

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1055/MUM/2018
Assessment Year: 2010-11

Grasim Industries Limited,
Corporate Finance Division,
A-2, Aditya Birla Centre, S.K.
Ahire Marg, Worli,
Mumbai-400030.

PAN No. AAACG 4464 B
Appellant

Vs.

The DCIT CC-1(4),
Room No. 902, 9th floor, Old
CGO Building, M.K. Road,
Mumbai-400020.

Respondent

ITA No. 1559/MUM/2018
Assessment Year: 2010-11

JCIT (OSD), Central Circle-
1(4),
Room No. 902, Pratishtha
Bhavan, 9th floor, Old CGO
Building Annexe,
Mumbai-400020.

Appellant

Vs.

Grasim Industries Limited,
A-Wing, 2nd floor, Aditya
Birla Centre, S.K. Ahire
Marg, Worli,
Mumbai-400030.

PAN No. AAACG 4464 B
Respondent

Assessee by : Mr. Yogesh Thar &
Mr. Chaitanya Joshi
Revenue by : Dr. Kishor Dhule, CIT-DR

Date of Hearing : 03/04/2024
Date of pronouncement : 29/04/2024



ORDER

PER OM PRAKASH KANT, AM

These cross appeals by the assessee and the Revenue were heard and adjudicated earlier by the Tribunal on 31.05.2023, however, same have been recalled by the Tribunal vide order passed in Miscellaneous Application No. 620 & 621/M/2023 for assessment year 2010-11 on 16.01.2024 , thus before us for adjudication. These appeals are arising from the order of the Ld. Commissioner of Income-tax (Appeals) [in short 'the Ld. CIT(A)'] dated 26.12.2017.

2. The grounds raised by the Revenue are reproduced as under:

1. *"On the facts and the circumstances of the case and in law the Ld. CIT(A) erred in granting relief to the assessee stating that no disallowance u/s 153C of the Act is called for as there are no incriminating materials found during the search and the assessment has reached its finality and was not abated at the initiation proceedings u/s. 132(1) of the Income Tax Act, 1961".*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred, in holding that no addition can be made us 153C of the Act, once the assessment has reached to finality u/s 143(3) of the Act, and no incriminating documents have been found and seized in the case of the assessee during the course of search and seizure action relying upon the decision of the jurisdictional Bombay high Court decision in the case of Continental Warehousing Corpn. and M/s Murli Agro Products without appreciating that the revenue has not accepted the decision and has filed SLP in the Hon'ble Apex Court"*

3. *"On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance of Rs. 62,28,18,348/- on account of additional Spill Over Depreciation by treating the assessment as flawed in light of the judgements which are subjudice before Apex and Bombay High Court. Besides this issue has not*



been examined and tested in the assessment and/or the Appellate Authorities."

4. "On the facts and circumstances of the case and in law the Ld. CIT(A) erred in allowing the additional Spill Over Depreciation relying upon the judicial pronouncement in the case of CIT vs Continental Warehousing Corpn. [374 ITR 645]- Hon'ble Mumbai HC, without appreciating that the revenue has not accepted the aforesaid judicial pronouncement and SLP is pending before the Hon'ble Supreme Court for adjudication".

2.1 The grounds raised by the assessee are reproduced as under:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in validating the action of the Assessing Officer ('AO') in issuing an invalid notice u/s 153C of the Act and in passing order dated 29.03.2016 u/s 153C r.w.s. 143(3) of the Act.

2. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in upholding the action of the AO in adopting lower opening written down value of the block of assets for allowing depreciation allowance and ought to have directed the AO to re-compute depreciation allowance allowable to the Appellant for the year adopting correct opening written down value consequent to withdrawal of depreciation allowance in the earlier years.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the AO in disallowing depreciation allowance of Rs.29,56,250/- on other buildings.

3. Briefly stated facts of the case are that the assessee company is engaged in manufacturing of fiber, chemical, cement and sponge, iron etc. For the year under consideration, the assessee filed its original return of income on 29.09.2010 which was further revised on 21.03.2012. The assessment u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 24.02.2014 . Thereafter, a search u/s 132 of the Act was carried out at the premises of M/s Aditya Birla Management Corporation Pvt. Ltd. on 16.10.2013, wherein material pertaining/belonging to the assessee was seized.



The said material containing cash book, along with page No. 28, 32, 40 of annexure A-1 pertaining to the assessee were forwarded to the Assessing Officer of the assessee following due procedure of law. Consequently, notice u/s 153C of the Act r.w.s. 153A was issued and assessment was completed u/s 153C r.w.s. 143(3) of the Act on 29.03.2016.

4. On further appeal before the Ld. CIT(A), the assessee challenged the validity of the reassessment as well as merit of the addition.

5. The Ld. CIT(A) though upheld the validity of the notice issued u/s 153C of the Act however, held that under the proceedings of section 153C of the Act in the case of non-abated assessment year, no addition could be made without the aid of incriminating material. The Ld. CIT(A) observed that there was no seized material qua the additions made by the Assessing Officer and therefore, accordingly he deleted the addition except the addition of disallowance of depreciation of Rs.29,56,250/- on other building which was held to be based on incriminating material i.e. the bogus purchase addition to the buildings.

6. Aggrieved with the above finding of the Ld. CIT(A) both the Revenue and the assessee are before the Tribunal by way of raising grounds reproduced above.



7. In the grounds raised by the Revenue, a common legal issue is that Id CIT(A) has erred in deleting the addition on the ground that there was no incriminating material qua the additions made by the AO including the addition of additional spill over depreciation in view of the decision of the Hon'ble Supreme Court in the case of CIT v. Continental Warehousing Corporation (supra). In the grounds raised by the Revenue, the only contention is that the Department has not accepted the decision of the Hon'ble Bombay High Court in the case of CIT v. Continental Warehousing Corporation (supra) and SLP filed was pending before the Hon'ble Supreme Court. We find that the Ld. CIT(A) after considering the decision of the Hon'ble Bombay High Court in the case of CIT v. Continental Warehousing Corporation and Murli Agro Products Ltd. (supra) has held that no addition could have been made in proceedings u/s 153C without aid of the incriminating material. The relevant finding of the Ld. CIT(A) in reproduced as under:

“16.0 I have carefully considered the findings of the AO, the submissions made by the Appellant Company and the other materials on record, on this issue.

16.1 The Appellant's claims is that the proceedings were already completed u/s 143(3), before the issuance of notice u/s 153C and hence didn't abate. It is seen from the facts of the case that the regular assessment for the current assessment year under consideration was completed by the A.O. u/s 143(3) on 24.02.2014. The appeal filed by the Appellant against the assessment order was decided by the CIT(A) vide order dated 11.03.2016. It is evident from the assessment order passed u/s 153C that the AO computed taxable income starting from income as assessed in regular assessment order u/s 143(3) and ignored the order passed by the CIT(A).

16.2 In the assessment order u/s 153C dated 29.03.2016, the AO has held that fresh assessment of total income is to be made and repeated all



the disallowances made in the regular assessment on the ground that the order of the CIT(A) is not accepted by the Department and appeal has been filed before ITAT. It is evident from the assessment order passed u/s 153C that the AO computed taxable income starting from the income as assessed in regular assessment order u/s 143(3) and has ignored the order passed u/s 250 giving effect to the order of the CIT(A).

16.3 I agree with the contentions of the Appellant that completed assessment shall not abate, as per the provisions of Section 153C r.w. 153A of the Act and has attained finality, unless the material gathered in the course of search establishes that the income computed under the finalized assessment is contrary to the facts unearthed during the course of search. It is also observed from the impugned assessment order passed by the A.O. u/s 153C for AY 2010-11 that no addition or disallowance has been made by the AO based on the seized material.

16.4 The Section 153(1) starts with a non-obstante clause and disregards the normal provisions of the assessment prescribed under the Act in the case of a search operation carried out u/s 132 of the Act. By virtue of clause (a) of section 153(1), the AO is required to issue notice requiring the assessee to file the return of income for the six assessment years prior to date of search. The further consequences of a search carried out u/s 132 are mentioned in clause (b), whereby the A.O. is required to assess or reassess the total income of those six years. As such, the AO has no option but to make an assessment in respect of all the concerned six years. He has to bring the proceedings to a logical conclusion by making an assessment of the returns filed for all the six years. It may be noted that the provisions of section 153C of the Act also refers back to the procedure prescribed in Section 153A of the Act. Accordingly, I am of the considered opinion that the AO has rightly proceeded with the assessment of 6 assessment years u/s 153C of the Act.

16.5 Having said so, the next question, which needs to be addressed is - what issues can be taken up for assessment u/s 153C of the Act, in a case where at the time of the search operation, the original assessment was already completed.

16.6 In such a scenario, the second proviso to Section 153(1) specifies that any assessment or reassessment falling within the period of six assessment years pending on the date of initiation of search under section 132 or requisition of books under section 132A as the case may be, shall abate. In this regard, the relevant proviso is reproduced below:-

S. 153A. ".....Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this subsection pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate".



16.7 Further, in Para 65.5 of the CBDT Circular No. 7/2003 dated 05.09.2003 giving explanatory notes on the provisions relating to direct taxes in the Finance Act, 2003, the CBDT has clarified as under:-

"65.5 The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or requisition under section 132A, as the case may be, shall abate. It is clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 or requisition shall not abate. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. It is also clarified that assessment or reassessment made under section 153A shall be subject to interest, penalty and prosecution, if applicable. In the assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

16.8 The word 'abate' means to stop or to put an end. The objective of the above proviso is clearly to eliminate the multiplicity of assessment or reassessment proceedings, which are pending on the date of search or requisition of records, as the case may be, and which are now required to be undertaken afresh in view of section 153A / 153C of the Act.

16.9 The word 'pending' occurring in the second proviso to Section 153A of the Act, is also significant. It is qualified by the words 'on the date of initiation of the search', which makes it clear that on initiation of the proceedings u/s. 153A or 153C, as the case may be, it is only the assessment/reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under section 132A of the Act, stand abated. As a corollary, the assessments / reassessments already completed and falling within the six years period referred to in section 153A of the Act are to be considered final and cannot be altered.

16.10 The Special Bench of Hon'ble Mumbai ITAT in the case of All Cargo Global Logistics Ltd vs DCIT(2012) 147 TTJ 0513 (SB) : (2012) 74 DTR 0089 (SB) : (2012) 137 TD 0287 (SB) : (2012) 18 ITR 0106 (SB) has observed as under:

"52. The provision comes into operation if a search or requisition is initiated after 31.5.2003. On satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of income of six years immediately preceding the year of search. The word used is "shall" and, thus, there is no option but to issue such a notice. Thereafter he has to assess or reassess total income of these six years. In this respect also, the word used is "shall" and, therefore, the AO has no option but to



assess or reassess the total income of these six years. The pending proceedings shall abate. This means that out of six years, if any assessment or reassessment is pending on the date of initiation of the search, it shall abate. In other words pending proceedings will not be proceeded with thereafter."

16.11 It has been categorically observed in the above mentioned judgment that only the pending proceedings, as on the date of search shall abate meaning thereby that the completed proceedings attains finality.

16.12 Now a question arises, as to what is the scope of assessment/reassessment under the provisions of section 153A/153C of the Act for the assessments/reassessments which have abated and those which have attained finality.

16.13 The use of the phrase 'so far as may be' in section 153(1)(a) implies that all the provisions of the IT Act as contained under Chapter AV prescribing the procedure for assessment or under any other Chapter of the act respect to the return of income filed u/s. 139 shall be applicable to the returns filed pursuant to notice issued u/s. 153A/153C of the Act. The applicability of those provisions which are inconsistent with the provisions of section 153A are restricted by the use of the phrase 'so far as may be'.

16.14 As such, for the assessments proceedings which are abated, the AO gets all the powers prescribed under the law, as if the assessment is being made for the first time. Thus, if the assessment is made for the first time, all the provisions of assessment, relevant for making of an assessment u/s. 143(3) shall be applicable. In the case of re-assessment, the principles pertaining to assessment u/s 147/148 of the Act shall become applicable.

16.15 As far as the assessments/reassessments, which do not abate or which have attained finality, the principle of time barring rule comes into play. The assessee acquires a right as to the finality of proceedings. Quietus of the completed assessments can be disturbed, only in a case, where incriminating seized material is found, during the course of the search operation u/s 132 of the Act.

16.16 Further, as observed above, the objective behind the second proviso to section 153(1) is to eliminate multiplicity of proceedings. In such cases it is only the seized material and undisclosed income emanating out of the search proceedings, which is relevant for the purpose of assessment.

16.17 The Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation [374 TR 645], has held that when the assessment has attained finality, then the A while passing the independent assessment order u/s 153A of the Act can't disturb the assessment / reassessment order which has attained finality, unless the materials gathered in the course of the proceedings u/s 132 of the Act



establish that the reliefs granted under the finalised assessment/reassessment were contrary to the facts unearthed during the course of search operation.

6.18 In the case referred, supra, the Hon'ble Bombay High Court has upheld of the following observations of Hon'ble ITAT:-

"i. On a plain reading of Section 153A of the Income-tax Act, it becomes clear that on initiation of the proceedings under Section 153A, it is only the assessment / reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under Section 132A of the Act stand abated and not the assessments/reassessments already finalised for those assessment years covered under Section 153A of the Act.

ii. By a circular No. 8 of 2003 dated 18-9-2003 (See 263 ITR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under Section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalised assessment/reassessment shall not abate. It is only because, the finalised assessments/reassessments do not abate, the appeal revision or rectification pending against finalised assessment/reassessments would not abate.

iii. Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalised for the assessment years covered under Section 153A of the Income-tax Act stand abated cannot be accepted. Similarly on annulment of assessment made under Section 153(1) what stands revived is the pending assessment/reassessment proceedings which stood abated as per section 153A(1)."

16.19 A similar view has been taken by the Hon'ble Bombay High Court (Nagpur Bench) in case of *Murli Agro Products Ltd Vs. CIT 49 Taxman.com 172 in ITA No 36 of 2009*, wherein it has been held that on initiation of proceedings U/s. 153A, it is only the assessment proceedings that are pending on the date of conducting search U/s. 132 or making requisition U/s. 132A of the Act that stand abated and not the assessments already finalised. The relevant excerpts of the judgment are reproduced hereunder:-

"9. What Section 153A contemplates is that, notwithstanding the regular provisions for assessment/ reassessment contained in the IT Act, where search is conducted under Section 132 or requisition is made under Section 132A on or of after 31/5/2003 in the case of any person, the Assessing Officer shall issue notice to such person requiring him to furnish return of income within the time stipulated therein, in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made and thereafter assess or reassess the total income for those



assessment years. The second proviso to Section 153A provides for abatement of assessment/reassessment proceedings which are pending on the date of search/requisition. Section 153(2) provides that when the assessment made under Section 153(1) is annulled, the assessment or reassessment that stood abated shall stand revived.

10. Thus on a plain reading of Section 153A of the Income-tax Act, it becomes clear that on initiation of proceedings under Section 153A, it is only the assessment/reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under Section 132A of the Act stand abated and not the assessment/reassessments already finalized for those assessment years covered under Section 153A of the Act. By a circular No.8 of 2003 dated 18-9-2003 (See 263 ITR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under Section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalized assessment/reassessment shall not abate. It is only because, the finalized assessments/reassessments do not abate, the appeal, revision or rectification pending against finalized assessments/reassessments would not abate. Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalized for the assessment years covered under Section 153A of the Income-tax Act stand abated cannot be accepted. Similarly on annulment of assessment made under Section 153(1) what stands revived is the pending assessment/reassessment proceedings which stood abated as per section 153(1).

11. In the present case, as contended by Shri Mani, learned counsel for the assessee, the assessment for the assessment year 1998-99 was finalized on 29-12-2000 and search was conducted thereafter on 3-12-2003. Therefore, in the facts of the present case, initiation of proceedings under Section 153A would not affect the assessment finalized on 29-12-2000.

12. Once it is held that the assessment finalized on 29.12.2000 has attained finality, then the deduction allowed under section 80HHC of the Income-tax Act as well as the loss computed under the assessment dated 29-12-2000 would attain finality. In such a case, the A.O. while passing the independent assessment order under Section 153A read with Section 143(3) of the IT. Act could not have disturbed the assessment/reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under Section 153A of the Income-tax Act establish that the reliefs granted under the finalized assessment/reassessment were contrary to the facts unearthed during the course of 153A proceedings.

13. In the present case, there is nothing on record to suggest that any material was unearthed during the search or during the 153A



proceedings which would show that the relief under Section 80 HHC was erroneous. In such a case, the A.O. while passing the assessment order under Section 153A read with Section 143(3) could not have disturbed the assessment order finalised on 29.12.2000 relating to Section 80 HHC deduction and consequently the C.I.T. could not have invoked jurisdiction under Section 263 of the Act."

16.20 In the above mentioned judgment, the Hon'ble Bombay High Court has held that no addition can be made in respect of assessments which have become final, if no incriminating material is found during the course of search. It has been held that once the original assessment has attained finality, then the Assessing Officer while passing the assessment order U/s. 153A r.w.s. 143(3) cannot disturb the assessment/ reassessment order which has attained finality, unless the material gathered during the course of the search proceedings establishes something contrary to it. If there is nothing on record to suggest that any incriminating material was unearthed during the search, the AO, while passing order U/s. 153C r.w.s.143(3) cannot disturb the original assessment order passed U/s. 143(3) of the Act.

16.21 On this issue the Special Bench of Hon'ble Mumbai ITAT in the case of All Cargo Global Logistics Ltd vs DCIT(2012) 147 TTJ 0513 (SB) : (2012) 74 DTR 0089 (SB) : (2012) 137 TD 0287 (SB) : (2012) 18 ITR 0106 (SB) has also observed as under:--

"58. Thus, question No.1 before us is answered as under:

- a) In assessments that are abated, the AO retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately;*
- b) In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material, which in the context of relevant provisions means - (i) books of account, other documents, found in the course of search but not produced in the course of original assessment, and (ii) undisclosed income or property discovered in the course of search."*

16.22 The Hon'ble Mumbai Tribunal in the case of Guruprerana Enterprises v. ACIT (57 DTR 465), has held that only the assessments pending before the AO for completion shall abate u/s. 153A and the issues decided in the assessment cannot be reconsidered and re-adjudicated, unless there is some fresh material found during the course of search in relation to such points.

16.23 In the case of Viraj Forgings Ltd. vs. DCIT [ITA No. 1948/M/2008] and Viraj Impoexpo Ltd. vs. DCIT in (ITA No. 1949/M/2008, the Hon'ble Mumbai ITAT has held as follows:-



"4.2 We have perused the records and considered the rival contentions carefully. The legal dispute raised in this ground is whether issues considered and decided in the regular assessment can be re-considered in an assessment proceedings initiated under section 153A. In case of search, the AO under section 153A is empowered to issue notices to the searched person requiring him to furnish the return of income in respect of each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. Further the second proviso to section 153A also provides that assessment or re-assessment relating to any assessment year falling within the period of six assessment years referred to above pending on the date of initiation of search under section 132 or making of requisition under section 132A as the case may be shall abate. Normally, the assessments which are pending in appeal or in revision cannot be said to be complete and therefore assessment/re-assessment pending in appeal/revision could also to be considered as pending on the date of search but the CBDT in the circular No.7 of 2003 dated 5.9.2003 has clarified that appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 will not abate. In other words, only the assessments pending before the Assessing Officer for completion shall abate. In this case there is no dispute that on the date of search, the assessment in the case of assessee had already been completed by the AO and in terms of the circular of the CBDT, the regular assessment made in case of the assessee will not abate. Therefore in our view the points/issues decided in the assessment cannot be re-considered in the proceedings under section 153A unless there is some fresh material found during the course of search in relation to such points/ issues."

16.24 The Hon'ble Delhi High Court in the case of CIT vs. RRJ Securities [2016] 380 ITR 612, has clearly held that in the absence of any incriminating material, the concluded assessments could not be interfered U/s. 153A of the Act. In the facts of that case, it was held that the documents seized has no reference to the income of the assessee for relevant assessment year and, thus, the AO has no jurisdiction to make the re-assessment U/s. 153A.

16.25 The Hon'ble Delhi High Court in the case of Pr. CIT vs. Lata Jain (ITA 274 and 276 of 2016), considering the ratio laid down in the case of CIT vs. Kabul Chawla [2016] 380 ITR 573, has held that section 153A assessment cannot be made for the assessment years in which incriminating material is not recovered even though incriminating material may be recovered for other years in the block of 6 years.

16.26 The Hon'ble Delhi High Court in a recent decision in the case of Pr. CIT vs. Meeta Gutgutia [2017-TIOL-1000-HC-DEL-IT], has affirmed the view that no addition can be made for a particular assessment year



without there being an incriminating material that relates to the said assessment year which would justify such an addition.

16.27 The Memorandum explaining the provisions of Finance Bill 2003, stated that the then existing provisions contained in Chapter XIVB relating to block assessment prescribing single assessment of undisclosed income for block period, were introduced for avoidance of disputes, early finalisation of such assessments and reduction in multiplicity of proceedings. However, there were parallel proceedings carried on namely regular assessment proceedings as well as block assessments for undisclosed income resulting into multiplicity of proceedings. In order to rectify this anomaly, a scheme of single assessment was introduced by inserting section 153A to Section 153D in the IT Act.

16.28 The purpose behind the introduction of section 153A/153C will get defeated, if the AO is allowed to assess/reassess the total income again in respect of completed assessments, in contradiction with the second proviso, except for the undisclosed income on the basis of incriminating material. If the view of the A.O. is accepted then the same will not only multiply assessment proceedings, but will also multiply the appellate proceedings and create fictitious demands.

16.29 The Revenue's interest is entirely safeguarded in view of the fact that all appeal, revision or rectification proceedings in respect of assessments completed prior to the date of search shall continue in the normal course. This indicates that the matters, which are being agitated either by the assessee or the Revenue will continue to hold its ground and can be decided course in the usual manner. As such, making same additions/ disallowances again in the proceedings under section 153C r.w.. 153A of the IT Act is unwarranted.

16.30 In view of the aforesaid detailed discussion and judicial precedents, I am of the view that assessments which are completed Us 143(3) do not abate. Further, proceedings Us. 153C r.w.s. 153A do not empower the AO to re-adjudicate the same issues again, unless fresh material is found in the course of search which has some connection with the said issues. The assessing authority cannot disturb the assessment order which has attained finality, unless the material gathered during the course of search, establishes that the income computed in the finalized assessment was not in accordance with the facts unearthed during the course of search.

16.31 Respectfully following these binding decisions, it is held that the completed proceedings u/s 143(3) will not abate and the AO is directed to follow the order of the CIT(A) and consider the same, while computing taxable income u/s 153C. The proceedings u/s 153C are not parallel proceedings and do not give power to the AO to re-adjudicate the issues. Accordingly, this ground of appeal is decided in favour of the Appellant.”



7.1 We find that the ratio in the case of CIT v. Continental Warehousing Corporation (supra) has been upheld by the Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell P. Ltd. (149 taxmann.com 399) (SC). In view of the decision of the Hon'ble Supreme court (supra), the contentions of the Revenue are rejected. The ground Nos. 1 and 2 of the appeal of the Revenue are accordingly dismissed.

8. In ground Nos. 3 and 4 of the appeal, the Revenue has again raised the same issue that the spillover depreciation deleted by the Ld. CIT(A) following the decision of the Hon'ble Bombay High Court in the case of CIT v. Continental Warehousing (supra) is not justified because the Revenue has challenged the said decision before the Hon'ble Supreme Court. The finding of the Ld. CIT(A) on the issue in dispute as under:

"24.0 I have carefully considered the contentions of the AO, the submissions made by the Appellant Company and other materials on record, on the issue.

24.1 I find that the claim of spill over additional depreciation was allowed by the AO while completing assessment u/s 143(3), which has been withdrawn, while completing assessment u/s 153C. It is seen that the reason given for withdrawal by the AO is not at all related to any seized material found during the course of search operation.

24.2 While deciding the Ground No. 2 of this appeal, following the decision of the jurisdictional High court in the case of CIT Vs Continental Warehousing Corporation (374 ITR 645), I have held that while making an assessment u/s 153C, the AO cannot disturb the completed proceedings, unless the material gathered in the course of search establish that the relief granted under the finalized assessment were contrary to the facts unearthed during the course of search operation. Thus, the action of the AO in withdrawing the spillover additional depreciation allowance is bad in law.



24.3 I also find that on merits the claim of the Appellant is supported by the followings decisions:

- a) High Court of Karnataka - CIT v. Rittal India Pot Ltd [380 ITR 423]
- b) Mumbai ITAT - Grasim Bhiwani Textiles Limited Vs ACIT (ITA 790 & 791/Mum/2014)
- c) CIT, Madurai Vs. Shri T.P.Textiles (P.) Ltd. (246 Taxman324) (Madras High Court)
- d) MITC Rolling Mills P. Ltd. us. ACIT (Order dated 13.05.2013 in ITA No. 2789/Mum/2012) (Mumbai ITAT)
- e) Apollo Tyres Ltd Vs ACTT (64 SOT 203) (Cochin ITAT)
- f) DCIT Vs Cosmos Films Ltd (139 ITD 628)(Delhi ITAT)
- g) AMIT Vs SIL Investments Ltd. (148 TTJ 213)(Delhi ITAT)
- h) Century Enka Limited Vs DCIT (154 ITD 426)(Kolkatta ITAT)

24.4 In view of the above discussion and respectfully following the decision of Jurisdictional High Court in the case of CIT Vs Continental Warehousing Corporation (374 ITR 645), this ground of appeal is decided in favour of the Appellant. Thus, the AO is directed not to withdraw the spillover additional depreciation allowance already allowed in the original assessment u/s 143(3) of the Act.”

8.1 We have heard rival submission of the parties and perused the relevant material on record. While adjudicating ground Nos. 1 and 2 of the appeal of the Revenue, we have held that the decision of the Hon’ble Bombay High Court in the case of CIT v. Continental Warehousing Corporation (supra) has been approved by the Hon’ble Supreme Court in the case of Abhisar Buildwell P Ltd. (supra) ,therefore, the contention of the Revenue raised are rejected. The ground Nos. 3 and 4 of the appeal of the Revenue are dismissed.

9. Now we take up the grounds of appeal of the assessee. As far as ground No. 1 of the appeal of the assessee is concerned, we have



already dismissed the ground of the Revenue challenging the additions made u/s 153C proceedings without aid of incriminating material and therefore, this ground is rendered only academic, therefore, we are not adjudicating upon.

10. As far as ground No. 2 of the appeal of the assessee relates to depreciation allowance consequent to withdrawal of depreciation allowance in earlier years. The finding of ld CIT(A) on the issue in dispute is reproduced as under:

“28.0(sic) I have carefully considered the submissions of the Appellant Company and other materials placed on record, on this issue.

28.1(sic) The contention of the Appellant is that the AO has withdrawn spill over additional depreciation allowance in AY 2008-09 & AY 2009-10 and while computing allowable depreciation allowance for AY 2010-11 did not give effect of the same"to the opening written down value of the block of assets. The Appellant Company has challenged withdrawal of spill over additional depreciation allowance claim in A.Y. 2008-09 in income tax Appeal No. CIT(A)-47/840/16-17 and the same is decided by me in favour of the Appellant Company. Also, the Income Tax Appeal No. CIT(A)-47/841/16-17 of the Appellant for AY 2009-10 has been decided in favour of the Appellant on this issue. Thus, the grievance of the Appellant Company on this issue is already addressed.

28.2(sic) Accordingly, Ground No. 6 of the present appeal is dismissed.”

(The paragraph numbers have been wrongly mentioned as ‘para 34, 34.1 & 34.2’ in the impugned order.)

10.1 We find that ld CIT(A) has allowed the issue in favour of the assessee and only mistake committed is that in para 28.2 he has erroneously mentioned as ground of the assessee was dismissed, but actually in para 28.1 as reproduced above , issue has been decided in favour of the assessee , thus this ground of appeal is non



maintainable and dismissed as infructuous. The ground No.2 of the appeal is dismissed.

11. The ground no. 3 of the appeal of the assessee relates to depreciation of Rs.29,56,250/- disallowed by the AO and sustained by the Id CIT(A). The Ld. CIT(A) has adjudicated the issue as under:

“36.0 I have carefully examined the issue and the submissions made by the Appellant Company.

36.1 In the appeals of the Appellant Company in Appeal No. CIT(A)-47/840/16-17 for the AY 2008-09 and Appeal No. CIT(A)-47/841/16-17 for AY 2009-10, I have decided the substantive grounds against the Appellant Company and held that the said transactions were just accommodation entries. In view of this conclusive finding in the earlier years, the consequential depreciation on such accommodation entries for the current year under consideration, needs to be disallowed.

36.2 Accordingly, the addition of Rs. 29,56,250/- made by the AO towards depreciation on other buildings is confirmed. Hence, the Ground No. 6 of the present appeal is dismissed.”

11.1 We have heard rival submission of the parties and perused the relevant material on record. This is the issue of consequential effect of the order of the earlier years 2008-09 and 2009-10. The appeals for assessment year 2008-09 and 2009-10 have already been adjudicated by the Tribunal in ITA No. 1053 & 1054/M/2019 dated 31.05.2023 and therefore, the Ld. Assessing Officer is required to give consequent effect. If the disallowance made in respect of assets has been deleted, then no further disallowance of depreciation is required in the year under consideration. The ground No. 3 of the appeal of the assessee is accordingly allowed for statistical purposes.



12. In the result, the appeal of the Revenue is dismissed whereas appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 29/04/2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 29/04/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai