstante provisions of the section 153C of the Act and then to pass a separate assessment order u/s 153A r.w.s. 153C of the Act. Had recourse to section 153C of the Act been adopted by the revenue, then it would be in accordance with the decision of the Hon'ble Supreme Court in the case of ITO vs Vikram Sujitkumar Bhatia (supra). Hence the consideration of denial of exemption u/s 10(38) of the Act for the long term capital gain on sale of shares of MARL could not be done by the revenue legally in the proceedings u/s 153A of the Act on the assessee."

8. Hence, we hold that an addition of Rs. 5 crores made in the regular assessment of the assessee u/s 143(3) of the Act for AY 2012-13 need not have been made and deserves to be quashed.

9. Even on merits, we find that only basis of the addition is email dated 19.05.2011 which does not indicate in any manner that the sum of Rs. 5 crores was actually paid by the assessee to Mr. Gulbir Madan. In the very same email Mr. Gulbir Madan had categorically denied having received any money of Rs. 5 crores from the assessee and had even sought for details of the alleged payment of Rs. 5 crores made by assessee to him. This fact has been ignored by the lower authorities in the instant case. Further, the assessee filed letter dated 18.12.2013 and even requested the Id AO to seek a direct confirmation from Mr. Gulbir Madan to ascertain the actual fact as to whether any payment of Rs. 5 crores was received by him from the assessee. This was not acted upon by the Id AO. Had cross verification been made from Gulbir Madan by the Id. AO, the fact of assessee making payment of Rs. 5 crores or not to Gulbir Madan could have been established and brought on record. The Id AO merely took the email contents as sacrosanct and taking support from the statement recorded at the time of search u/s 132(4) of the Act which effectively stood retracted by the assessee by not honouring it in the return of income, proceeded to make the addition of Rs. 5 crores on the premise that assessee had made payment of Rs. 5 crores to Gulbir Madan. No doubt the assessee had given a statement u/s 132(4) of the Act but had not duly reflected the same in the return of income by not honouring it because there was no payment made by him to Gulbir Madan to the extent of Rs. 5 crores. That is why the assessee had even requested the Id AO to seek a direct confirmation from Gulbir Madan. In fact since Mr. Gulbir Madan and assessee were fighting with each other by making mutual allegations which is conspicuous from the copy of the email dated 19.05.2011 itself, the assessee obviously could not have obtained any confirmation from Gulbir Madan to prove his innocence on the issue involved. That is why a direct confirmation was requested to be sought from Mr. Gulbir Madan to the Id AO which was not acted upon by the Id AO. Hence, it could safely be concluded that there is absolutely no corroborative evidence at all to prove that the assessee had indeed made any payment of Rs. 5 crores to Mr. Gulbir Madan. Accordingly, even on merits, this addition deserves to be deleted and is hereby deleted.

10. In the aforesaid observations, the additional ground raised by the assessee and the original grounds of the assessee are hereby allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08/04/2024.

-Sd/-

(C. N. PRASAD)
JUDICIAL MEMBER

-Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:08/04/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi