

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &  
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 159/CHD/2020

निर्धारण वर्ष / Assessment Year : 2012-13

Shri Rakesh Kumar Kataria SCO 862, Prop. Subhinfra, Ist Floor, NAC, Manimajra, Chandigarh	Vs. बनाम	The DCIT, Central Circle, Chandigarh
स्थायी लेखा सं./PAN NO: AESPK5238A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Parikshit Aggarwal, CA  
राजस्व की ओर से/ Revenue by : Shri Dharamvir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 05.03.2024  
उद्घोषणा की तारीख/Date of Pronouncement : 15.04.2024

**आदेश/Order**

**Per A.D. Jain, Vice President:**

This is assessee's appeal against the order of the ld. CIT(A)-3, Gurgaon, dated 4.12.2019, for the assessment year 2012-13, raising the following grounds of appeal:-

*1. That on the facts, circumstances and legal position of the case, the Worthy CIT(A) in Appeal No. 102/CIT-(A)-3/GGN/2015-16 has erred in passing that order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.*

*2. That on the facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in confirming the*

*action of Ld. AO wherein he has erred in assuming jurisdiction over the appellant and hence the impugned assessment proceedings and the assessment order is a nullity and deserves to be quashed.*

*3. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action Ld. AO wherein he had erred in initiating, continuing and completing the impugned assessment proceedings and thereby the impugned assessment order is a nullity and deserves to be quashed.*

*4. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action Ld. AO wherein he had erred in making addition of Rs. 26,35,000/- on account of alleged commission received from Manohar Singh Group by the appellant in the form of plots even when no such amount was received or plots were transferred to the appellant in lieu of such alleged commission.*

2. Ground No.1 is general in nature.

3. Apropos Ground Nos. 2 and 3, the facts are that the Assessee is an individual and Proprietor of M/s Shubh Infra. The said proprietary concern is into the commission business wherein it acted as broker for selling of plots of various builders / contractors. During the year in question, the Assessee received Rs. 10 lacs as commission from the Manohar Singh Group (hereinafter to be referred as 'MSG'). The said receipt was duly considered while filing ITR for the year in question. A search u/s 132A of the Income Tax Act, 1961 (in short 'the Act') was

conducted on 'MSG' on 08.09.2011. During the search, a document containing customer wise details of booking done for the Palm Spring Project of M/s Manohar Infrastructure & Construction Companies Pvt. Ltd. was found. Based on this document, the Assessing Officer alleged that the Assessee was entitled to commission of Rs. 10 lacs in cash and Rs. 26.35 lacs by adjusting towards plots in Palm Spring Projects. The said document was used by the Assessing Officer while framing assessment u/s 143(3) and he made the addition of Rs. 26.35 lacs on the basis of this document only. Aggrieved, the Assessee filed appeal before the Id. CIT(A), who, vide his order dated 04.12.2019, dismissed this issue raised via Ground Nos. 2 & 3 by holding that these grounds are general in nature and therefore, do not require any adjudication. Aggrieved, the Assessee filed this appeal.

4. The Id. Counsel for the Assessee has contended that the Id. CIT(A) has erred in confirming the action of the Assessing Officer, wherein, he has erred in assuming jurisdiction over the Assessee and hence, the impugned assessment proceedings and the assessment order is a nullity and deserves to be quashed.

4.1 The Id. Counsel for the Assessee has further contended that the Id. CIT(A) has erred in confirming the action of the Assessing Officer, wherein, he had erred in initiating, continuing and completing the

impugned assessment proceedings and thereby, the impugned assessment order is a nullity and deserves to be quashed.

4.2 The Id. Counsel for the Assessee has further contended that however, it is important to note that no mandatory procedure u/s 153C was followed by the Assessing Officer before using the material found in the premises of the searched person while framing the assessment of the Assessee.

4.3 The Id. Counsel for the Assessee has further contended that from the above stated facts of the case, it is absolutely clear that the entire assessment and the sole addition, being Rs. 26.35 lacs, i.e., alleged receipt of commission, is based on so called material found during search u/s 132 on 'MSG'; that therefore, the Assessee became the other person as is referred to in Section 153C; that in accordance with the provisions of Section 153C, when the entire information and material was gathered during the course of search u/s 132 on 'MSG', the right course of action would have been to invoke the provisions of Section 153C, instead of what has been done u/s 143(3) in the present case.

4.4 It has further been contended that in fact, under the provisions of Section 143(3), based on notice u/s 143(2), the Assessing Officer has to initiate and frame the assessment as per the information

in the ITR; that the initiation for framing assessment u/s 143(3) is based on notice u/s 143(2), which, in-turn, is based solely on the data in the ITR; that however, for framing assessment u/s 153C, the initiation is based on material found during search on the searched person; that that material cannot be pushed into ongoing assessment proceedings u/s 143(3) without following the procedure mandated u/s 153C; and that therefore, the impugned assessment framed u/s 143(3), and not u/s 153C, is illegal and deserves to be quashed.

4.5 The ld. Counsel for the Assessee has placed reliance on:

- i) 'PCIT vs Anand Kumar Jain (HUF)', 432 ITR 384 (Delhi).
- ii) 'VSL Mining Company Pvt. Ltd. & Anr. Vs. DCIT', [(2019) 56 CCH 197] (Bang. Trib.).
- iii) 'Sanjay Singhal (HUF) vs. DCIT', [(2020) 81 ITR (Trib) 377 (Chd)].
- iv) 'PCIT vs. Hitesh Ashok Vaswani' [SCA No. 11998/2023] dated 02.11.2023.

4.6 It has been contended that therefore, the assessment framed by the Assessing Officer u/s 143(3) deserves to be declared void ab initio, as the same has been framed without following the mandatory provisions of Section 153C. The ld. Counsel for the Assessee has contended that in other words, in the present case, the Assessing Officer has overlooked the provisions of Section 153C, had not issued

any notice u/s 153C and did not record the mandatory satisfaction before initiating proceedings, and this has rendered the impugned assessment framed u/s 143(3) as illegal.

5. Per Contra, the ld. DR has contended that the perusal of section 153C of the I.T. Act reveals that the assessment can be completed for six assessment years prior to the date of search u/s 153C of the Act, provided the conditions mentioned therein are complied with.

5.1 The ld. DR has further contended that therefore, if the contention of the assessee is accepted without prejudice to the subsequent submissions, the assessment for six assessment years, i.e., assessment years 2006-07 to 2011-12 should be completed under section 153C(1) of Income Tax Act 1961; that the matter under appeal relates to assessment year 2012-13, i.e., the year relating to the date of search; that the provision relevant to this year is given in section 153C (2) of Income Tax Act 1961; and that as per this section 153C(2), the notice u/s 153C of Income Tax Act is only issued where books of account or documents or assets seized or requisitioned, as referred to in sub-section (1), has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under

section 132 or requisition is made under section 132A of the Act and under the following circumstances :

(a) No return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) A return of income has been furnished by such other person but no notice under sub-section (2) of section 143(2) has been served and limitation of serving the notice under sub-section (2) of section 143 has expired or

(c) assessment or reassessment, if any, has been made.

5.2 The ld. DR has further contended that in this case, the Assessee filed his return of income on 18.03.2013 and notice u/s 143(2) of the Act was issued on 07.08.2013, and that therefore, notice u/s 153C of the Act was neither called for, nor issued.

5.3 The ld. DR has further contended that in this case, subsequent to the search and seizure in the case of a third party, i.e., Manohar Singh Group of Companies on 08.09.2011, the statement of the assessee was recorded under section 131 (l)(d) on 09.09.2011; that a survey action under section 133A of the Act took place on the premises of the assessee on 23.09.2011; that this action was distinct when compared with the search and seizure action in the case of

Manohar Singh Group of companies and such action is always carried out with its own facts and reasons stated therein; that therefore, the survey action u/s 133A of the Act taken against the assessee on 23.09.2011 eclipsed the action taken u/s 132 of the Act in the cases of the Manohar Singh Group of Companies; that the assessee has not enclosed any document including statement of the assessee made during the course of survey, for reasons best known to him, whereas the same has been elaborately quoted by the Assessing Officer in the assessment order: that the documents found during the search was merely a piece of information supported by documents for completion of assessment; that in no way, it can be stretched to the level that it is only seized documents to initiate and complete the assessment; that the assessment notice has been issued duly taking into account the guidelines for taking scrutiny and it is not the case of the assessee that the scrutiny notice issued is beyond the power of the Assessing Office; and that accordingly, the assessment has been completed taking into account the relevant documents and the extant provisions of law. It has been prayed that the submission of the assessee has no force and it needs to be rejected.

5.4 The ld. DR has further contended that it is a case of survey u/s 133A of the Act and the assessment has been completed as per the provisions of the Income Tax Act 1961; that even for argument sake, if

the argument of the assessee is accepted, there was no requirement for issuance of notice u/s 153C of the Act for the period relevant to the date of search as envisaged in section 153C(2) of the Act; that the ratio of the judgment dated 24.09.2023 passed by the Hon'ble Supreme court in the case of 'PCIT Vs Abhisar Buildwell Pvt. Ltd.' is relied upon, though the issue involved was admittedly different in that case.

6. We have considered the rival contentions with regard to the issue raised through Ground Nos. 2 and 3. As against the Assessee's contention that the assumption of jurisdiction by the Assessing Officer over the Assessee was itself bad in law and a nullity, due to which, the initiation and continuance and completion of the assessment proceedings is also a nullity, deserving to be quashed, the Department is of the view that since the search was carried out on 08.09.2011, the six year block of assessment years, of AYs 2006-07 to 2011-12, fell u/s 153C and the year in question, i.e., AY 2012-13 fell u/s 143(3). For this, they have relied on the provisions of Section 153C(2). This argument of revenue is incorrect. The first proviso to Section 153C deems the date of search in the case of the 'other person' as the date of handing over of relevant material. In the present case, the date of search on 'MSG' is 08.09.2011, but the Assessing Officer who initiated the assessment, assumed jurisdiction u/s 127, for the first time, only

on 01.11.2012. A copy of the relevant order u/s 127 of the Act has been filed. Therefore, the handing over of record could not have been earlier than to 01.11.2012. This date of 01.11.2012 falls in the assessment year 2013-14 and, therefore, the block period for six years for notice u/s 153C was assessment years 2007-08 to 2012-13, as held by the Hon'ble Supreme Court in 'CIT Vs. Jasjit Singh' [[2023] 155 taxmann.com 155 (SC)].

6.1 Therein it has been held as follows:

*"9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement. 10. This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials of the search party, under Section 132 would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would*

*virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of Section 153-C supports the interpretation which this Court adopts."*

6.2 Accordingly, we hold that the year under consideration, i.e., assessment year 2012-13 can only be assessed u/s 153C of the Act.

7. As regards the argument of the Revenue that in respect of the search year, notice u/s 153C is not required to be issued, which is as per the mandate of Section 153C(2), this argument is also fallacious. In the case of the 'other person', the year of search changes as per the first proviso to Section 153C(1). Therefore, the year in question, i.e., assessment year 2012-13, when it is in the earlier block of six assessment years and falls under Section 153C(1), the Revenue is wrongly taking this year to be in the block mentioned in Section 153C(2). Then, even the provisions of Section 153C(2) do not exempt

the Assessing Officer from following the mandate of the procedure mentioned u/s 153C. It only lays down that notice is to be issued and assessment is to be framed in the manner provided u/s 153A. So, it merely prescribes the manner of framing of the assessment. The basic requirement of handing over the material, recording of satisfaction and issuance of notice as per 153C(1) continues to remain the same and it cannot be just wished away by illegally taking the shelter of 153C(2). In the present case, no such satisfaction has been recorded by the Assessing Officer and the material seized from 'MSG' has been used. This is not in accordance with law, as rightly contended..

8. Further though a survey u/s 133A was carried out on the Assessee, even in an assessment based on a survey, the Assessing Officer cannot use the material found during the course of search on the searched person. There is no such exception mentioned u/s 153C. Thus, as rightly contended, even factually, the Revenue is incorrect on facts. The case of the assessee always remained tied up with the searched person immediately from the date of search, i.e., 08.09.2011, as is available from the order u/s 127. It is in this same order that the searched person (Sr.No. 1) and the assessee (Sr.No. 15), both were centralised with the same Assessing Officer. Therefore, even before the issuance of notice u/s 143(2), the assessee had been connected with the searched person. This connection was due to the relevant

seized document only, and that is why both the persons were centralised with the same Assessing Officer.

9. Further still, again as rightly contended, the first notice u/s 143(2) was issued, as well as the entire assessment was conducted and assessment order was passed by the DCIT, Central Circle, who conducts assessment of search and connected cases. Therefore, it is not a matter where the case of the assessee came up in random scrutiny through computerized selection, notices were issued by the regular Assessing Officer, and then, in ongoing assessment, the material was received and it was thereafter, that the case was transferred to the Central Circle. Rather, it is a case where the reason for centralization of the assessee with the same Assessing Officer as that of the searched person in the Central Circle was the impounding of the relevant documents, from the searched person. Therefore, the Assessing Officer has, by not taking the route of Section 153C, gone totally wrong in carrying out the assessment as a regular assessment framed u/s 143(3) of the Act.

10. In 'PCIT vs Anand Kumar Jain (HUF)' (supra), it has been held that as per the mandate of Section 153C, if the statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), the only legal recourse available to the department was to proceed in

terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such other person

10.1 In ‘VSL Mining Company Pvt. Ltd. & Anr. Vs. DCIT’ (supra), it has been held that the Assessing Officer could not have, in the factual and legal matrix, which are exactly similar to those herein, taken cognizance of the seized documents and other material found and seized in the course of search conducted in the premises / case of Shri Manoj Kumar Jain, while framing the order of assessment under section 43(3) of the Act in the case on hand, i.e., the other person.

10.2 In ‘Sanjay Singhal (HUF) vs. DCIT’ (supra), it has been held that if any action was required to be taken on the basis of certain documents found from other persons during the course of search, then the assessment could have been framed under section 153C of the Act, but no such action was taken in the assessee's case rather, the action was taken indirectly under section 147 r.w.s 148 of the Act; and that a similar issue, their Lordships of the Hon'ble Delhi High, Court in the case of ‘CIT Vs. Kalvinator of India Ltd.’ (supra), observed at page no. 15 that *"it is well settled principle of law that what cannot be done directly cannot be done indirectly"*.

10.3 In ‘PCIT vs. Hitesh Ashok Vaswani’ (supra), it was held that material found/seized from the premises of some other assessee could

not be used against the Assessee without invoking Section 153C, even when search was carried out simultaneously, or even if the assessee was of the same group. In the present case, remarkably, the Assessee was not even part of the search carried out.

11. In view of the above, finding merit in Ground Nos. 2 and 3 raised by the Assessee, the same are accepted and it is held that the Id. CIT(A) has erred in confirming the action of the Assessing Officer in assuming jurisdiction over the Assessee. Such assumption of jurisdiction under the provisions of section 143(3) of the Act, and all proceedings consequent there upon, including the assessment order and culminating in the order under appeal, are quashed. Ordered accordingly.

12. In view of our decision on Ground Nos. 2 and 3, nothing further survives for adjudication, nor was anything else argued

13. In the result, appeal is allowed as indicated.

Order pronounced on 15.04.2024.

Sd/-  
**(VIKRAM SINGH YADAV)**  
**Accountant Member**

Sd/-  
**( A.D. JAIN )**  
**Vice President**

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar