

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH
DELHI**

**BEFORE: SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
&
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.3018/Del/2023
(Assessment Year: 2017-18)**

ACIT, Circle 46(1), Civic Centre, New Delhi	Vs.	Yogesh Gambhir, 22, B/2, Deshbandhu Gupta Road, Karol Bagh, Delhi 11005
PAN/GIR No. AAKPG 2771 N		
(Appellant)	..	(Respondent)

Assessee by	Shri Ved Jain, Adv. Ms. Uma Upadhyay, CA Ms. Kirti Gupta, CA
Revenue by	Ms. Sapna Bhatia, CIT(DR)
Date of Hearing	30/04/2024
Date of Pronouncement	01/05/2024

ORDER

PER SHAMIM YAHYA (A.M):

This appeal by the Revenue is directed against order of Id. CIT(A) dated 02.08.2023 and pertains to A.Y. 2017-18.

2. Grounds of appeals read as under:-

Whether on the facts and circumstances of the case Ld. CIT(A) has erred in differentiating the information concluded on the basis of seized material(as required u/s 148 of the Act) as per section 153C of the Act.

Whether on the facts and circumstances of the case Ld. CIT(A) has erred in considering the fact that satisfaction note by AO of the searched person is a necessary requirement for proceedings u/s 153C of the Act.

Whether in facts and circumstances of the case, Ld. CIT(A) has erred in overlooking the fact that no satisfaction note was sent to the AO of the assessee.

2. Brief facts of the case are that in this case assessment was done pursuant to the reopening of the case an assessment was framed u/s. 147/143(3) of the I.T Act, 1961. In the assessment, AO held that it is clear that the assessee has received accommodation entry in the form of bogus LTCG/STCG of Rs. 4,03,21,009/- from M/s. Alankit Ltd. through one entry operator namely Shri Alok Kumar Agarwal. Therefore, AO held that an amount of Rs. 4,03,21,009/- is added back to the total income of the assessee for the year under consideration as unexplained cash credit u/s. 68 of the I.T Act, 1961.

3. Against the above order, assessee appeal before the Id. CIT(A).

4. The Ld. CIT(A) granted relief to the assessee by holding that assessment should have been done in this case u/s. 153C and not by way of reopening u/s. 147 of the I.T Act, 1961. The order of the Ld. CIT(A) in this regard, reads as under:-

"5.4 Before arriving at any conclusion, it is important to examine the provisions of Section 153C of the Act, which are as under:

"153C.(1) Notwithstanding anything contained in, section 147, section 148, section 149, section 151 and section 153, 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 books 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 six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A:"

5.5 Analysis:

5.5.1 The paper on the basis of which addition has been made pertains to the appellant as

- It has the name of the appellant i.e. Mr. Yogesh Gambhir*
- It relates to transactions of security (Alankit Limited) on National Stock Exchange (NSE).*

- *The details as per contract note issued by M/s Rajgul Securities Pvt Ltd to the appellant in this regard matches with details on this seized sheet.*

5.5.2 The seized paper has some extra details other than what is available in contract note. These details are as under:

- *Commission @ 5.5% (second last column)*
- *Our share: Calculation given in third last column and distribution of commission is given at the bottom. As per the distribution, the share of Alankit Group is 70%.*
- *Bhallaji Share: Calculation given in second last column and distribution of commission is given at the bottom. As per the distribution, the share of Mr. Sunil Bhalla is 30%.*
- *Remark: In this column, it has clearly been mentioned that "Commission received".*
- *This commission was over and above the brokerage and received in cash as stated by Mr. S K Gupta in his statement.*

5.5.3 Further, the name of Mr. S K Bhalla is also appearing in the statement of Mr. S K Gupta wherein he has clearly mentioned that he and Mr. S K Bhalla are involved in providing the entries of capital gains/losses to their clients. Mr. S K Gupta in his statement has also explained in detail the modus operandi of providing the entries of capital gains/losses to their clients.

5.5.4 In view of the above analysis, it can be concluded that this seized paper, based on its contents and the statement of Mr. S K Gupta, acquires the nature of "Incriminating paper."

5.5.5 Once it is established that the seized paper is an incriminating material found during the search operation on Alankit Group and pertains to third party i.e. Mr. Yogesh Gambhir, then correct section under which any addition on the basis of this paper can be made in the case of the appellant, is Section 153 C of the Act.

5.6 Some judicial decisions in this regard are as under:

5.6.1 The decision of the Co-ordinate Bench of Hon'ble ITAT Amritsar in the case of ITO Vs Arun Kumar Kapoor, ITA No. 147 (ASR.) of 2010 dated 21.06.2011:

"8. On a perusal of the above provisions, it would be clear that the provisions of s.153C of the Act were applicable, which supersedes the applicability of provisions of ss. 147 and 148 of the Act. As we have already noted hereinabove that the documents were seized during the search under s. 132 of the Act and the same were sent to the assessee's AO at Amritsar by the officer at Delhi in our view, the learned CIT(A) has correctly observed that only the provision in which any assessment could be made against the assessee in the IT Act was s. 153C r/w s. 153A of the Act. It is also apparent from the record that the officer at Delhi has mentioned in his letter that the necessary action may be taken as per law under s. 153C/148 of the Act. Hence, notice issued under s. 148 of the Act and proceedings under s. 147 of the Act by the AO are illegal and void ab initio. In view of the provisions of s. 153C of the Act, s. 147/148 stands ousted. In the instant case, the procedure laid down under s. 153C has not been followed by the AO and, therefore, assessment has become invalid. We also observe that the CIT(A) was justified in following the ratio laid down by the Hon 'ble Supreme Court in the case of

Manish Maheshwari v. Asstt. CIT [2007] 289ITR 341/159 Taxman 258 wherein it has been held that if the procedure laid down in s. 158BD is not followed, block assessment proceedings would be illegal. The CIT(A) has correctly observed that the provisions of s. 153C are exactly similar to the provisions of s. 158BD of the Act in block assessment proceedings. Thus, considering the entire facts and the circumstances of the present case, we hold that the CIT(A) was fully justified in quashing the reassessment order.

5.6.2 Rajat Shubra Chatterji Vs. ACIT, ITAT Bench, ITA No.2430/Del/2015 New Delhi

"7. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), we find that in that case as in the present case before us, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT (Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). In the present case before us, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information received from the Directorate of Income-tax (Inv.) on the basis of search & seizure operation conducted at the premises of Rock Land Group of Cases and the documents related to the assessee found during the course of search were made available to the Assessing Officer of the present assessee. We thus respectfully following the decision of Co-ordinate Bench of the ITAT in the case of ACIT vs. Arun Kapur - 140 TTJ 249 (Amritsar) hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act, hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. The reassessment in question is accordingly quashed. The ground No. 1 is accordingly allowed."

5.6.3 Jitender Jain vs ITO bearing ITA No. 5078/Del/2019 Dated. 28.09.2020:

"11. These documents belong to the assessee and, therefore, the AO should have framed assessment u/s. 153 C of the Act.

12. I find that on identical set of facts were there in the case of Girish Chand Sharma in ITA No.987/Del/2018 wherein similar reasoning were given for reopening of the assessment. I further find that similar set of facts were there in the case of Sushil Gaur in ITA No.1500/Del/2018 which decision was used in the case of Girish Chand Sharma (supra). The relevant findings of the coordinate Bench read as under: -

8. I have given a thoughtful consideration to the orders of the authorities below. The reasons recorded for initiating proceedings u/s 147 of the Act read as under: -

"Dr. Girish Chandra Sharma,
38, Chhoti Holi, Near Ganga Mandir, Khurja, Bulandshahr
PAN: - AGNPS2979Q
Reason for initiating proceeding u/s 147 of IT Act 1961.

A search operation u/s 132 was carried on 27.06.2013 in the premises of Santosh Group of institution and Dr. P. Mahalingam. Certain documents/books of account were seized from the above premises which revealed that donation /capitation fee over and above the regular courses, During the course of recording statement u/s 132(4) of 1. T. Act, 1965 relevant seized materials were confronted to Dr. P. Mahalingam, chairman of the Trust. He has categorically admitted of accepting donation / capitation fee in cash and offered unaccounted money so received for taxation.

On perusal of list given with the above information, it is revealed that Sh. Girish Chand Sharma, 38, Chhoti Holi, Near Ganga Mandir, Khurja, Bulandshahr, has given donation/capitation fee for the admission of his son Sh. Shiv Kumar Gaur for the course of MS ENT on 27.04.2010 amounting to Rs. 40,01,000/- In view of the above facts, I have reason to believe that income of Rs. 40,01,000/- has escaped assessment due to failure on the part of the assessee to disclose true and correct particulars of income. In order to assess the same, notice u/s 148 of the I.T. Act needs to be issued."

9. *It can be seen from the above that search operation was carried on in the premises of Santosh Group of Institutions. This means that any document found during the course of the search makes the assessee "other person" therefore the correct section for initiation of any proceeding against the assessee is section 153C of the Act. On identical set of facts the coordinate bench in the case of Sushil Gaur (supra) had the occasion to consider identical set of facts. In that case also the search in the premises of Santosh Medical College was under consideration. The relevant findings of the coordinate bench reads as under: -*

"8.1 have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153 C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec.153C, reassessment order was rightly quashed by the Learned CIT(Appeals). I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of ITO vs. Arun Kumar Kapoor (supra) in the present case before

me, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information available with the AO, thus respectfully following the decision of coordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kapur - 140 TTJ 249 vs. (Amritsar) and the ITAT, Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016 hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which that the Assessing Officer has initiated reassessment proceedings in the present case on the basis of information received based on the material found excludes the application of sec. 147 of the ~ hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Hence, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds.

9. *In the result, both the appeals filed by the different Assessee stand allowed in the aforesaid manner."*

10. *A similar view was taken by Lucknow Bench of the Tribunal in ITA No.205/LKW/2016 wherein also the search in the premises of Santosh Medical College was under consideration and coordinate bench was pleased to delete the impugned addition.*

11. *Respectfully following the findings of the coordinate bench (supra). I am inclined to hold that the notice issued u/s 148 of the Act and assessment framed u/s 147 of the Act is void ab initio.*

13. *On finding parity of facts I do not find any reason to differ from the findings of the coordinate bench (supra) and following the findings of the coordinate bench I am inclined to hold that the notice issued u/s. 148 and the assessment framed u/s. 147 of the Act is void-ab-initio.*

14. *Since the assessment has been quashed, I do not find it necessary to dwell into the merits of the case. Accordingly, the appeal filed by the assessee is allowed."*

5.6.4 *Sushil Gaur, Shelly Agarwal vs. ITO, in ITA No.1500/Del/2017 and ITA No. 1501/Del/2017:*

"6. At the time of hearing, Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 22 in which the Assessee's counsel has attached the written submissions; copy of reasons recorded and the copy of the order of the ITAT, New Delhi in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016. He contended that the action taken by the Assessing Officer under sec. 147 is not tenable for the simple reason that provisions of sec. 153 C of the Act are applicable in this case and not the provisions laid down under sec. 147 of the Act. He further submitted that it is an admitted position of the fact as it is also evident from the assessment order that the Assessing Officer has initiated reassessment proceedings in the present case on the basis of information received based on the material found during the course of search from the premises of Santosh Medical College run by Maharaja Education Trust. The Learned AR contended that provisions of sec. 153C provides that persons relating to whom some material is found in search of some other person should be

assessed under sec. 153C of the Act. The provisions of section 153C are non-obstantive provisions and specially excludes the operation of sec. 147 of the Act, therefore, the Assessing Officer in the present case has erred in invoking the provisions of sec. 147, instead of 153C of the Act. If action under sec. 147 is permitted on the basis of material found in the course of search, then the provisions of sec. 153 would be redundant. In this regard, he placed reliance on the following decisions to support his above contentions that no action under sec. 147 is permissible on the basis of material found in search:

- *ACIT vs. Arun Kapur - 140 TTJ 249 (Amritsar);*
- *Cargo Clearing Agency vs. JC/T - 307 ITR 1(Guj);*
- *Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016.*

7. *On the contrary, Ld. DR relied upon the orders of the authorities below and has tried to justify the action of the Assessing Officer in initiating reopening proceedings.*

8. *I have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of ITO vs. Arun Kumar Kapoor (supra). In the present case before me, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information available with the AO. I thus respectfully following the decision of Coordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kapur - 140 TTJ 249 vs. (Amritsar) and the ITAT Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016 hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act and hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Hence, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds."*

5.7 In view of the above discussion and respectfully following the decision of Coordinate Bench of the Hon'ble ITAT, Amritsar, in the case of ACIT vs. Arun Kapur - 140 TTJ 249 (Amritsar) and cases decided by various other ITATs including Hon'ble ITAT, Delhi, it is held that the provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act, hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Therefore, the reassessment u/s 147/148 of the Act for 2017-18 is quashed and this ground of appeal is hereby allowed.

5. Against the above order, Revenue has appeal filed before us.

6. We have heard both the parties and perused the records. At the outset, in this case Id. Counsel of the assessee pleaded that the issue is squarely covered in favour of the assessee by the several decisions relied upon by the Id. CIT(A) in his order.

7. Per contra, Id. DR could not dispute this proposition that the issue is covered in favour of the assessee. Upon careful consideration, we find that assessment in this case was framed pursuant to the reopening of the case u/s. 147 of the I.T Act, 1961. The Id. CIT(A) has given findings which has been duly elaborated as above, Id. CIT(A) has held that the provision 153C of the Act, were applicable in the present case for framing the assessment, which excludes the application of section 147 of the Act. Hence, notice issued u/s. 148 of the Act and the assessment framed further thereto u/s. 147 r.w.s 143(3) of the Act are *void ab initio*. Therefore the Id. CIT(A) held that the reassessment u/s. 147/148 of the Act for AY 2017-18 is quashed and this ground of appeal is allowed. We find that, the Id. CIT(A) has taken a correct decision and relied upon relevant case laws. In our considered opinion, there is no infirmity in the order of Id. CIT(A). Accordingly, we uphold the same.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 01/05/2024.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Delhi; Dated 01/05/2024

NV

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Delhi.
4. CIT
5. DR, ITAT, Delhi
6. Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Delhi