

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SH. AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos. 3650 & 3651/Del/2023
(Assessment Years : 2016-17 & 2017-18)**

Anil Kumar
48, Old Lajpat Rai
Market,
New Delhi-110006

Vs. ACIT
Central Circle – 18
New Delhi

PAN: AAGPK 0739 C

(Appellant)

..

(Respondent)

Appellant by :

Shri Nitin Gulati, Adv.
Shri Shyam Jain, Adv.

Respondent by :

Shri Kanv Bali, Sr. D.R.

Date of Hearing 13.06.2024

Date of Pronouncement 27.06.2024

ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

Both the appeals filed by the assessee are directed against the orders both dated 27.10.2023 passed by the Commissioner of Income Tax (Appeals)-27, New Delhi under Section 250 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the order dated 30.03.2022 passed by the ACIT/DCIT, Central Circle – 18, New Delhi under Section 147 read with Section 143(3) of the Act for Assessment Years 2016-17 & 2017-18 respectively.

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2. Since both the matters relate to the same assessee, these are heard analogously and are being disposed of by this common order.

ITA No.3651/Del/2023 for A.Y. 2017-18 :

3. The assessee having a proprietary business in the name of M/s. Vijay Enterprises in retail trading of cable wire, remotes, stabilizers, converters, set top box etc. originally filed its return of income for the Year 2017-18 on 30.10.2017 declaring total income at Rs.24,63,080/- under the head income from Profit and Gains of Business of Profession (PGBP).

4. The brief facts leading to this case is this that a search and seizure action under Section 132 of the Act was carried out on various residential and business premises of Laxmi Remote Group and its related entities / persons on 21.08.2017. On the basis of information received from such search, the case of the assessee has been selected for reassessment under Section 147 of the Act upon getting approval from the competent authority and notice under Section 148 of the Act dated 09.03.2021 was served upon the assessee. It is relevant to mention that during the above search, it was found that parallel accounting software was being used by Laxmi Remote India Pvt. Ltd. (LRIPL) with the help of cloud based accounting software called Inventory Management System (IVMS). The said private limited company was also used for software called ERP

software, which was disclosed to the Government agencies. The ERP books of account contained the details of inter-unit purchases and other details of expenses incurred at the unit. The other IVMS software contained the details of cash sales made the said private limited company. According to the Revenue, the IVMS software was hidden from normal access and was hosted on a cloud server. Apart from that during the search, one of the directors of the said Laxmi Remote Group namely Shri Prakash Sachdeva made a statement under Section 132(4) of the Act that unaccounted sales was made by using IVMS software as alleged.

5. A list of top sales parties as per such IVMS & ERP software were prepared for the seized digital data and the name of the assessee being the Prop. of Vijay Enterprises found to have appeared in both ERP database and IVMS data base. The department was of the view that as per ERP, the sales made to the assessee was far less than actual sale made as recorded in IVMS software. On 09.01.2018, a further survey was conducted at M/s. Vijay Enterprises, Shop No.48, Lajpat Rai Market, Delhi wherein fact of making cash purchases from Laxmi Group was admitted by one Shri Vijay Kumar said to be the key person of M/s Vijay Enterprises. Anomalies in record to actual sales were found; these figures were out of books and not accounted for. No books of accounts were maintained by Vijay Enterprises. In fact, the fact of sale of stocks by Laxmi Group to Vijay Enterprises was not recorded in books of account

of Laxmi Group and, therefore, finally on 09.03.2021, a notice under Section 148 of the Act was issued to the assessee followed by notice under Section 142(1) of the Act. The assessee filed its return of income pursuant to the notice issued in the proceedings initiated under Section 148 of the Act on 23.02.2022. The reason for reopening assessment under Section 147 of the Act was forwarded to the assessee in response whereof the assessee filed its objection of 23.03.2022 and also requested for providing the impounded materials. Such proceeding was culminated in the order of addition to the tune of Rs.29,28,940/- under Section 69A read with Section 115BBE of the Act on the premises that the assessee was making cash purchase and sale and not disclosed the true profit of this cash sale in his ITR. The same was confirmed by the First Appellate Authority. Hence, the instant appeal before us.

6. We have heard the rival contentions made by the respective parties; we have also perused the relevant materials available on record.

7. The case of the assessee is this that the assessment would only be made under Section 153C of the Act based upon the documents / information found during the course of search of the third party namely Laxmi Remote India Pvt. Ltd. (LRIPL) and, therefore, the proceedings initiated under Section 148 of the Act is illegal, bad in law and thus, liable to be quashed. This particular ground of assumption of jurisdiction

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by the Learned AO is *void ab initio* also raised before the Learned CIT(A). However, the same was rejected by the Learned CIT(A).

8. In the instant case, the search was conducted on Laxmi Remote India Pvt. Ltd. on 21.08.2017 and the assessment under Section 153C should have been completed by 31.12.2019. During the course of hearing, it was submitted by the Learned AR that the provision of Section 148 to 153 of the Act were amended w.e.f 01.04.2021 by Finance Act, 2021 and simultaneously, the provisions of Section 153A and 153C of the Act relating to search assessment was omitted and made inapplicable w.e.f 01.04.2021 meaning thereby the assessment in relation to the search initiated “before” 31.03.2021 will be governed by provisions of Section 153A , 153C of the Act and in case of search conducted “after” 01.04.2021 reassessment proceeding would be initiated under Section 148 of the Act only. It was further pointed out by the Learned AR that though in the case of the assessee, notice under Section 148 of the Act issued, even on the basis of the searched documents, seized during the course of search of Laxmi Remote India Pvt. Ltd., the brother of the assessee namely Vijay Kumar was issued with the notice under Section 153C of the Act by the department itself. More so, the tax department did not take any further action in the case of brother of the assessee after receiving the objection made by him and dropped the proceedings.

9. On the basis of the above facts, it was categorically submitted before us that issuance of notice under Section 153C of the Act upon the brother of the assessee prior to the assessee substantiates that Learned AO was of the firm belief at the first instance that the assessment should be made under Section 153C of the Act. It was further contended by him that once the department realized that the time limit for completion of assessment under Section 153C of the Act as elapsed the, Learned AO resorted to issue notice under Section 148 of the Act. While arguing the same, the Learned AR drew our attention at pages 14 to 20 of the paper book filed before us. Upon perusal of the same it appears that page 14 contains the notice issued under Section 153C of the Act to the brother of the assessee on 05.07.2019 for A.Y. 2016-17. Page 15 contains the objection raised by him to the ACIT. Page 16 is the notice issued to the assessee under Section 148 of the Act dated 09.03.2021 for A.Y. 2016-17. Page 17 contains the notice under Section 142(1) of the Act issued to the assessee dated 30.11.2021 for A.Y. 2016-17. Page 19 contains the final show-cause notice to the assessee dated 14.01.2021 for A.Y. 2016-17 and page 20 is the return filed by the assessee for A.Y. 2016-17 filed on 23.02.2022.

10. Under these circumstances, it was vehemently argued by the Learned AR that the assessment should have been framed under section 153C of the Act and not under Section 148 of the Act. He has further relied upon the judgement passed by the Hon'ble Apex Court in the case

of PCIT vs. Abhisar Builwell Pvt. Ltd. in Civil Appeal No.6580 of 2021 wherein it has been laid down that in case of any incriminating material found, the assessment has to be made under Section 153A of the Act. He has further invited our attention to the first proviso to Section 149(1) of the Act which provides that for Assessment Year on or before 01.04.2021 notice under Section 148 of the Act cannot be issued if the time limit to issue such notice under Section 153C of the Act has elapsed.

Against the arguments advanced by the Learned AR in regard to the maintainability of the proceedings initiated under Section 148 of the Act and not 153C of the Act relying upon the judgements of the Hon'ble Apex Court in the matter of Abhisar Builwell Pvt. Ltd. (supra), the Learned DR relied upon a judgement passed by the Hon'ble Delhi High Court in the case of CIT vs. Shri Shyam Sunder Infrastructure (P.) Ltd. in ITA No.236/2014, wherein the question of lack of jurisdiction of the Assessing Officer to complete the assessment was raised by the Revenue challenging the order passed by the Tribunal quashing the assessment proceedings. The Hon'ble Court was of the opinion that the maintainability of the proceedings in that case ought to have been raised at the very threshold of the matter. We do not find any relevance of the ratio laid down therein to the instant case in view of the particular reason that the said matter dealt with the issue of territorial jurisdiction and not the jurisdiction exercised by the Assessing Officer in terms of the statutory provision. It is also a settled principle of law that a legal ground

can be raised by the party aggrieved, at any stage even before the Apex Court.

11. We further note that so far as the contentions raised by the assessee that in the case of the brother of the assessee proceedings was initiated under Section 153C of the Act and not under Section 148 of the Act as in the case of the assessee due to the reason that at the very first instance the AO was of the opinion that proceedings should have been initiated under Section 153C of the Act and only upon realizing that the time limit for completion of assessment under Section 153C of the Act as elapsed, the Learned AO resorted to issuing notice under Section 148 of the Act, the Learned DR failed to controvert the same. Moreso, the proceeding against the brother of the assessee initiated under Section 153C of the Act has been finally dropped as it appears from the record.

12. Thus the fact of initiation of proceeding under Section 153C of the Act against the assessee's brother has made prior to the reassessment proceedings initiated against the assessee under Section 148 of the Act demands consideration. Further that, such 153C proceedings initiated against the said brother Vijay Kumar was further dropped. The contention made by Learned AR is, therefore, found to be acceptable having regard to this particular facts and circumstances of the case.

13. Further that the approval under Section 153(1) of the Act was given with the following statement :

“I have gone through the reasons recorded by AO, information available on record in the form of evidences gathered during the search in the case of Laxmi Remote India Pvt. Ltd. (LRIPL) and return of income filed by assessee. I am satisfied that it is fit case for issue of notice under Section 148 of the Act. Proposal for issue of notice is approved”.

From the above, it appears that only on the basis of the incriminating materials found and seized during the search conducted upon Laxmi Remote India Pvt. Ltd., the reassessment proceeding was initiated against the assessee before us under Section 148 of the Act. But having regard to the ratio laid down by the Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. (supra) such reassessment proceeding initiated under Section 148 of the Act impugned before us found to be unacceptable. Thus taking into consideration the entire aspect of the matter such assessment, therefore, not maintainable *void ab inito*, illegal, arbitrary and, thus, quashed.

14. In the result, appeal of the assessee in ITA No.3651/Del/2023 is allowed.

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15. The issue involved in ITA No.3650/Del/2023 for A.Y. 2016-17 is identical to that of the issue already been dealt with by us and in the absence of any changed circumstances the same shall apply mutatis mutandis. Hence, this appeal preferred by the assessee is also allowed.

16. In the combined result, both the appeals filed by the assessee are allowed.

This Order pronounced in Open Court on 27/06/2024

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Dated 27/06/2024

*Priti Yadav, Sr.PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI