

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

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.1218/DEL/2023
(Assessment Year: 2009-10)**

Kamal Sharma,
Village Bakoli,
Delhi – 415 112.

vs.

DCIT, Central Circle II,
Faridabad.

(PAN : AWSPS7332M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Aman Garg, CA

REVENUE BY : Shri Sumer Singh Meena, CIT DR

Date of Hearing : 19.09.2024

Date of Order : 14.11.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal is filed by the assessee against the order of Id. Commissioner of Income-tax Appeals-3, Gurgaon (hereinafter referred to 'Ld. CIT (A)') dated 27.02.2023 for Assessment Year 2009-10.
2. At the time of hearing, Id. AR for the assessee submitted that search was conducted in the case of Sunstar Group on 19.12.2013. Based on the material found, notice under section 153C of the Income-tax Act, 1961 (for short 'the Act') was issued on 20.01.2016. He submitted that the

deemed search for the purpose of section 153C is AY 2016-17. Assessing Officer has issued notice u/s 153C to AYs falling within six assessment years immediately preceding assessment year relevant to the previous year in which search was conducted. He submitted that notices u/s 153C was issued on 20.01.2016 to the assessee. It shows that satisfaction was recorded by the Assessing Officer of the assessee in the AY 2016-17, therefore, as per the provisions of section 153C, six years prior to the searched assessment year in this case is AY 2016-17 covers the period i.e. AYs 2010-11 to 2015-16. Since the assessment proceedings were initiated for impugned AY 2009-10 is beyond jurisdiction. He submitted that the issue under consideration is well settled and in this regard, he relied on the following decisions :-

- (i) *ITTA Delhi in the case of M/s. Marconi Infratech (P) Ltd. vs. ACIT, CC-11, Faridabad – 2024 (7) TIMI 129 dated 21.06.2024;*
- (ii) *ITAT Delhi in the case of ACIT, CC-1, Gurgaon vs. Enpro Telecom Pvt. Ltd., Delhi (vice versa) 2024 (2) TMI 543 dated 08.02.2024;*
- (iii) *ITAT Delhi in the case of DCIT, Central Circle 20, New Delhi vs. Rajesh Vashisht – 2023 (12) TMI 294 dated 29.11.2023;*
- (iv) *ITAT Delhi in the case of M/s. Esha Securities Pvt. Ltd. vs. DCIT, Central Circle 13, New Delhi.*
- (v) *Jasjit Singh vs. ACIT, CC-11, New Delhi – 2014 (11) TMI 1012 dated 05.11.2014;*

- (vi) *CIT-14 vs. Shree Jasjit Singh – 2015 (8) TMI 982 dated 11.08.2015;*
- (vii) *CIT-7 vs. RRJ Securities Ltd. & vice versa – (2017 (4) TMI 1194 dated 25.04.2017;*
- (viii) *ARN Infrastructure India Ltd. vs. CIT, CC-28, New Delhi – 2017 (8) TMI 733 dated 17.08.2017;*
- (ix) *DCIT, CC-14, New Delhi vs. M/s. Rajesh Sharma – 2023 (8) TMI 1181 dated 23.08.2023;*
- (x) *ACIT, CC-13, New Delhi vs. Pragun Finance Pvt. Ltd. – 2024 (7) TMI 1414 dated 30.05.2024; and*
- (xi) *M/s. KSJ Infrastructure Pvt. Ltd. vs. DCIT, CC-1(1), Chennai – 2024 (8) TMI 1421 dated 06.03.2024.*

3. On the other hand, ld. DR for the Revenue relied on the orders of the authorities below.
4. Considered the rival submissions and material placed on record. We observed that the search in the case of Sunstar Group was carried on 19.12.2013 and as per records submitted before us, we observed that the notice u/s 153C was issued only on 20.01.2016. Therefore, the satisfaction in the case of the assessee was recorded by the jurisdictional Assessing Officer prior to issue of notice issued u/s 153C, therefore, the relevant searched assessment year pertains to AY 2016-17. Accordingly, six years prior to the relevant assessment year covers AYs 2010-11 to 2015-16. In the case of the assessee, notice u/s 153C was issued to the assessee covering AY 2009-10 which is beyond jurisdiction as per the

judicial precedence as held in the case of CIT-14 vs. Shree Jasjit Singh in ITA No.337/2015 dated 11.08.2015. Hon'ble Delhi High Court held as under :-

“4. Although, the ITAT has also referred to its own decision in the case of DSL Properties Pvt. Ltd., which decision is pending consideration in ITA No.585 of 2013 in this Court, in which a question of law has been framed, the decision in SSP Aviation Ltd. (supra) puts the matter beyond all doubt. In addition, the Court has been shown by learned counsel for the Respondent a circular dated 31st March 2014 issued by the CBDT, containing the guidelines regarding Section 153C of the Act. Para 2.5 of the said circular clarifies as under :-

“The AO of the other person assumes jurisdiction under Section 153C with the receipt of the relevant seized material from the AO of the searched person. Also, a copy of the satisfaction received from the AO of the searched person in this regard would enable him to proceed further in the case of the other person under Section 153C. Though there is no statutory requirement for the AO of such other person to record any satisfaction/reason before issuing notice under Section 153C and proceeding further, considering the above aspects. It is advisable for maintaining institutional memory that the AO records receipt of the seized material and the satisfaction from the AO of the searched person and such recording/noting may be kept in the assessment folder of such other person. In case, the AO of the searched person exercises jurisdiction over the other person also, appropriate referencing should be made in the relevant assessment records of such other person.

5. It may be noted that in the present case satisfaction note was prepared by the AO on 25th February 2010. Consequently, the finding of the ITAT in the present case that the assessment made under section 143 (1) of the Act for the AY 2009-10 was not valid, calls for no interference. No substantial question of law arises in the facts and circumstances of the present case.”

5. Respectfully following the above decision, we note that AY 2009-10 which was covered by the AO u/s 153C is beyond jurisdiction. Accordingly, we set aside the assessment made in this case.
6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 14th day of November, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 14.11.2024
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**