

आयकर अपीलिय अधिकरण
दिल्ली पीठ " जी ", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आअसं . 8198/दिल्ली/2019 (नि . व. 2008-09)
ITA NO.8198/DEL/2019(A.Y.2008-09)

Income Tax Officer, Ward-5(2),
R.No. 379, 3rd Floor, C R Building,
IP Estate, New Delhi 110001

..... अपीलार्थी/ Appellant

बनाम Vs.

M/s. Sanchit Counsultants Pvt. Ltd.,
(Now amalgamated to M/s Bullish Trading P. Ltd.)
G-029, Ground Floor, Gourmet Hub, Plot No. 1,
BG-1 and BG-2, Paschim Puri, New Delhi 110063
PAN: AAOCS-0318-L

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dharmveer Singh, CIT(DR)
प्रतिवादीद्वारा/ Respondent by : Shri Vikas Jain, Advocate
सुनवाई की तिथि/ Date of hearing : 18/04/2024
घोषणा की तिथि/ Date of pronouncement : 20/06/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-8, Delhi [in short 'the CIT(A)] dated 19.07.2019, for the Assessment Year 2008-09.

2. Shri Dharmveer Singh, representing the Department submitted that the Assessing Officer has passed the order dated 10.12.2018, in accordance with the

directions of the Tribunal in ITA No. 6415/Del/2013 dated 29.01.2018. In the first round of litigation, the Tribunal had directed the AO to continue with the proceedings u/s. 153C of the Act, where the seized documents belonged to the relevant assessment year and the transactions reflected in the seized documents are not recorded in the books of account. The AO in assessment order has categorically pointed that the assessee was not carrying any genuine business and the entire cash purchases were disallowed as bogus in the preceding AYs i.e. AY 2003-04, 2004-05 and 2005-06 u/s. 153C of the Act. The facts remain the same in the impugned assessment year. The addition has been made in the light of incriminating material. The Id. DR prayed for reversing the findings of CIT(A), and restoring the addition made in the assessment order.

3. Per contra, Shri Vikas Jain, appearing on behalf of the assessee, strongly supported the impugned order and prayed for dismissing appeal of the Revenue. He further submitted that, the AO has not passed the assessment order in second round in accordance with the directions of the Tribunal. The directions of the Tribunal are specific to consider seized documents relevant to assessment year and where the transactions reflected in the seized document is not recorded in the books of account. In the first instance, there is no incriminating material, secondly, there is no evidence that whatever material is on record, the transactions are not recorded in the books of account.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. This appeal emanates from the assessment order passed consequent to the directions of the Tribunal in ITA No. 6415/Del/2013 (supra). In the

first round of appeal by the Department and the cross objections by the assessee, the Tribunal restored the issue back to the file of AO with following directions:

“9.2 Considering the facts of the case and the arguments of both the sides, we set aside the matter to the file of the Assessing Officer for re-examination of the issue in the light of the above decision of Hon'ble Jurisdictional High Court i.e., the Assessing Officer will first verify the years to which the seized documents belonged. There would be no justification for continuation of the proceedings under Section 153C to which the seized documents do not belong. Therefore, the Assessing Officer will drop the proceedings initiated under Section 153 of the years to which the seized documents do not belong. For the year to which the seized documents belonged, he will verify whether the transaction reflected by the seized documents are duly accounted for in the books of account. If the transactions are duly accounted for in the books of account, as contended by the learned counsel, the Assessing Officer will drop the proceedings initiated under Section 153C. However, if for the year to which the seized documents belonged, the transaction reflected by the seized documents is not recorded in the books of account, the proceedings under Section 153C will continue and the Assessing Officer will make the assessment afresh in accordance with law. Since we have set aside all the years under appeal, the Revenue's appeals on merits do not require any adjudication and they are also deemed to be allowed for statistical purposes. The Assessing Officer will proceed to make the assessment afresh only in the year where proceedings under section 153C can validly continue in the light of the above decision of Hon'ble Jurisdictional High Court.”

5. The above directions are specific with regard to seized documents belonging to the relevant year and the transaction reflected in the seized documents not recorded in the books of account. In the instant case, we find that the AO, while passing the consequent order, has nowhere in the order specified that the documents seized belong to the assessment year under appeal and the transactions, reflected in the seized documents are not recorded in the books of account of assessee. The First Appellate Authority in the impugned order has observed as under:

“Under the circumstances I am of the view that the AO was not justified in assuming jurisdiction u/s. 153C and also not justified in making the addition in question without reference to any incriminating seized material. In respect of the statements recorded by the Investigation Wing, detailed judgement has been given in Para 12, hereinafter. I thus held that the appellant company succeeds on the grounds no. 1, 2, 3, 4, 4A, 4B and 6 i.e. on validity of assumption u/s.153C and additions in question. The grounds involving the above issues are accordingly allowed.”

6. It is no more re-integra that provisions of section 153C of the Act can be invoked only if any incriminating material seized during the course of search action pertain to that particular assessment year. [Re. CIT vs Sinhgad Technical Education Society, 84 taxmann.com 290 (SC)].

7. The Id. DR could not controvert the findings of the CIT(A), hence, we find no infirmity in the impugned order. In the result, impugned order is upheld and appeal of the Revenue is dismissed.

Order pronounced in the open court on Thursday the 20th day of April, 2024.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 20/06/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI