

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.42/Chny/2022
निर्धारण वर्ष/Assessment Year: 2012-13

The Dy. Commissioner – of Income Tax, Central Circle-2, No.63, Race Course Road, Coimbatore-641 018.	v.	Shri Poosappan – Arulsundaram, No.11, Poondurai Road, Ragupathynaickenpalayam, Erode-638 002.
		[PAN: ACGPA 7995 N]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.43/Chny/2022
निर्धारण वर्ष/Assessment Year: 2014-15

The Dy. Commissioner – of Income Tax, Central Circle-2, No.63, Race Course Road, Coimbatore-641 018.	v.	Smt. Arulsundaram Nithya, No.11, Poondurai Road, Ragupathynaickenpalayam, Erode-638 002.
		[PAN: ABSPN 5094 N]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Department by	:	Shri V. Nandakumar, CIT
Assessee by	:	Shri S. Sridhar, Advocate
सुनवाईकीतारीख/Date of Hearing	:	08.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	05.06.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-19, (hereinafter 'the



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Ld.CIT(A)'), Chennai, dated 04.10.2021 for the Assessment Year (hereinafter 'AY') 2012-13 & 2014-15.

2. At the outset, it is noted that '4' days delay in filing the appeal and we find from the reasons given by revenue for the cause of delay to be reasonable, therefore, we condone the same and proceed to hear the appeal. Both the parties agreed that grounds of appeal raised by the Revenue are similar/identical. Therefore, the decision in one of the appeals would decide the fate of the other appeal. Therefore, we take appeal No.42/Chny/2022 as the lead case and the result of which will followed for ITA No.43/Chny/2022. The grounds of the Revenue in ITA No.42/Chny/2022 are as under:

1. The order of the learned Commissioner of Income tax (Appeals)-18, Chennai is erroneous on facts of the case and in law.
2. The learned CIT (A) has erred in holding that the assessment reopened under sec.147 is bad in the eyes of law without adjudicating the merits of the case.
3. The learned Commissioner of Income tax (Appeals) failed to appreciate the fact that the AO has rightly reopened the assessment on the basis of information available to him consequent to the explanation submitted by M/s. RPP Infra Projects (Searched person) before the Hon'ble ITSC with regard to expenses incurred to procure contract by M/s. Bonton Software Pvt Ltd as mentioned in the seized material related to Directors in their Individual capacity.
4. The learned CIT (A) failed to appreciate that the assessee has not objected for the reopening of assessment before the Assessing Officer even though he has been provided with the reasons for reopening the assessment.
5. The learned CIT (A) failed to note that the addition was made on the basis of material evidence and the assessee was unable to furnish valid explanation in respect of unaccounted cash expenditure.
6. The learned CIT (A) failed to appreciate that Assessing Officer of assessee (person other than searched person) could not be compelled to pursue remedy necessarily under



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sec.153C in exclusion to remedy available to him under section 147. Reliance is placed on the decision of ITAT, Ahmedabad in the case of Sailesh Patil Vs. ITO, Ward 5, Palanpur 97 taxmann.com 570.

7. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT (Appeals) may be set aside and that of the Assessing Officer be restored.

3. The brief facts relevant to the legal issue are that the assessee Shri P.Arulsundaram, was Chairman and Managing Director of M/s.RPP Infra Projects Pvt. Ltd., (hereinafter in short 'M/s.RPP-IPPL') and had filed his return of income (hereinafter in short 'RoI') for AY 2012-13 on 12.12.2012 declaring income of Rs.53,71,920/-, which RoI was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter in short 'the Act'). Thereafter, search u/s.132 of the Act was carried out in M/s.RPP-IPPL on 24.03.2016. After the search, the case of the assessee was centralized with DCIT, Central Circle-2, Coimbatore. Based on certain incriminating material marked as ANN/RPP/ST/LS/S-1 vide Page No.93 to 97, relating to the expenses made by the assessee towards procurement of a contract work of M/s.Bonton Software Pvt. Ltd. [*relating to issuance of smart card of licence and RC and based on certain statements of M/s.RPP-IPPL, before the Income Tax Settlement Commission (ITSC)*], the AO(Central-Circle) issued notice u/s.148 expressing his desire to re-open the assessment of assessee for the AY 2012-13 on 30/03/2019. In response to the notice u/s.148, the assessee filed return of income for the AY 2012-13 on 24/06/2019 declaring income of Rs.53,71,920/-. And



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thereafter, the AO completed the assessment determining the total income of Rs.12,36,47,920/- [*by making addition of Rs.11,62,76,000/- u/s.69C of the Act*].

4. Aggrieved the assessee preferred an appeal before the Ld.CIT(A) and raised *inter-alia* a legal issue that when the AO was relying on incriminating documents found and seized from the search conducted on 24.03.2016 at the premise of M/s.RPP-IPPL and those documents purportedly related to the expenses made by the assessee towards procurement of contract work by M/s.Bonton Software Pvt. Ltd. valued at Rs.290 Crs, according to the assessee, the AO ought to have invoked jurisdiction u/s.153C of the Act, rather than initiate notice u/s. 148 of the Act, which contention/legal issue was accepted by the Ld.CIT(A) who relied on several Tribunal orders and held as under:

22. In view of the foregoing discussions and in the light of careful study of sections 153A/153B/153C of the Act and the provisions of s.147/148 of the Act, the circulars issued by the CBDT explaining the procedure of assessment in the cases of persons other than the searched person, the judicial precedents in a host of judgments mentioned supra, the facts of the case of the appellant relating to the reasons recorded in the case of the appellant which emanated solely from the impugned seized documents, I am of the view that once these are/is a separate provision and exclusive provision that is independent of other provisions relating to re-assessment, the assessment is bad in the eyes of law for the AO could have invoked only the provisions of s.153C of the Act not the general provision of s.147 of the Act. Therefore, the AO is directed to delete the addition. Thus, the appellant's ground connected to the jurisdictional issue on the issue of not initiating the proceedings under s.153C of the Act is liable to be allowed and accordingly, the appellant's said ground is allowed.

5. And since, the legal issue was answered in favour of the assessee, the Ld.CIT(A) did not go into the merits of addition made by the AO in both the cases/years. Aggrieved, the Revenue is in appeal before us.



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6. We have heard both the parties and perused the material available on record. The legal issue raised by the assessee before the Ld.CIT(A) was that since the entire exercise for re-opening of assessment u/s.147 of the Act was based on incriminating evidence/materials found during the search u/s.132 of the Act which took place in the premise of M/s.RPP-IPPL, the AO's impugned action of re-opening the assessment u/s.147 of the Act was bad in law. According to the assessee, since special provisions have been brought in the statute for assessment in the case of search u/s.132 of the Act by introducing Sec.153A/153C of the Act, the AO ought to have resorted to jurisdiction u/s.153C of the Act, which is a special provision for assessing the income in the hands of other person (3rd person) [*whose books/documents or valuable articles, inter alia, pertains to or information relating to them are found in the course of search u/s 132*], and accordingly ought to have issued notice u/s.sec.153C of the Act, rather than issuing notice under general provisions of s.148 of the Act (re-opening of assessment); and for such a proposition cited few case laws of the Tribunal; and the Ld.CIT(A) allowed the legal issue in favour of the assessee; and was pleased to hold that in the facts emanating from the reasons recorded by the AO for re-opening, it was clear that the AO could have invoked only the jurisdiction u/s.153C of the Act and not resorted to assess, the assessee under the general



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provisions of Sec.147 of the Act and allowed the legal issue and did not return any finding on the merits of the additions made by AO. Aggrieved by the action of the Ld.CIT(A), the Revenue is before us.

7. We find that similar question came before the Hon'ble Madras High Court in the case of Saloni Prakash Kumar v. ITO reported in [2023] 458 ITR 452 (Madras-HC), wherein, it was raised by the Writ Petitioner that since the entire exercise of re-opening of assessment was based on the search conducted in the premise of one Shri Naresh Jain, the AO ought not to have issued notice u/s.148A(b)/148A(d) (reopening notice after the Substituted Finance Act, 2021) and instead the AO ought to have issued notice u/s.153C of the Act. However, the Hon'ble Madras High Court after taking note of the decision of the Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell P. Ltd. reported in (2023) 454 ITR 212 (SC) and also the decision of the Hon'ble Delhi High Court in the case of CIT v. Kabul Chawla reported in (2016) 380 ITR 573 (Del-HC) which was affirmed by the Hon'ble Supreme Court in the case of Abhisar Buildwell P. Ltd. (supra) and taking note of Sec.153A & 153C of the Act was pleased to repel such a contention of petitioner by holding as under:

A reading of Section 153 of the Income Tax Act indicates that proviso to Section 153A of the Income Tax Act is available for completing the assessment under Section 147 of the Income Tax Act.



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Section 153C of the Income Tax Act is only an enabling provision to issue a notice notwithstanding anything contained in Sections 139, 147, 148 etc of the Income Tax Act. However, it does not preclude the Department from issuing notice for reopening the assessment under Section 148A(b) of the Income Tax Act for the purpose of Section 148 of the Income Tax Act to complete the assessment under Section 147 of the Income Tax Act.

Therefore, the argument that the notice was bad cannot be countenanced.

8. Therefore, in light of the jurisdictional High Court's decision in Saloni Prakash Kumar (supra), we set aside the impugned action of the Ld.CIT(A) and direct the Ld.CIT(A) to decide the issue on merits of the additions made by the AO in both the appeals. The Ld.CIT(A) is directed to give proper opportunity to the assessee before passing the order in accordance to law.

9. In the result, both appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced on the 05th day of June, 2024, in Chennai.

Sd/-
(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 05th June, 2024.
TLN, Sr.PS



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आदेश की प्रतिलिपि अग्रेषित / Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF