

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.235 & 236/Nag./2017
(Assessment Year : 2007-08 & 2009-10)

Imperial Construction Company
Khullar Chambers, Munje Chowk
Sitabuldi, Nagpur 440 012
PAN – AACFI79618C

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle-1(3), Nagpur

..... Respondent

Assessee by : Shri Bhavesh Moryani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 18/11/2024

Date of Order – 06/12/2024

ORDER

PER K.M. ROY, A.M.

These appeals by the assessee are against the impugned orders of even date 06/10/2015, passed by the learned Commissioner of Income Tax (Appeals)-III, Nagpur, [*learned CIT(A)*], for the assessment year 2007-08 and 2009-10.

2. In both the captioned appeals, there is a delay of 557 days in filing these appeals by the assessee. During the course of hearing, the learned Counsel, Shri Bhavesh Moryani, appearing for the assessee furnished an application for condonation of delay which is duly supported by an Affidavit, the contents of such Affidavit are as under:-

"BEFORE THE PUBLIC NOTARY, NAGPUR

(TO BE FILED BEFORE HON'BLE THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR
BENCH, NAGPUR)

AFFIDAVIT

Deponent: Miss Urvashi S/o. Dinesh Vishwarkarma, aged about 24 years, Occupation-Private Service, resident of Plot No. 54, Wathoda Ring Road, Near Lalitha Public School, Bagadganj, Nagpur-440008.

I, the above named deponent do hereby declare an oath and affirms as under:-

That the deponent is residing at Plot No. 54, Wathoda Ring Road, Near Lalitha Public School, Bagadganj, Nagpur-440008 and presently working at Hetal Home Décor Pvt. Ltd.. The deponent is not having knowledge of Income Tax.

2. That the deponent was earlier working at M/s. Imperial Construction Co., Khullar Chambers, Munje Square, Sitabuildi, Nagpur as Accountant and left the aforesaid firm on 30/11/2015. The deponent has received the order of the Commissioner of Income Tax (Appeals)-III, Nagpur dated 06/10/2015 on 02/11/2015 for Asstt. Year 2007-2008 & 2009-2010 during the working period with said firm.

3. That the deponent was in depression due to financial assistances as well as family problems and has not communicated the said order of the Commissioner of Income Tax (Appeals)-III, Nagpur to the partners of the firm M/s. Imperial Construction Company as well as not informed about receiving of order at the time of leaving of office.

4. That none communication of said order to the partners and the partners have not communicated to his counsel within the specific time limits and counsel has not filed appeal against the order of Commissioner of Income Tax (Appeals)-III, Nagpur. The partners of the firm are having no knowledge of the said order and said aspect comes to the knowledge of the partners of the firm when the firm has received order U/s. 271(1)(c) of the Income Tax Act, 1961 on 31/03/2017.

Hence this affidavit."

3. We find that there was a miscommunication which arose due to circumstances beyond the control of the assessee. Sufficient cause has been demonstrated to condone the delay in filing the present appeals. Hence, delay is hereby condoned and we proceed to dispose off the appeals on merit.

4. The only issue which arose in both these appeal relates to addition of ₹ 12,42,000 for A.Y. 2007-08 and ₹ 10,50,000, for A.Y. 2009-10, on account of unexplained cash credit under section 68 of the Income Tax Act, 1961 ("*the Act*").

5. The assessee he facts of the case are that the assessee has availed cash loan, which according to the Assessing Officer, is in violation of provisions of section 269SS of the Act. The Assessing Officer held that the assessee failed to furnish loan confirmation in respect of cash loans availed from the following parties.

1.	<i>Ashok Rathi</i>	₹ 5,01,000
2.	<i>B.A. Kamdar</i>	₹ 1,00,000
3.	<i>K.M. Rathi</i>	₹ 5,01,000
4.	<i>Mayuri Kamdar</i>	₹ 1,00,000
5.	<i>Tarun Construction Co.</i>	₹ 40,000

6. Despite providing several opportunity to the assessee for providing loan confirmations from the parties from whom the cash loan was obtained, the assessee failed to comply with the requests of the Assessing Officer and hence the addition.

7. On appeal, the learned CIT(A) confirmed the order passed by the Assessing Officer.

8. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We find that the assessee has challenged the very validity of assumption of jurisdiction to pass the order. From the assessment order, it is not clear as to how the

assumption initiation of action under section 153C of the Act is justified and discernible in view of the following observations of the Hon'ble High Court in Saksham Commodities Ltd. v/s ITO, [2024] 464 ITR 001 (Del.):–

"63. On an overall consideration of the structure of Sections 153A and 153C, we thus find that a reopening or abatement would be triggered only upon the discovery of material which is likely to "have a bearing on the determination of the total income" and would have to be examined bearing in mind the AYs' which are likely to be impacted. It would thus be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the "relevant assessment year".

64. In our considered view, abatement of the six AYs' or the "relevant assessment year" under Section 153C would follow the formation of opinion and satisfaction being reached that the material received is likely to impact the computation of income for a particular AY or AYs' that may form part of the block of ten AYs'. Abatement would be triggered by the formation of that opinion rather than the other way around. This, in light of the discernibly distinguishable statutory regime underlying Sections 153A and 153C as explained above. While in the case of the former, a notice would inevitably be issued the moment a search is undertaken or documents requisitioned, whereas in the case of the latter, the proceedings would be liable to be commenced only upon the AO having formed the opinion that the material gathered is likely to inculcate the assessee. While in the case of a Section 153A assessment, the issue of whether additions are liable to be made based upon the material recovered is an aspect which would merit consideration in the course of the assessment proceedings, under Section 153C, the AO would have to be prima facie satisfied that the documents, data or asset recovered is likely to "have a bearing on the determination of the total income". It is only once an opinion in that regard is formed that the AO would be legally justified in issuing a notice under that provision and which in turn would culminate in the abatement of pending assessments or reassessments as the case may be.

65. We would thus recognize the flow of events contemplated under Section 153C being firstly the receipt of books, accounts, documents or assets by the jurisdictional AO, an evaluation and examination of their contents and an assessment of the potential impact that they may have on the total income for the six AYs' immediately preceding the AY pertaining to the year of search and the "relevant assessment year". It is only once the AO of the non-searched entity is satisfied that the material coming into its possession is likely to "have a bearing on the determination of the total income" that a notice under Section 153C would be issued. Abatement would thus be a necessary corollary of that notice. However, both the issuance of notice as well as abatement would have to necessarily be preceded by the satisfaction spoken of above being reached by the jurisdictional AO of the non-searched entity.

66. Therefore, and in our opinion, abatement of the six AYs' or the "relevant assessment year" would follow the formation of that opinion and satisfaction in that respect being reached.

67. On an overall consideration of the aforesaid, we come to the firm conclusion that the "incriminating material" which is spoken of would have to be identified with respect to the AY to which it relates or may be likely to impact before the initiation of proceedings under Section 153C of the Act. A material, document or asset recovered in the course of a search or on the basis of a requisition made would justify abatement of only those pending assessments or reopening of such concluded assessments to which alone it relates or is likely to have a bearing on the estimation of income. The mere existence of a power to assess or reassess the six AYs' immediately preceding the AY corresponding to the year of search or the "relevant assessment year" would not justify a sweeping or indiscriminate invocation of Section 153C.

68. The jurisdictional AO would have to firstly be satisfied that the material received is likely to have a bearing on or impact the total income of years or years which may form part of the block of six or ten AYs' and thereafter proceed to place the assessee on notice under Section 153C. The power to undertake such an assessment would stand confined to those years to which the material may relate or is likely to influence. Absent any material that may either cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C. It would only be consequent to such satisfaction being reached that a notice would be liable to be issued and thus resulting in the abatement of pending proceedings and reopening of concluded assessments."

9. The above matter was further examined which in equivocal terms, observed as under:-

"59. It would be pertinent to recall that Section 153C essentially seeks to merge ongoing assessments with a search assessment which may be triggered by the discovery of material obtained in a search and which was the statutory procedure which prevailed in terms of the provisions contained in Chapter XIV B. However, and in cases where on facts it is found that the material gathered is unlikely to have any impact on the computation of total income for a particular year, there would exist no justification to invoke the powers conferred by Section 153C."

10. In this case, the assessment order is silent on the issue of satisfaction, incriminating materials discovered which could possibly trigger action under section 153C of the Act. Respectfully following the dictum laid down by Their Lordship in Saksham Commodities Ltd. (supra), we quash the entire assessment under section 153C of the Act for both the years under consideration by allowing all the grounds raised by the assessee.

11. In the result, appeals filed by the assessee for A.Y. 2007-08 and 2009-10 are allowed.

Order pronounced in the open Court on 06/12/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 06/12/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur