

आयकर अपीलीय अधिकरण “डी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं. / ITA No.966/Chny/2022
(निर्धारण वर्ष / Assessment Year:2007-08)

&

2. आयकर अपील सं. / ITA No.967/Chny/2022
(निर्धारण वर्ष / Assessment Year:2008-09)

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| M/s. Ruby Realty Private Limited No. B-908, Radiance Shine Apts, Kazhipattur, OMR, Chennai-600 103. | बनाम/ Vs. | DCIT Central Circle-3(4), Chennai-34. |
| स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AADCR-2832-B | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थीकी ओरसे/Appellant by | : | Shri P. Murali Mohan Rao (CA)-Ld. AR |
| प्रत्यर्थीकी ओरसे/Respondent by | : | Smt. Komali Krishna (CIT)- Ld. DR |

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| सुनवाईकी तारीख/Date of Hearing | : | 27-02-2024 |
| घोषणाकी तारीख /Date of Pronouncement | : | 17-05-2024 |

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AYs) 2007-08 & 2008-09 arises out of separate but identical orders of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 22.09.2022 in the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s.153C r.w.s 153A of the Act on 28.03.2014.

First, we take up appeal for AY 2007-08 wherein the grounds taken by the assessee read as under: -

1. The order of the Commissioner (Appeals) is erroneous both in law and on facts.
2. The Commissioner (Appeals) failed to see that the Assessing Officer must be in possession of incriminating evidence gathered during search in order to invoke the provisions of section 153C. Nothing relating to the addition was seized during search. As is evident from paragraph 6 of the assessment order wherein the Assessing Officer clearly states that **as** per the cash hook submitted Rs.25,00,000 was paid in cash on 9-9-2006. Therefore, the Assessing Officer had no material in his possession to suggest seizure of any incriminating material to even assume jurisdiction u/s 153C.
3. The Commissioner (Appeals) erred in ignoring the fact that the Assessing Officer issued notice u/s 153C despite being aware that the document seized during search had no bearing on the case of the Appellant for the year under consideration. The Assessing Officer, therefore, grossly erred in ignoring the jurisdictional condition precedent to the issue of notice u/s 153C that money, bullion, jewellery or other valuable article or thing or any books of account or document relevant for the year must be seized. Consequently, the satisfaction recorded by him for the year is bad in law and the assessment made in pursuance thereof is also bad in law and deserves to be quashed.
4. The Commissioner (Appeals) erred in not following Circular No. 24/2015 dated 31 December 2015 issued by the CBDT which clearly instructs the Officers to record satisfaction note for assumption of jurisdiction u/s.153C. The Circular is binding on the Assessing Officer. Further, assumption of jurisdiction u/s 153C is not an empty formality. It can be exercised only on being satisfied that the document seized is incriminating in nature.
5. The Commissioner (Appeals) failed to see that mere possession of document pertaining to the Assessee will not confer automatic jurisdiction to the Assessing Officer to issue notice under section 153C. The Assessing Officer should verify the seized material/ information and satisfy himself that the seized material is incriminating and has bearing on the determination of total income of the Assessee for any particular year.

As is evident, the sole grievance of the assessee is confirmation of addition of Rs.25 Lacs.

2. The Ld. AR advanced arguments supporting the grounds of appeal and relied on various judicial decisions, the copies of which have been placed on record. The Ld. CIT-DR also advanced arguments supporting the case of the revenue. Having heard rival submissions, our adjudication would be as under.

3. Proceedings before lower authorities

3.1 Upon perusal of assessment order, it emerges that the assessee deals in real estate and it is a part of Platinum Group of companies. The group was being managed by Shri M. Sukumar Reddy (MSR) and Shri B. Venkatrama Reddy (BVR) who acted as directors in these companies. The group was primarily financed by Shri Sukumar Reddy. The Group was searched by the department u/s 132 on 21.06.2011. Based on search findings, notice u/s 153C was issued to the assessee on 25.09.2012. The assessee offered original return of income as filed on 11.10.2007. It is quite clear that on the date of issuance of notice u/s 153C, no proceedings for this year were pending against the assessee and this was a case of an unabated year.

3.2 During assessment proceedings, it transpired that the assessee sold land during the year and offered the same as business income. From the details furnished by the assessee regarding purchase of land, it was noted by Ld. AO that the assessee paid amount of Rs.25 Lacs in cash to seller on 09.09.2006. Accordingly, the same was disallowed invoking the provisions of Sec. 40A(3).

3.3 During appellate proceedings, the assessee submitted that the addition was not based on any incriminating material as found during the course of search. The Ld. AO did not record any satisfaction note before making assessment u/s 153C.

3.4 Rejecting the same, Ld. CIT(A) held that notice u/s 153C was issued based on seized document which contain details of sales affected by the assessee. The Ld. AO recorded proper satisfaction before proceeding u/s 153C. However, Ld. CIT(A) concurred that it no such

expenditure was claimed, no disallowance could be made. Further, the disallowance, if at all, was to be made then the same would be 20% of cash payment. The Ld. AO was directed accordingly. Aggrieved, the assessee is in further appeal before us.

3.5 From the facts, it would emerge that Ld. AO has made disallowance u/s 40A(3) which is for expenditure already recorded in the books of accounts. Apparently, the impugned addition is not based on any incriminating material unearthed during the course of search proceedings on assessee group. The jurisdictional requirement of Sec.153C i.e., recording of satisfaction that certain document / information pertained to the assessee and the same had bearing on determination of total income of the assessee, was not fulfilled in the present case. No such satisfaction note has been shown to us. Therefore, we hold that the assessment was bad-in-law. In other words, the impugned addition stands deleted and the appeal stand allowed.

Assessment Year 2008-09

4.1 In this year, similar assessment u/s 153C r.w.s. 153A has been framed against the assessee. It has been noted by Ld. AO that the assessee deals in real estate and it is a part of Platinum Group of companies. The group was being managed by Shri M. Sukumar Reddy (MSR) and Shri B. Venkatrama Reddy (BVR) who acted as directors in these companies. The group was primarily financed by Shri Sukumar Reddy. The Group was searched by the department u/s 132 on 21.06.2011. Based on search findings, notice u/s 153C was issued to the assessee on 25.09.2012. The assessee offered original return of income as filed on 27.09.2008. It is quite clear that on the date of issuance of

notice u/s 153C, no proceedings for this year were pending against the assessee and this was a case of an unabated year.

4.2 In para-5 of the assessment order, Ld. AO referred to another search conducted in the case of Om Sakthy Agencies (Madras) Pvt. Ltd. (OSAPL) on 02.07.2010 wherein it was found that OSAPL inflated expenses on purchase of land from assessee group. A search was also conducted on the assessee on 21.06.2011 wherein it was found that the assessee company along with its sister concerns made land sales to OSAPL through two brokers in financial years 2006-07 and 2007-08 which were allegedly partly unaccounted. Total land sold by the assessee group was 102.87 acres against sale consideration of Rs.24.01 Crores. Despite search and cross examinations, there was no clarity as to whether the sale figure was correct figures of sales as the books of buyer as well as sellers had been manipulated. Therefore, the assessment was framed based on evidences available on record.

4.3 It was noted by Ld. AO that OSAPL claimed payment of Rs.24.01 Crores whereas brokers claimed to have received Rs.11.9 Crores for payment to assessee group. Both the brokers as well as BVR were produced on 01.07.2011 as witnesses of OSAPL and statement was recorded from executive director Shri N Manigantan. Shri BVR accepted to have received 4.5 Crores through cheques and Rs.1.73 Crores in cash. The cheque was stated to be paid to BVR in his own account whereas the cash was stated to be paid to 4 companies of the assessee group. The Ld. AO proceeded to add proportionate on-money in the hands of the assessee. The assessee denied having received any such payment and submitted that the same would have been received by BVR

in his individual capacity. However, Ld. AO alleged that the assessee could not escape the responsibilities for the action by its directors. Finally, proportionate amount of Rs.294.10 Lacs was added to the income of the assessee.

Appellate Proceedings

5.1 The assessee raised pertinent legal issue assailing the assumption of jurisdiction u/s 153C. It was submitted that to assume such a jurisdiction, AO must be in possession of incriminating evidences gathered in the course of search. Nothing relating to the addition was seized in the course of search. The impugned addition was based on some alleged evidence found during earlier search conducted on OSAPL. No fresh incriminating material / evidence connected to the assessee were found during search on assessee group. The assessee, relying on CBDT Circular No.24/2015 dated 31.12.2015, submitted that AO was bound to record satisfaction note for assumption of jurisdiction u/s 153C. Mere possession of documents would not confer jurisdiction to AO for issuing notice u/s 153C. The AO should verify the seized material and satisfy himself that the same had bearing on determination of total income of the assessee. Therefore, the assessment was to be quashed, inter-alia, in terms of decision of Hon'ble Supreme Court in the case of **CIT vs. Singhad Technical Education Society (84 Taxmann.com 290)**.

5.2 The assessee also submitted that alleged amount was never received by the assessee. The addition made merely on third-party evidences would not be sustainable. The assessee, inter-alia, submitted that impugned amounts may have been received by Shri BVR as agent /

broker of OSAPL. It was pointed out that during search on assessee group, no evidence was found suggesting receipt of impugned amounts. The assessee also submitted that the account held with SBI by BVR was opened in the year 1999. The assessee company was incorporated on 24.04.2006 and Shri BVR was inducted as director only on 24.08.2006. The same would show that BVR had its own business much before his induction as director in the assessee company. Therefore, all the credit entries appearing in the bank accounts would be the receipts from personal ventures. The assessee also drew attention to subsequent civil and criminal action initiated against BVR to support the submissions.

5.3 The submissions of the assessee were subjected to remand proceedings wherein Ld. AO reiterated the assessment considering the fact that the assessee did not cooperate during remand proceedings.

5.4 The Ld. CIT(A), following first appellate order in the case of assessee's sister concern i.e., M/s Platinum Holdings Private Ltd. for AY 2008-09, held that only proportionate cash component could be added in the hands of the assessee. Accordingly, the impugned addition was restricted to Rs.82.35 Lacs.

5.5 On the issue of assumption of jurisdiction u/s 153C, the Ld. CIT(A) held that there was a search in case of Platinum Group and during the course of search, it was found that the assessee had affected sale of lands to OSAPL and there was on-money paid on such transactions. The proceedings were thus initiated u/s.153C based on the incriminating materials found from the searched person as belonging / pertaining to the assessee. The AO duly recorded satisfaction note before issuance of

notice u/s 153C which was sufficient enough to assume such a jurisdiction. Therefore, the proceedings were held to be valid.

5.6 Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

6. We find that similar issue, on identical facts, has already been decided by us in another group concern of the assessee in the case of M/s Jayam Infrastructure Private Limited, ITA No.1061/Chny/2022 for AY 2008-09 as under: -

5. From the facts, it is quite clear that the impugned addition of on-money is not based on any incriminating material as unearthed during the course of search proceedings in the case of the assessee group. In para-5 of assessment order, the Ld. AO has referred to documents / information as unearthed during earlier search conducted in the case of OSAPL on 02.07.2010 which has led to impugned addition in the hands of the assessee. The impugned additions are thus based on incriminating material found in another search which has already concluded much before the date of search on the assessee. The search in assessee's case has happened on 21.06.2011. As noted in preceding para 3.1, the assessee had filed its return of income for this year on 27.09.2008 declaring income of Rs.22.56 Lacs. Notice u/s 153C was issued the assessee on 25.09.2012 against which the assessee offered original return of income as filed on 27.09.2008. It is quite clear that on the date of issuance of notice u/s 153C, no proceedings for this year were pending against the assessee and this was a case of an unabated year. The Hon'ble Supreme Court in the case of **DCIT vs. U.K.Paints (Overseas) Ltd.(150 Taxmann.com 108)**, concurring with the decision in **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)**, held that since no incriminating material was found in case of any of the assessees either from the assessee or from the third-party and the assessments were u/s 153C of the Act, the High Court has rightly set aside the Assessment Order. In the present case, Ld. AO has relied on information obtained in earlier search on OSAPL on 02.07.2010 wherein undisclosed bank accounts were discovered and the said information was utilized in the case of the assessee while making assessment u/s 153C consequent to search u/s 132 conducted in case of assessee group on 21.06.2011. The information obtained in an earlier search was a third-party information for which require recording of separate satisfaction note. No such satisfaction note has been shown to us. Therefore, the said information could not be utilized in proceedings u/s 153C issued on the basis of search initiated in Platinum group of cases. Respectfully following the same, we would hold that the assumption of jurisdiction was bad-in-law and accordingly, assessment is liable to be quashed. We order so. Delving into the merits of the case has been rendered infructuous and we see no reason to go into the same.

6. The appeal stands partly allowed in terms of our above order.

Further, similar legal issue has been decided by us in assessee's favor in the case of M/s Platinum Holdings Private Limited, ITA No.3436/Chny/2018 for AY 2008-09 wherein the assessment was framed u/s 153A. Therefore, facts being pari-materia the same, taking the same view, we would hold that the information obtained in an earlier search was third-party information which require recording of separate satisfaction note. The said information could not be utilized in proceedings u/s 153C issued on the basis of search initiated in Platinum group of cases. No satisfaction note u/s 153C is shown to have been recorded based on search conducted in the case of OSAPL. Therefore, the assumption of jurisdiction was bad-in-law and accordingly, assessment is liable to be quashed. We order so. Delving into the merits of the case has been rendered infructuous. The appeal stand allowed in terms of our above order.

Conclusion

7. Both the appeals stand allowed in terms of our above order.

Order pronounced on 17th May, 2024

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 17-05-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF