

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

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1334/Del/2024
Assessment Year: 2021-22

Vaibhav Jain, C-42, Preet Vihar, Nirman Vihar, S.O. East Delhi, New Delhi PAN No.AWRPJ7469H	Vs.	DCIT Central Circle -31, Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ved Jain, Advocate Sh. Aman Garg, CA
Respondent by	Ms. Sapna Bhatia, CIT DR

Date of hearing:	10/09/2024
Date of Pronouncement:	15/10/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)/NFAC, Delhi [hereinafter referred to as "CIT(A)"] vide order dated 20.02.2024 pertaining to A.Y. 2021-22 arises out of the assessment order

dated 27.12.2022 under section 143(3) of the IT Act, 1961 of the Income Tax Act 1961 [hereinafter referred as 'the Act'].

2. The assessee has raised following grounds of appeal :-

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the action of the AO despite the fact that order passed by the AO under section 143(3) of the Act is illegal, void and non-est as the same has been passed under section 143(3) of the Act as against the specific provisions under section 153C of the Act.

3. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the action of the AO despite the fact that the assessment order passed under section 143(3) of the Act is null and void as the same has been passed in violation of CBDT Circular No. 19/2019 requiring mandatory DIN in the body of the assessment order.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the learned AO under Section 143(3) of the Act is bad and liable to be quashed as the same has been framed

consequent to a search which itself was unlawful and invalid in the eye of law.

5. On the facts and circumstances of the case, the proceedings initiated under Section 143(3) of the Act and the assessment framed under the said section is bad and liable to be quashed in the absence of any valid satisfaction being recorded by the assessing officer of the searched person as well as the assessing officer of the assessee.

6. On the facts and circumstances of the case, the learned AO has erred in issuing notice under section 143(3) of the Act and completing the assessment on the basis of satisfaction recorded by the assessing officer of the searched person and the assessing officer of the assessee are invalid and non-est as no Document Identification Number (DIN) has been quoted in the body of the said satisfaction notes in violation of the instructions issued by the CBDT Circular No.19/2019.

7. On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the proceedings initiated against the assessee and the assessment framed under section 143(3) of the Act are in violation of mandatory provisions of Section 153D of the Act and as such the same is bad in eyes of law. The purported approval u/s 153D of the Act is illegal, bad in law and also without any application of mind.

8.(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in

confirming the addition of Rs. 2,35,000/- made by the AO on account of undisclosed commission income.

(ii) That the abovesaid addition has been confirmed rejecting the detailed submissions and explanations along with the evidences brought on record by the assessee in this regard.

9. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the abovesaid addition despite the fact that the same has been made by the AO on the basis of image extracted from the whatsapp chats between the third parties and not related to the assessee.

10. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the documents relied upon by the AO does not contain the signatures and is a dumb and shall not be relied upon.

11. The appellant craves leave to add, amend or alter any of the grounds of appeal.

3. The assessee has raised additional grounds of appeal :-

1. The applicant has filed the above said appeal No. 1334/Del/2024 on 26th March, 2024 against the order dated 20.02.2024 passed by the learned Commissioner of Income Tax (Appeals)-30, New Delhi under Section 250 of the Income Tax Act.

2. That while filing the appeal, the applicant has raised 11 grounds of appeal.

3. However, while filing the appeal the appellant inadvertently has left out the ground of appeal relating to the assessment proceedings initiated without complying with the provision of section 153C of the Act being bad in law and without jurisdiction and therefore same is liable to be quashed.

4. That accordingly, the applicant is filing application for admission of additional grounds of appeal.

4. The brief facts of the case are that assessee has filed return of income u/s 139 of Act declaring income of Rs 2281440/-. A notice u/s 142(1) of the Act along with questionnaire was issued and served upon the assessee through ITBA portal. A search and seizure action carried out on 06-01-2021 u/s. 132 of the Act in Hans Group of cases and various papers/ documents and incriminating material were found and seized from the residence/ business premises of Hans Group of cases. The satisfaction note was recorded by the AO of the assessee on 10-05-2022. According to AO during the course of search on the perusal of the data of the seized mobile phone one image has been found which was related to investment made by Shri Vaibhav Jain in Bhutani Group. According to AO Shri Vaibhav Jain

has made the total investment of Rs one crore was made out of which Rs 10,00,000/- was made by cheque and balance payment of Rs 90,00,000/- made in cash. After considering the submission of the assessee the assessing officer passed the assessment order u/s 143(3) of the Act on 27-12-2022 determining the income at Rs 37,16,440/- after making an addition of Rs 1200000/- towards undisclosed income from interest and Rs 235000/- as undisclosed commission from commission.

5. Aggrieved with the order, the assessee has filed an appeal before the Ld CIT(A). The Ld CIT(A) partly allowed the appeal vide his order dated 20-02-2024 against which the assessee is in appeal before us.

6. The Ld AR has submitted that the order passed by AO is without jurisdiction and liable to be quashed. The assessment for A.Y.2021-22 has been wrongly framed u/s 143(3) of the Act by ignoring the mandatory provision of the section 153C of the Act. The case is squarely covered by Hon'ble ITAT judgement in the case of **Akanksha Gupta vs ACIT Central circle 04 Delhi ITA no 3074/Del/2023**. The relevant portion of Hon'ble Tribunal finding are as under :-

"9. Therefore, in view of the above decision, the date of recording of the satisfaction will be the deemed date for the possession of the seized documents, which is 30.06.2022 in the present case and the date of search and

six years period would be reckoned from this date 1.0.30.06.2022. Therefore, there is merit in the submission of the assessee that the assessment year relevant for previous year in which search was conducted in the case of the assessee will be AY 2023-24 and the six assessment years immediately preceding the assessment year relevant for the previous year in which search was conducted for initiating proceeding u/s 153C of the Act will be AY 2018-19 to 2022-23. Therefore, respectfully following the decision of the cited case, it is held that in the present case, the assessment for AY 2021-22 should have been carried out by issuing notice u/s 153C of the Act and not u/s 143(2) of the Act as done by the AO in this case. No other contrary facts or decision was brought on record by the Ld. DR Therefore, it is held that the assessment order dated 29.12.2022 passed u/s 143(3) of the Act by the issuance of notice u/s 143(2) of the Act dated 30.06.2022 is bad in law and hence the notice u/s 143(2) of the Act, dated 30.06.2022 and the consequent assessment order dated 29.12.2022 passed u/s 143(3) of the Act are hereby quashed. The additional grounds filed by the assessee are allowed."

7. The Ld AR further submitted that the notice u/s 143(2) of the Act for A.Y. 2021-22 was issued on 21-12-2022. He has further submitted that it is settled position in law that in respect of assessment proceedings u/s 153C of the Act, blocked period of six assessment years has to be reckoned from the date of receipt of the documents by the AO. In this regard, reliance has placed on the following judgments;

1. *M/s. Spendor Landbase Limited Vs. Asstt. Commissioner of Income Tax 2014 (11) TMI 1012*
 2. *Jagjit Singh Vs. ACIT, Central Circle-11, New Delhi 2015 (8) TMI 982*
 3. *Commissioner of Income Tax -14 Vs. Shree Jasjit Singh 2023 (1) TMI 572*
 4. *Commissioner of Income Tax 14 Vs. Jasjit Singh 2024 (4) TMI 268*
 5. *The Pr. Commissioner of Income Tax Central-1 Vs. Ojjus Medicare Pvt. Ltd. & Others. 2019 (10) TMI 350*
 6. *Shr. Jagjit Singh C/o. M/s. Satish Aggarwal & Associates Vs. ACIT, Central Circle -21, New Delhi 2019 (10) TMI 350*
 7. *Shalimar Town Panners Pvt. Ltd. Vs. ACIT Central Circle – 23 New Delhi 2020 (7) TMI 47*
8. The Ld AR has submitted that for the assessment proceedings u/s 153C of the Act, the period of six years immediately preceding the assessment year relevant for the previous year, in which search was conducted has to be reckoned from the date of receipt of the documents by the AO of the assessee which is 10-05-2022 and accordingly assessment years relevant for the previous year in which search was conducted is AY.2023-2024 and the six assessment years immediately preceding the assessment year, relevant for the previous year in which search was conducted will be AY 2018-20 to 2022-23. He has also submitted that in the present case assessment proceedings

for AY 2021-22 should have been framed u/s 153 C of the Act after issuance of notice u/s 153C of the Act. The Ld AR has further submitted that in the present case assessment year i.e.2021-22, it was wrongly framed u/s 143(3) of the Act by issuing the notice u/s 143(3) of the Act on 30-06-2022 along with notice u/s 153C of the Act for Assessment years 2015-16 to 2021-2022.

9. The Ld DR has submitted that the below authorities have passed the order as per law. He supported the orders of the authorities below.

10. We have the parties and perused the material available on record.

11. Firstly, we take up the additional ground for adjudication which goes to the root of the matter as it challenges the legality of the order u/s.143(3) dated 29-12-2022 of the Act. These additional grounds were not raised before the Ld CIT(A) nor the similar plea was taken before the AO but the additional grounds are purely legal and all the facts of the case are on record, therefore, the same is admitted in view of the decision of the Hon'ble Apex Court in the case of **National Thermal Power Corporation {1998} 229 ITR 383 (SC)** and is hereby adjudicated.

12. On perusal of the satisfaction note it reveals that same was recorded on 10-10-2022 by the AO after giving the findings that the seized assets and documents /digital data and information relates to assessee and it is a fit case for initiating proceedings u/s 153C r.w.s153A of the Act for the A.Y. 2015-16 to 2020-21. The AO has issued the notice u/s.143(2) of the Act. On the similar facts, the coordinate Bench of the Tribunal in the case of Jasjit Singh (supra), it was held that the date of receiving of the seized documents would become the date of search and six years period would be reckoned from this date. In the case of Jasjit Singh held as under :-

“15. We find that an identical issue has been decided by Delhi Bench of the Tribunal in the case of DSL Properties P. Ltd. (supra) in favour of the assessee accepting the similar contention of the assessee. Similar view has been expressed by the Delhi Bench of the Tribunal in the case of V.K. Fiscal (supra) holding that the date of receiving of the seized documents would become the date of search and six years period would be reckoned from this date. For a ready reference para no. 19, 21, 22 & 23 of the decision of Delhi Bench of the Tribunal in the case of DSL Properties (supra) are being reproduced hereunder:

“19. *We have carefully considered the rival submissions. Proviso to section 153C reads as under:*

"Provided that in case of such other person, the reference to the date of initiation of the search u/s 132 or making of requisition u/s 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the AO having jurisdiction over such other person."

20. *The above proviso refers to second proviso to sub-section (1) of section 153A. That section 153(1) and its first and second provisions read as under: -*

"153A. ((1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated u/s 132 or books of account, section 132A after the 31st day of May, 2003, the AO shall –

(a) Issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth

such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139;

(b) Assess or reassess the total income or six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

Provided that the AO shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section) pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A, as the case may be, shall abate."

21. From the above, it is evident that as per clause (b) of subsection (1) of section 153A and second proviso, the AO can be issue notice for assessment or reassessment of total six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted. As per proviso to section 153C, the date of search is to be substituted by the date of receiving the books of account or documents or assets seized by the AO having jurisdiction over such other person. Ld. DR has stated that since the AO of the person searched and the AO of such other person was the same, no

handing over or taking over of the document was required. That section 153C(1) and its proviso have to be read together in a harmonious manner. While interpreting section 153C, we have already held that for initiating valid jurisdiction u/s 153C, even if the AO of the person searched and the AO of such other person is the same, he has to first record the satisfaction in the file of the person searched and thereafter, such note alongwith the seized document/books of account is to be placed in the file of such other person. The date on which this exercise is done would be considered as the date of receiving the books of account or document by the AO having jurisdiction over such other person. Though while examining the facts of the assessee's case we have arrived at the conclusion that no such exercise has been properly carried out and, therefore, initiation of proceedings u/s 153C itself is invalid, however, since both the parties have argued the issue of period of limitation also, we deem it proper to adjudicate the same. Since in this case satisfaction is recorded on 21st June, 2010 and notice u/s 153C is also issued on the same date, then only conclusion that can be drawn is that the AO of such other person has taken over the possession of seized document on 21st June, 2010. Accordingly, as per section 153(1), the AO can issue the notice for the previous year in which search is conducted (for the purpose of Section 1530 the document is handed over) and six assessment years preceding such assessment year. Now, in this case, the previous year in which the document is handed over is 1st April, 2010 to 31st March, 2011. The assessment year would be A.Y.

2011-12. Six preceding previous years and relevant assessment year would be as under:

<i>Previous Year</i>	<i>Assessment Year</i>
<i>1.4.2009 to 31.03.2010</i>	<i>2010-11</i>
<i>1.4.2008 to 31.03.2009</i>	<i>2009-10</i>
<i>1.4.2007 to 31.03.2008</i>	<i>2008-09</i>
<i>1.4.2006 to 31.03.2007</i>	<i>2007-08</i>
<i>1.4.2005 to 31.03.2006</i>	<i>2006-07</i>
<i>1.4.2004 to 31.03.2005</i>	<i>2005-06</i>

22. The Assessing Officer has issued notice u/s 153C for A.Y. 2004-05 which is clearly barred by limitation. Therefore, issue of notice u/s 153C issued by the Revenue cannot be sustained on both the above counts, ie., it is legally not valid as conditions laid down u/s 153C has not been fulfilled and it is barred by limitation. In view of the above, we quash the notice issued u/s 153C and consequently, the assessment completed in pursuance to such notice, is also quashed.

23. Since we have quashed the assessment order itself, the additions challenged by the assessee by way of other grounds of appeal do not survive, and, therefore, do not require any adjudication.

16. We thus, find that the issue raised in the additional ground has been answered in favour of the assessee, by the Coordinate Delhi Bench of the Tribunal in the case of DSL Properties (supra).

17. So far as decision of Hon'ble Delhi High Court in the case of SSP Aviation Ltd. vs. DCIT (supra) relied upon by the Id. CIT(DR) is concerned, we find that it is not helpful to the revenue as in that case also in

para no. 14 of the judgment it has been held as under.

14. "Now there can be a situation when during the search conducted on one person u/s 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the AO has to first be satisfied u/s 153C, which provides for the assessment of income of any other person, Le., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the AO having jurisdiction over the other person. Thereafter, the AO having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the manner contemplated by the provisions of section 153A. Now a question may arise as to the applicability of the second proviso to section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search u/s 132 or the requisition u/s 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the

date of receiving the books of account or documents or assets seized or requisition by the AO having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date."

18. In view of the above finding, the assessment framed u/s 143(3) of the Act for the A.Y. 2009-10 in the present case is not valid. Respectfully following the above cited decisions on an identical issue, the additional ground no. 4 in the present case is decided in favour of the assessee and in the result the assessment order is quashed as void.

19. Since in the above finding on the issue raised in additional ground no. 4 we have quashed the assessment order itself, the additions questioned by the assessee by way of other grounds of the appeal do not survive and, therefore, do not require any adjudication.

20. In the result, the appeal of the assessee is allowed."

13. From the above discussion the date of recording of the satisfaction will be the deemed date for the possession of the seized documents which is 03-10-2022 and six years would be reckoned from this date. The submission made by Ld AR is tenable that the assessment year relevant for previous year in which search was conducted in the case of the assessee will be AY 2023-24 and six years immediately preceding the assessment year relevant for u/s 153C of the Act will be AY

2018-19 to 2022-23. The assessment for AY 2021-22 should have been carried out by issuing notice u/s 153C of the Act and not u/s 143(2) of the Act. The case is squarely covered by the Hon'ble ITAT judgment passed in the case of Akanksha Gupta vs ACIT, Central circle -04 Delhi ITA No 3074/Del/2023. Therefore the assessment order dated 27-12-22 passed u/s 143(3) of the Act is bad in law and liable to be quashed and quashed accordingly. The additional grounds filed by the assessee are allowed.

14. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 15.10.2024.

Sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:- .10.2024

Copy forwarded to:

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

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI