

**THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, DELHI**

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER

**ITA No.966/Del/2020
(Assessment Year 2009-10)**

Shila Builders & Developers Pvt. Ltd. Flat No. 50, Aakshardham Apptt., Pocket-3, Dwarka Sector- 19, New Delhi-110075	Vs.	ITO, Ward 23(2) New Delhi
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAICS0470K		
Appellant	..	Respondent

Appellant by :	Sh. Salil Aggarwal, Sr. Adv & Sh. Shailesh Gupta, CA
Respondent by :	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	22.10.2024
Date of Pronouncement	18.10.2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order dated 16.03.2018 passed by the CIT(A)-28, New Delhi, arising out of the Assessment order dated 28.12.2016 passed by the ITO, Ward-23(2) New Delhi, Under Section 147/143(3) of the Income Tax

Act (hereinafter referred to as 'the Act') for Assessment Year 2009-10.

2. The appeal is barred by limitation for about 192 days. The assessee has filed an application for condonation of delay wherein it has been stated that the order passed by the Ld. CIT(A) dated 16.03.2018 was obtained by the assessee on 25.06.2019 and the appeal was ultimately filed on 04.03.2020. Admittedly, there is delay of 192 days in filing the said appeal before us, the reason assigned for such delay are as under:

i. Name of the assessee's company was struck off from ROC records and was dissolved by and under the order passed on 08.08.2018. Subsequently, the name of the assessee's company was restored and revived in ROC records by and under the NCLT's order dated 30.07.2020.

ii. The assessee was functioning through a rented premises and due to disputes between the landlord and directors of the assessee company, the order impugned was not served on the assessee and thus, certified copy was applied for.

iii. Due the ongoing proceeding before NCLT and the Director of the assessee company were involved in getting the assessee company revived in ROC records and once it is done after the order passed by the NCLT, the said certified copy was obtained and appeal was filed.

3. In view of the above facts there is no intentional laches on the part of the assessee in filing the appeal before us. The cause shown is, therefore, to be treated reasonable in filing the appeal and, thus, the delay be condoned as the main prayer made by the assessee in the application seeking condonation of delay which has been reiterated by the Ld. Senior Counsel Mr. Salil Agarwal at the time of hearing of the matter in support of condonation of delay in filing the appeal.

4. On the other hand, the Ld. D.R has raised his objection that the above reason cannot be said to be sufficient reason by which the assessee was prevented to file the appeal before us well within time. However, having regard to the order passed by the NCLT and our factors as narrated hereinabove supporting documents whereof being annexed to the application for condonation of delay since found to be genuine and further that no deliberate or intentional laches is found in the conduct of the assessee in preferring the appeal late, delay is hereby condoned. The appeal is, therefore, admitted.

5. The assessee has raised additional ground of appeal challenging the initiation of proceeding under Section 147 of the Act and further completion of assessment under Section 143(3) r.w.s 147 of the Act as without satisfying the statutory pre-condition envisaged in the above section and without jurisdiction and, therefore, liable to be quashed. As all the material facts are on

record and this additional ground raised is purely legal in nature relying upon the judgment passed by the Hon'ble Apex Court in the case of National Thermal Power Company Ltd. Vs. CIT, reported in (1998) 229 ITR 383 (SC), the assessee has made a prayer for admission of the same by us as the said ground has been raised for the first time before the Tribunal. Having regard to the judgment passed by the Hon'ble Apex Court as this being a legal ground the same is hereby admitted and since it goes to the root of the matter the same is addressed at the very threshold.

6. The brief facts leading to the case are that the assessee company has filed a return of income on 26.09.2009 declaring income at Rs.nil which was processed under Section 143(1) of the Act on 28.10.2010. However, the case of the assessee was reopened under Section 147 of the Act after recording reasons and due approval of authorities in terms of Section 151 of the Act. Notice under Section 148 of the Act was issued on 11.03.2016 which was duly served upon the assessee. In fact, from the reason recorded as provided by the Ld. AO to the assessee along with annexures appearing at page 2-16 of the paper book, it appears that a search operation was conducted on 14.09.2020 in the case of one Shri Surendra Kumar Jain group wherein after scrutiny of incriminating documents unearthed and seized during the course of search, it revealed that accommodation entries were obtained by way of shares capital/share premium/loan. From the details of accommodation entries and the amount received by beneficiary

companies, it further revealed that the assessee company had taken accommodation entry amounting to Rs.40,00,000/- during the Financial Year 2008-09 from the said Surendra Kumar Jain group of companies. These transactions were found recorded at various documents seized from Surendra Kumar Jain group company a scanned copy whereof has also been enclosed to the reason recorded along with the report of the investigation wing annexed to the paper book file before us. Relevant to mention that all the books of account and other relevant facts of these companies were found at the resident of Shri Surendra Kumar Jain and Shri Virendra Kumar Jain itself and no document was found at the other addresses which was mentioned in the statutory records of these companies. After careful scrutiny of the information received from the Investigation wing and particularly on the basis of the copies of seized documents and upon verification of assessment and appeal orders in the case of Jain brothers led to the irresistible conclusion that the assessee herein had received Rs.40,00,000/- in the form of share capital/share premium of their companies/entities engaged in business of providing accommodation entries in lieu of cash payment by beneficiary including assessee by charging commission and accordingly an amount of Rs. 40,00,000/- represents and explained credit under Section 68 of the Act in the books of account and, therefore, the Assessing Officer had a reason to believe that the assessee has willfully and knowingly concealed its particulars of income to avoid tax and at least an income of Rs.40,00,000/- chargeable to tax had escaped assessment for the year under

consideration within the meaning of Section 147 of the Act as recorded by the Ld. AO while initiating proceeding under Section 148 of the Act.

7. The assessee's counsel joins issue here to this effect that since, admittedly, the case of the assessee was reopened on the basis of search conducted on 14.09.2010 in the case of Shri Surendra Kumar Jain group companies and the incriminating documents unearthed from the residential as well as other premises related to Shri Surendra Kumar Jain and Shri Virendra Kumar Jain which are the sole basis of reopening of assessment of the assessee before us, and particularly when reassessment was done in the case of Shri Surendra Kumar Jain group of companies under Section 153A of the Act the reopening, if, at all, ought to have been made under Section 153C of the Act and not the provision of Section 148 is to be resorted to. In that view of the matter the initiation of reassessment proceeding and consequent order including reassessment order dated 28.12.2016 is void-ab-initio and not sustainable in eye of law. In support of his argument he has relied upon the judgment passed by the Coordinate Bench in the case of Jasneet Kaur Chattwal Vs. ITO, Ward 25(3), Delhi in ITA No. 215/Del/2016 and the judgment passed by the Hon'ble Rajasthan High Court in the case of Shyam Sunder Khandelwal Vs. ACIT, reported in (2024) 161 taxmann.com 255 (Rajasthan).

8. The Ld. D.R. however, has not been able to controvert the said legal submission made by the assessee's counsel.

9. Under this facts and circumstances of the matter relevant provision of law has been duly considered. It is found that Section 153C clearly lays down that the procedure to be followed when during the course of search on a person any money, bullion, jewellery or valuable article or thing or any books of account or documents or any information contained therein pertains to or relate/relates to other than the person searched, first and foremost duty of the Assessing Officer of that searched person is to hand over all the said assets and/or informations to the Assessing Officer of other than the person searched and then the Assessing Officer has to proceed and determine the income of the other person in accordance with the provision of Section 153C of the Act. It further clarifies that the provision of Section 153C of the Act are to be applied notwithstanding anything contained in Section 139, 147, 148, 151 and 153 of the Act.

10. Keeping in view this particular legal aspect of the matter as certain documents unearthed/found and seized during the course of search in the residential as well as other premises related of Shri Surendra Kumar Jain and Shri Virendra Kumar Jain, on the basis of which the additional income was to be assessed in the hands of the assessee, such addition can only be made taking recourse of the provision of Section 153C of the Act and no proceeding can be initiated under Section 147, 148, 153 and 151 of the Act.

11. In the instant case, therefore, reopening of proceeding under Section 148 of the Act has no legs to stand upon particularly when the reason to believe is on the basis of search conducted on a third party and on the basis of documents unearthed during search of the said third party namely Shri Surendra Kumar Jain group of companies.

12. Under this facts and circumstances of the matter the judgment relied upon by the Ld. A.R has duly been considered. It appears that in the case of Jasneet Kaur Chattwal (supra) the initiation of proceeding was done under Section 148 of the Act and not 153C on the basis of the materials found and seized during the course of search and seizure operation on 26.03.2020 in the case of one Assen Kumar Gupta group and not the assessee, the initiation has been held to be null and void as the same ought to have been done under Section 153C of the Act. Similarly, the judgment passed by the Rajasthan High Court in the case Shyam Sunder Khandelwal (supra) has also been considered, where it has been held that once there is incriminating material considered or requisitioned or relatable to person other than whom search was conducted, reopening of assessment under Section 153C is to be resorted. Thus, these two judgments are found to be squarely applicable to the case in hand and respectfully relying upon the same, the initiation of proceeding in the case in hand under Section 148 of the Act on the basis of materials unearthed relating to and belonging to the assessee during the course of search conducted on Jain

brothers is found to be not sustainable in the eyes of law. The assessment is void-ab-initio and thus, quashed.

10. Assessee's appeal is allowed.

Order pronounced in the open court on 18.11.2024

Sd/-

(Madhumita Roy)
Judicial Member

Date 18.11.2024

Rohit: PS

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI