

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH " G ": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos. 333 & 334/Del/2024
(Assessment Years: 2012-13 & 2013-14)**
Income Tax Officer, Vs. Svam Software Ltd,
Ward-22(3), S-524, Vikas Marg,
New Delhi Shakarpur, Delhi
(Appellant) (Respondent)
PAN:AAACS0292B

**CO Nos. 64 & 65/Del/2024
(In ITA Nos. 333 & 334/Del/2024)
(Assessment Years: 2012-13 & 2013-14)**
Svam Software Ltd, Vs. Income Tax Officer,
S-524, Vikas Marg, Ward-22(3),
Shakarpur, Delhi New Delhi
(Appellant) (Respondent)
PAN:AAACS0292B

Assessee by : Shri Ved Jain, Adv
Shri Aayush Garg, Adv

Revenue by: Shri Mritunjay Prasad Dwivedi, Sr. DR

Date of Hearing 23/10/2024
Date of pronouncement 14/11/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. These are the appeals filed by the revenue and the cross objection filed by the revenue in ITA Nos. 333 & 334/Del/2024 and CO Nos. 64 & 65/Del/2024 for AYs 2012-13 and 2013-14 arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi ([hereinafter referred to as 'Id. AO)', in short] dated 30.11.2023 against the order of assessment passed u/s 147 r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter

referred to as 'the Act') dated 29.12.2019 by the Assessing Officer, ITO-22(4), Delhi.

2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. We find that assessee in its cross objections for assessment year 2013-14 vide ground No. 12 had raised specifically that in the instant case material found during the course of a search of a third party has been used against the assessee in the reopened proceedings under section 147 of the Act, instead of proceeding under section 153C of the Act. Since this issue goes to the root of the matter, we deem it fit to address this ground first.

4. We have heard the rival submissions and perused the materials available on record. A search and seizure operation was carried out under section 132 of the Act on 17-12-2015 in the case of Shri Anand Kumar Jain and Shri Naresh Kumar Jain. In the present case of the assessee, information has been received from the investigation wing on the basis of which assessment was sought to be reopened. However, the information received from the investigation wing emanated out of the information gathered during the course of search in the case of Shri Anand Kumar Jain and Shri Naresh Kumar Jain. Hence, the same becomes a search material. Since the search material found in the course of Shri Anand Kumar Jain and Shri Naresh Kumar Jain stating that the transactions carried out by the assessee are to be construed as accommodation entries is sought to be used against the assessee herein in the present reopened proceedings, any proceeding against the assessee using such information could be proceeded only under section 153C of the Act. Whereas, in the instant case, based on the information received from the investigation

wing, the assessment of the assessee for assessment year 2013-14 was sought to be reopened by the learned assessing officer under section 147 of the Act. Now, when the search material of a third party is sought to be used against a non-searched person, then the right recourse available to the revenue would be to proceed only under section 153C of the Act and not under section 147 of the Act. This issue is no longer res integra in view of the decision of this tribunal in the case of ACIT vs Shri Deepak Gambhir in ITA No. 2466/Del/2023 dated 8-7-2024, wherein it was held as under:-

"It is not in dispute that the addition of Rs. 3,64,21,799/- has been made based on incriminating material found in the course of search of M/s Alankit Group as information pertaining to the assessee herein. Hence, the same becomes a search material/ incriminating material found during the course of search of Mis Alankit Group which pertains to assessee herein. Hence, the right course of action to be initiated on the assessee qua such incriminating material would be initiation of proceedings u/s 153C of the Act and not u/s 147 of the Act.

6. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we hold that the Id CIT(A) had rightly quashed the reassessment proceedings u/s 147 of the Act in the facts and circumstances of the instant case. We do not find any infirmity in the said order. Accordingly, the grounds raised by the revenue are dismissed.

5. The learned AR also placed on record the following decisions, wherein similar views were taken:-

- *WARM FORGINGS P. LTD. VERSUS DCIT CIRCLE 27 (1), NEW DELHI., 2024 (4) TMI 259-ITAT DELHI, Dated.- April 3, 2024*
- *M/S. MAH IMPEX PRIVATE LTD. VERSUS ITO, WARD-16 (1), DELHI, 2024 (1) TMI 411-ITAT DELHI, Dated.- October 31, 2023*
- *KODALI SURESH BABU, LABBIPET VERSUS INCOME TAX OFFICER, WARD (INTERNATIONAL TAXATION), VIJAYAWADA, ITAT VISAKHAPATNAM, 2024 (4) TMI 837, Dated: -18-4-2024*
- *SHYAM SUNDER KHANDELWAL SIO LATE DAMODAR LAL KHANDELWAL AND OTHERS VERSUS ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 2 JAIPUR AND OTHERS, RAJASTHAN HIGH COURT, 2024 (4) TMI 196, Dated: -19-3-2024*

- *SRI. DINAKARA SUVARNA PROP, BALAJI CONSTRUCTIONS SHESHAPPA COMPOUND VERSUS DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE MANGALORE, [2023] 454 ITR 21, KARNATAKA HIGH COURT, dated, July 8, 2022*
- *DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE VERSUS SRI DINAKARA SUVARNA, 2023 (6) TMI 1175 Dated.- April 27, 2022-SC ORDER, Dated.- March 27, 2023*
- *M/S. ADITI CONSTRUCTIONS VERSUS DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE - 1 (3) MUMBAI ASST. COMMISSIONER OF INCOME TAX 24 (1), MUMBAI, UNION OF INDIA, 2023 (5) TMI 281-BOMBAY*
- *HIGH COURT, Dated.- May 4, 2023 M/S RAVI NIRMAN NIGAM LIMITED VERSUS DCIT-CIRCLE-13 (3) (1) MUMBAI, 2022 (6) TMI 256ITAT MUMBAI, dated April 27, 2022.*
- *SAMBHAVNATH INFRABUILD AND FARMS PVT. LTD., (SUCCESSOR TO LODHA CENTRAL CIRCLE-7(3), MUMBAI, 2022 (1) TMI 735-ITAT MUMBAI. Dated.- January 6, 2022."*

6. Admittedly, the assessment in this case was made by the Learned AO under section 147 of the Act by treating the sum of Rs 4,49,96,788/- as unexplained cash credit under section 68 of the Act by using the search material received in the case of Shri Anand Kumar Jain and Shri Naresh Kumar Jain treating it as accommodation entry. Hence, the ratio decidendi laid down in the aforesaid cases would squarely be applicable to the facts of the instant case. Accordingly, respectfully following the said decisions, we hold that the reassessment proceedings under section 147 of the Act are to be declared void ab initio and liable to be quashed. Accordingly, the ground No. 12 raised by the assessee in its cross-objection is allowed.

7. Since the entire reassessment proceeding is quashed by adjudicating ground number 12 alone, the other grounds raised by the assessee in its cross-objection need not be gone into and they are left

open. No opinion is given here under on other grounds in the Cross Objection.

8. Since the cross-objection of the assessee is hereby allowed wherein the entire reassessment proceedings are quashed, the grounds raised by the revenue on merits in its appeal becomes infructuous.

9. In the result, the appeal of the revenue for assessment year 2013-14 is dismissed as infructuous and cross-objection of the assessee is allowed.

10. We find that the assessee had raised an identical ground vide Ground No. 6 in its Cross Objection for the assessment year 2012-13 also. Hence the decision rendered hereinabove for the assessment year 2013-14 shall apply mutatis mutandis for assessment year 2012-13 also.

11. In the result, both the appeals of the revenue are dismissed as infructuous and Cross Objections of the assessee are allowed for both the years under consideration.

Order pronounced in the open court on 14/11/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 14/11/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi