

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,  
NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 2583/DEL/2023[A.Y 2011-12]

Horizon Global Limited  
Plot No. 8, Mathura Road  
Sector 5, Faridabad

Vs.

The Dy. C.I.T  
Central Circle-2  
New Delhi

PAN: AABCH 4308 N

(Applicant)

(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv  
Shri Somil Agrawal, Adv  
Shri Deepesh Garg, Adv

Department By : Ms. Neha Choudhary, CIT- DR

Date of Hearing : 12.09.2024

Date of Pronouncement : 26.11.2024

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A)-3, Gurgaon dated 30.12.2022 pertaining to A.Y 2011-12.

2. The grievances of the assessee read as under:

1. *That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action, of Ld, A. O. in assuming jurisdiction u/s 153C and framing the impugned assessment, order which is bad in law and against the facts and circumstances of the case and void-ab initio and basic Jurisdictional conditions and pre-requisites under section 153C were not met.*
2. *That in any case and in any view of the matter, the assessment framed under section 153C r.w.s 144of the Act, is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the facts and circumstances of the case, Ld, CIT(A) has erred in law and on facts in confirming the action of the A.O in making an addition of:Rs.7,56,54,000/- on account share application money received by the company on the ground that assessee has not furnished any justifiable explanation and that too by recording incorrect fact - finding and making allegations based on surmises and conjectures and without observing the principles of natural justice and men so when there was no incriminating material found as a result of search.*
4. *That in any case and in any view of the matter, action of Ld, CIT(A} in confirming the addition of Rs. 7,56,54,000/- bad in law and against the facts and circumstances of the case,*
5. *That haying regard to the facts and circumstances of the case Ld. CIT(A) has erred in la v and on facts in confirming the action of the Ld. A.O. in making an addition of Rs. 84 24 95/- as alleged unexplained cash credit and that too by recording incorrect facts and finding and without any basis, material evidence, more so when there was no incriminating material found as a result of search.*
6. *that in any case and in and in view of the matter; action of Ld. CIT{A) in confirming the addition of Rs 1,84,24,895/- bad in law and against the facts and circumstances of the case.*
7. *That having regard to the facts d circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. AO. in making an addition ofRs.76,86,707/ as alleged unexplained cash credit on account of unsecured loan and sundry creditors and that too by recording incorrect facts and findings and without any basis, material or evidence, more so when there was no incriminating material found as a result of search.*
8. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition of Rs, 2,76,86,071/-is bad in law and against the facts and circumstances of the case.*

9. *That having regard to the facts and circumstance of the case, Ld. CIT(A) has erred in law and on fact in not admitting the additional evidences filed by the assessee and is bad in law and against the facts and circumstances of the case and without observing the principles of natural justice,*
  10. *That having regard to the facts and circumstances of the case Ld. CIT() has erred in law and on facts in confirming the action of the Ld. A.O. in making the impugned additions and passing the impugned assessment order dated 25--09-2021 which is 'illegal had in law, void ab-initio and again t the facts and circumstances' of the case and in gross violation of principles of natural justice and barred by limitation also.*
  11. *That having regard to the facts and circumstance of the case, Ld. CIT(A)has erred In law and on facts in confirming the action of the Ld. A.O. in passing the impugned assessment order without there being requisite approval in terms of section 153D and in any case approval if any is mechanical and without application of mind and no approval in the eyes of law.*
  12. *That having regard to the facts and circumstances of the case Ld. CJT(A) has erred in law and on facts in passing the impugned e -parte order and that too without any basis, material or evidence and without appreciating considering the facts and circumstances of the case*
  - 13 *That having regard to the facts and circumstances of the case the CIT(A) has erred in confirming the action of Ld. A.O in charging interest, mar so when such interest could not be levied under the law,*
  - 14.*That having regard to the facts and circumstances of the 'case, Ld.CIT(A) has erred in law and on facts in confirming the action of Ld, AO in passing the impugned order without giving adequate opportunity of being heard and in gross violation of principles of natural justice,*
  15. *That the appellant craves the leave to add, modify amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*
3. The assessee has also filed an application praying for admission of additional ground u/r 11 of the Rules which reads as under:

"That having regard to the facts and circumstances of the case, the impugned assessment order dated 25.09.2021 is bad in law in view of the latest judgment of the Hon'ble High Court of Delhi in the case of PCIT Vs. Ojjus Medicare Pvt Ltd & Ors ITA No. 52/2024 & ors dated 03.04.2024 in which the Hon'ble High Court have held that preceding ten years for reopening het case would be seen from the end of the A.Y in which books of account etc. pertaining to the assessee company were handed over to the Assessing Officer of the assessee company. Since, admittedly in the instant case books of account were handed over to the Assessing Officer of the assessee company in A.Y 2021-22, hence ten years period would not cover the year under consideration.

Since the above ground of appeal is purely legal, does not require fresh facts to be investigated and goes to the root of the matter, it is prayed that the same may please be admitted in view of the following judgments:

- i) CIT Vs. Singhad Technical Education Society 397 ITR 344 [SC]
- ii) NTPC LTD Vs. CIT 229 ITR 383 [SC]
- iii) VMT Spinning Co. Ltd Vs. CIT & Anr. 389 ITR 326 [P&H]
- iv) CIT Vs. Sam Global Securities 36-0 ITR 326
- v) Siksha Vs. CIT 336 ITR 112 [Orissa]
- vi) Inventors Industrial Corporation Ltd Vs. CIT 194 ITR 548 [Bom]"

4. Admittedly, this issue was never raised before the lower authorities. But since the challenge to the jurisdiction of the Assessing Officer goes to the root of the matter, in light of the ratio laid down by the Hon'ble Supreme Court in the case of NTPC 229 ITR 383, the same deserves to be admitted and adjudicated. Accordingly, the additional plea raised for the first time is admitted, since it requires no verification of facts and the facts are very much in the body of the assessment order itself.

5. The challenge in the additional ground is in respect assumption of jurisdiction u/s 153C of the Income-tax Act, 1961 [the Act, for short] which according to the assessee, is bad in law and against the facts and circumstances of the case and void ab initio and basic jurisdictional conditions and pre-requisites u/s 153C were not met.

6. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

7. Briefly stated, the facts of the case are that a search and seizure operation u/s 132(1) of the Act was carried out on 06.06.2018 in SRS group of cases and several others. During the course of search proceedings, certain incriminating documents relating to the assessee were found and seized. On the basis of the seized materials, the assessing officer formed a satisfaction note dated 12.02.2021 and issued a notice u/s 153C dated 14.02.2021 to the assessee for 8 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted and for the relevant assessment years AY 2011-12,2012-13 as referred to in sub-section (1) of section 153A of the Act.

8. The Assessing Officer observing that the assessee has not furnished any justifiable explanation, made additions for AY 2011-12 as under:

i) Share application money	Rs. 7,56,54,000/-
ii) unexplained cash credit	Rs. 1,84,24,695/-
iii) unsecured loan	Rs. 2,76,86,707/-

9. At the very outset, referring to Ground Nos. 1 and 2 and the additional ground, the ld. counsel for the assessee stated that the impugned assessment order is void ab initio, in as much as, the same has been framed without jurisdiction.

10. The ld. counsel for the assessee referred to the satisfaction note dated 12.02.2021 and placing strong reliance on the decision of the Delhi High Court in the case of *Ojjus Medicare Ltd* ITA No. 52/2024 dated 03.04.2024 and CIT Vs. *Jasjit Singh* 458 ITR 437 [SC], submitted that since AY 2011-12 is not covered and hence the impugned assessment order dated 25.09.2021 is barred by limitation.

11. The ld. DR could not controvert to the submissions of the ld. counsel for the assessee and placed strong reliance on the orders of the authorities below. The ld DR relied on the decision of Delhi High Court in the case of *PCIT Vs Karina Airlines International ltd*(2024) 165 Taxmann.com 421 (Delhi) dated 02.08.2024 for the proposition that after introduction of Finance Act 2017, in the case of other than searched person to be assessed u/s 153C of the Income Tax Act the date of reckoning period is from the date of search and not the date of satisfaction note. The date of recording of satisfaction record is merely

applicable for the framing of mind by the Assessing officer whether the reassessment proceeding is to be initiated against the other than searched person or not.

12. We have carefully considered the orders of the authorities below and have gone through the relevant material on record. Challenge is to the validity of the impugned assessment order framed u/s 153C of the Act for the reason that the impugned A.Y is beyond the block of 10 A.Ys, as per provisions of the Act.

13. The Hon'ble Supreme Court in the case of *Jasjit Singh* (supra) laid down the law that as per provisions of section 153C of the Act, for taking action u/s 153C of the Act, date of search in the case of the other person, would be date of receiving books of account or documents or assets allegedly belonging to the other person and seized in the course of search of the searched person. It held as follows:

*".....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 Assessing Officer 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."*

14. Further the Hon'ble Delhi High Court, *PCIT Vs Karina Airlines International Ltd*(supra) held that the date of recording of the satisfaction in the case of the non-searched person qua the searched person becomes date of search in the case of other person [the assessee in the present case] as follows:

*"20. It thus becomes apparent that it is the satisfaction arrived at under Section 153C which constitutes the cornerstone of that provision and the primary ingredient for Section 153C being set into motion. In our considered opinion, the actual or physical act of transmission of documents is merely a step in aid of formation of opinion whether an assessment under Section 153C is liable to be initiated. It is in that sense merely a machinery provision put in place to enable the AO of the non-searched person to examine whether an assessment is liable to be commenced under Section 153C of the Act. Thus, even in a case where the AO of the searched and the non-searched party be one and the same, it would be the formation of an opinion that the material is likely to "have a bearing on the determination of the total income.." which would constitute the core and the heart of Section 153C.*

*21. A harmonious interpretation of the main part of Section 153C and its Proviso lead us to hold that in cases where the jurisdictional AO is common, the commencement point would have to be construed as the date when the satisfaction is formed by the said AO with respect to such other person, In our considered view, even though there may not have been an actual exchange of material unearthed in the course of the search between two separate authorities, it would be the date when the AO records its satisfaction with respect to the non- searched entity which would be of seminal importance and constitute the bedrock for commencement of action under Section 153C."*

15. With the point of commencement of action u/s 153C being established, the process of computation of the relevant block of 8 assessment years, is laid down in the decision of the Hon'ble Delhi Court in the case of *Ojjus Medicare Pvt Ltd* (supra). We find that in the instant case, the date of search on the searched person is 06.06.2018. The satisfaction note was dated 12.02.2021 in the case of the assessee who is a non- searched person. According to the decision of the Supreme Court in the case of *Jasjit Singh*, and that of Delhi High Court in *Karina Airlines International ltd*, where the satisfaction u/s 153C in the case of non-searched person, is recorded on 12.02.2021, the commencement point for computing the relevant block of 10 AYs would become AY 2021-22. Therefore, in the instant

case, since the AO has issued notice for 8 assessment years, the relevant block of eight AYs would commence from AY 2021-22 upto AY 2014-15 only.

16. In light of the aforementioned ruling of the Hon'ble Supreme Court and the Hon'ble Delhi Court, the impugned A.Y 2011-12, therefore, is beyond the block of eight A.Ys which starts from AY 2021-22 upto AY 2014-15. Since A.Y 2011-12 does not form part of the relevant block years, the impugned A.Y is barred by limitation. Considering the facts of the case in totality, in light of the decision of the judicial pronouncement discussed above, we have no hesitation in holding the assessment order for Ay 2011-12 void ab initio and consequently we quash the impugned assessment order.

17. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case. The additional ground in conjunction with ground no 1 and 2 is allowed.

18. In the result, the appeal of the assessee in ITA No. 2583/DEL/2023 is allowed.

The order is pronounced in the open court on 26.11.2024.

Sd/-

Sd/-

**[CHALLA NAGENDRA PRASAD]  
JUDICIAL MEMBER**

**[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER**

Dated: 26<sup>th</sup> November, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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