

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.480/DEL/2024
[Assessment Year 2015-16]**

Baboo Ram Hari Chand, 2114 Khari Baoli, Delhi-110006	Vs	DCIT, Central Circle-29, Room No.318, E-2, ARA Centre, Jhandewalan Extension, Delhi-110055
PAN-AAAFB2868D		
Assessee		Revenue

Assessee by	Shri Prahlad Rai Jain , partner
Revenue by	Shri Sanjay Sharma, Sr. DR

Date of Hearing	03.09.2024
Date of Pronouncement	18.10.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of the learned CIT(Appeals)-30, Delhi, dated 27.10.2023, pertaining to Assessment Year 2015-16.

2. The grounds of appeal reads as under:-

"1. The Ld. Assessing Officer without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case in imposing the penalty of Rs.60,000 on account of alleged non-compliances of various statutory notices issued which suffers from various legal infirmities.

2. The Supreme Court of India in its order dated 20-09-2023 in SLPCC No. 6044 of 2016 has rejected arguments of the Commissioner of Income Tax. The Assessing Officer has

issued notices for assessment years 2014-15 to 2020-21 i.e. for seven assessment years as against assessment years 2016-17 to 2021-22 i.e. for six assessment years because the Assessing Officer was assigned the third parties documents on 04/02/2022. A copy of the said order is attached herewith. As such the entire proceedings are contrary to provisions of section 153C of the Income tax Act 1961. A copy of the said satisfaction note is also attached.”

3. This appeal is against the order dated 27.10.2023 of the Ld. CIT(Appeals) rejecting the appeal of the assessee against the penalty order dated 23.09.2022 under Section 271(1)(b) of the Act levying a penalty of Rs.60,000/- on the ground of non-compliance of notices issued under Section 143(2) and 142(1) of the Act.

4. In this regard, the Ld. AR submitted that the proceedings for the assessment year 2015-16 initiated in the case of the assessee vide notice u/s 153C of the Act dated 04.02.2022 was barred by limitation. In this regard, it was submitted that the assessment Year 2015-16 was beyond the period of six years relevant for issuance of notice under Section 153C of the Act issued on 04.02.2022. In this regard, the Ld AR relied upon the decisions in the case of CIT vs. Jasjit Singh [2023] 458 ITR 437 (SC) and PCIT vs. Ojjus Medicare (P) Ltd. [2024] 161 taxmann.com 160 (Delhi). It is further submitted that the A.O. having accepted the returned income in the assessment order dated 31.03.2023 under Section 153C of the Act, no penalty under Section 271(1)(b) of the Act was leviable in the case of the assessee. In this regard, the Ld. AR relied upon the decisions in the case of DLF Commercial Enterprises v. ACIT (ITA No.2530/Del/18) (Delhi ITAT) and |Sh. Anil Jain v. DCIT (ITA No.2456/Del/16) (ITAT Ahd.). It was also submitted that on similar facts the Co-ordinate Bench in assessee's own

case for A.Y. 2014-15 had cancelled the penalty order under Section 271(1)(b) of the Act.

5. The Ld. DR relied upon the orders of the authorities below.

6. We have considered the rival submissions and the material on record. It is seen that on similar facts, the Co-ordinate Bench by an order dated 27.06.2024 in ITA No.3942/Del/2023 in the case of the assessee for A.Y. 2014-15 had cancelled the penalty of Rs.10,000 levied under Section 271(1)(b) of the Act. The relevant order is reproduced as under:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-30, New Delhi ('CIT(A)' in short) dated 27.10.2023 arising from the penalty order dated 23.09.2022 passed by the Assessing Officer (AO) under Section 271(1)(b) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2014-15.

2. As per the grounds of appeal, the assessee has challenged the imposition of penalty of Rs.60,000/- on account of alleged noncompliance of various statutory notices issued for the purposes of carrying out assessment under Section 153C r.w. Section 143(3) of the Act.

3. On perusal of the case records, it is observed that original return of income in the present case was filed on 30.11.2014 declaring income of Rs.22,35,700/-. Subsequently, the AO initiated proceedings under Section 153C of the Act. The AO issued notice under Section 142(1) r.w. Section 143(2) of the Act which allegedly remained uncomplied with. The AO accordingly imposed penalty of Rs.10,000/- for non-compliance of each notice issued under Section 142(1) of the Act while framing the assessment under Section 153C r.w. Section 143(3) of the Act.

4. Before the First Appellate Authority, the assessee pointed out that the proceedings under Section 153C itself is vitiated by lack of jurisdiction and initiated without any material and documents pertaining to the assessee found in the course of search of other person. Despite several requisitions, the AO failed to provide copy of documents and material purportedly seized as required under law for valid initiation of proceedings under Section 153C. The assessee thus sought reversal of the imposition of penalty which was declined by the CIT(A) vide order dated 27.10.2023.

5. Hence the present appeal.

6. The assessee contends that notice issued under Section 153C and consequent proceedings in which the penalty was imposed for non-

compliance of the notices is, at the first instance, outside the ambit of the assessment under Section 153C of the Act. The A.Y. 2014-15 in question is outside the purview of Section 153C owing to the fact that the 'satisfaction note' giving rise to jurisdiction under Section 153C has been recorded in the previous year 2022-23 relevant to A.Y. 2023-24 when six years are counted with reference to such assessment year. The assessee contends that such view is fortified from the judgment in the case of CIT vs Jasjit Singh [2023] 155 Taxmann.com 155 (SC). It was contended that by virtue of such judgment, the previous year of search would stand substituted by the date or the year in which books of account or documents etc. are handed over to the jurisdictional Assessing Officer. In the light of such observations, the A.Y. 2014-15 is out of reckoning for the purposes of Section 153C of the Act.

5. On perusal, two relevant facts come to surface. Firstly, the assessment has been ultimately carried out under Section 143(3) of the Act. Hence, the assessee cannot be treated as chronic defaulter. Secondly, the assessee has raised question mark on the assumption of jurisdiction itself. Without going into the merits of the contentions raised on behalf of the assessee on the aspects of jurisdiction in view of later amendments in main provisions of Section 153C of the Act by the Finance Act, 2017, we are of the view that the extenuating circumstances exists to reverse the penalty imposed under Section 153C of the Act. The penalty imposed under Section 271(1)(b) in dispute is thus cancelled.

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

6.1 Facts being similar in the case of the assessee for the present year also, respectfully following the above order, the penalty imposed under Section 271(1)(b) of the Act amounting to Rs.60,000/- in this dispute is, thus, cancelled.

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

Order pronounced in the open court on 18th October, 2024.

Sd/-
[VIKAS AWASTHY]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 18.10.2024.

SJK

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT

4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi