

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 3659/Del/2023
(Assessment Year: 2017-18)**

Mohan Garg, H. No. 905, Sector-15, SO Faridabad, Sector-16A, Faridabad, Haryana (Appellant) PAN: AHLPG2577N	Vs. DCIT, Central Circle-2, Faridabad (Respondent)
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Assessee by :	Shri Ved Jain, Adv Shri Ayush Garg, CA
Revenue by:	Ms. Baljeet Kaur, CIT DR
Date of Hearing	04/12/2024
Date of pronouncement	10/12/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3659/Del/2023 for AY 2017-18, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-3, Gurugram [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. CIT(3)/GGN/11625/2016-17 dated 10.10.2023 against the order of assessment passed u/s 153A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 03.09.2021 by the Assessing Officer, DCIT, Central Circle-2, Faridabad (hereinafter referred to as 'Id. AO').

2. Though the assessee had raised various grounds of appeal, the preliminary issue to be decided in this appeal is as to whether the Learned AO was justified in framing the assessment in the instant case under section 153A of the Act as against section 153C of the Act.

3. We have heard the rival submissions and perused the materials available on record. The return of income for the assessment year 2017-18 was filed by the assessee on 30-10-2017 declaring total income of Rs 19,51,300/-. A search and seizure operation was carried out in the residential and office premises under Section 132 of the Act in SRS Group of Cases on 06-06-2018. The case of the assessee was transferred by PCIT Faridabad, vide his order dated 11-03-2019 to the office of Central Circle. The assessee was also subjected to search under Section 132 of the Act. Accordingly, notice under Section 153A of the Act was issued to the assessee on 03-12-2019 and search assessment proceedings stood commenced in the hands of the assessee. The assessee is a proprietor of M/s SMS Projects India. The audited financial statements of SMS Projects India reflected a sum of Rs 30 lakhs as unsecured loan received from M/s Destiny Gems & Jewellers Private Limited. This unsecured loan was duly reflected in the balance sheet of the proprietary concern of the assessee and stood already accounted in the books prior to the date of search.

4. During the course of search proceedings, a pen drive was found and seized from premises of M/s Jitendra Enterprises. On perusal of pen drive data, it was found that it contained trial balance of M/s Jitendra Enterprises, M/s Hi-Tech Mould Industries, M/s SMS Projects India and M/s G M Engineers and Fabricators Private Limited. On perusal of trial balance of all concerns, it has been observed that unsecured loan was obtained by the assessee from M/s Destiny Gems and Jewellers Pvt Ltd which has been established as a shell company in the case of M/s SRS Group. In other words, the revenue concluded that assessee had obtained unsecured loan from M/s Destiny Gems and Jewellers Pvt Ltd in the sum of Rs 30 lakhs and since the said lender entity has been established to be a shell company, the unsecured loan received by the assessee was sought to be treated as bogus and considered in the assessment of the

assessee. All the details that were called for by the Learned AO during the course of search assessment proceedings were duly furnished by the assessee and ultimately the above unsecured loan of Rs 30 lakhs received from M/s Destiny Gems and Jewellers Pvt Ltd was treated as bogus and addition under section 68 read with section 115 BBE of the Act was made in the hands of the assessee in the search assessment proceedings completed under section 153 A of the Act on 25-6-21.

5. It is not in dispute that the pen drive containing the trial balances of the assessee was found from the premises of M/s Jitendra Enterprises during the course of search of Jitendra Enterprises. Hence the said pen drive was not seized during the course of search of the assessee. The revenue had treated the said pen drive as an incriminating material has been sought to be used against the assessee in the search assessment proceedings under section 153A of the Act. The Learned AO in page 3 para 4.1 of his assessment order had stated that the search action was initiated on SRS group on 6-6-2018 and finally concluded on 2-8-2018. During the course of pre-search, search and post-search investigation proceedings, it came to notice that that SRS group accepted huge cash from public and has earned huge unaccounted income in last six to seven years and the same have been routed back in the companies/concerns of the group in the form of capital and loan from shell entities. After depositing the cash, funds were transferred by layering of funds to SRS limited or other sister concerns. During the course of inquiries by the investigation wing, 71 shell concerns and the 91 own bogus concerns were identified to be used by the SRS group to route its funds. M/s Destiny Gems and Jewelers Private Limited was also established as a shell/ paper entity. The statement of directors of these paper/ shell companies were recorded on oath wherein they admitted that they did not know anything

about affairs of these companies and were just made directors by Shri Anil Jindal, his allies and promoters of SRS group.

6. From the above observations, it could be seen that the learned AO himself had given clear finding that during the course of search action on SRS group (which is a third party), statements of directors of various concerns were recorded, including the directors of M/s Destiny Gems and Jewelers Private Limited. The said statements have been used in making the assessment in the case of the assessee. Hence the pen drive containing trial balance which contained a transaction showing unsecured loan received by the assessee of Rs. 30 lakhs from Destiny Gems and Jewelers Private Limited which was seized from the premises of M/s Jitendra Enterprises (Proprietary concern of Mr Gopal Garg) during his search coupled with statements recorded from the directors of M/s Destiny Gems and Jewelers Private Limited during the post search investigation of SRS group search, would constitute third party search material, which is sought to be used against the assessee herein. Hence the proper recourse for the revenue would be to use the said information containing the receipt of unsecured loan from Destiny Gems and Jewelers Private Limited which has been considered as a shell entity, in the assessment of the assessee by taking recourse to provisions of Section 153C of the Act after recording satisfaction that is mandated in terms of Section 153C of the Act. Hence, the preliminary argument and objection was advanced by the Learned AR before us that the unsecured loan receipt of Rs. 30 lakhs from Destiny Gems and Jewelers Private Limited could not be considered in the search assessment framed for the year under consideration under Section 153A of the Act and instead the same should have been considered only by taking recourse to Section 153C of the Act.

7. The learned DR before us at the outset stated that existence of incriminating material is not required at all as the year for which the search assessment is being framed is an abated assessment wherein the existence of incriminating material is of no consequence or relevance. The learned DR also vehemently argued that the argument advanced by the learned AR could be accepted only when there is no common search involved. In the instant case, there was one common search which was carried out in SRS group of cases and assessee herein also forms part of the very same group. Hence the search material which is incriminating in nature which has been found during the course of search of one of the parties belonging to the same group which contained entry pertaining to other party (assessee herein) belonging to the same group could be used in the search assessment framed in the hands of the other party (assessee herein) under section 153A of the Act itself. To buttress this argument, the learned AR before us placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Anand Kumar Jain HUF , Satish Dev Jain, Sajan Kumar Jain reported in 432 ITR 384 (Del) wherein all these parties were indeed belonging to the same searched group and part of the same common search carried out which fact is reflected in Para 3, page 2 of its order.

"3. A search was conducted u/s. 132 on 18th November, 2015 at the premises of the Assessee (being Anand Kumar Jain (HUF), its coparceners and relatives) as well as at the premises of one Pradeep Kumar Jindal. During the search, statement of Pradeep Kumar Jindal was recorded on oath u/s. 132(4) on the same date, wherein he admitted to providing accommodation entries to Anand Kumar Jain (HUF) and his tamtly members through their Chartered Accountant. The assessing officer framed the assessment order detailing the modus operandi as to how the cash is provided to accommodation entry operator in lieu of allotment of shares of a private company. Thereafter when the matter was carried up in appeal before the CIT(A), the findings of AO were affirmed. However, in further appeal before the ITAT, the said findings were set aside vide the impugned order.

Infact, the question framed before the Hon'ble Jurisdictional High Court is as under:-

4. The Revenue is aggrieved with the aforesaid impugned order and has filed the present appeal under Section 260A of the Act, proposing the following questions of law:

a. Whether the ITAT is justified in deleting the additions made on account of bogus long term capital gain on the ground that the evidences found during search at the premises of entry provider cannot be the basis for making additions in assessment completed u/S. 153A in the case of beneficiary ignoring the vital fact that there was a common search u/s 132 conducted on the same day in both the cases of the entry provider and the beneficiary?

b. Whether ITAT was justified in holding that mere failure of cross examination of entry operator is fatal when copy of statement was provided to the Assessee and Assessee failed to discharge the onus of providing the genuineness of LTCCG especially in view of the apex court decision in the case of State of UP vs. Sudhir Kumar Singh [AIR 2020 SC 5215]?

The Hon'ble High Court disposed of the question raised before it by observing as under:-

10. Now, coming to the aspect viz the invocation of section 1634 on the basis of the statement recorded in search action against a third person, We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (Le, search of Pradeep Kuntar Jindal) for making the additions in the hands of the assesson. As per the mandate of filegion 1530, if this statement was to be construed as an incriminating material belonging to or pertaining toy a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 1530 of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 1530 has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration,

11. Accordingly, the present appeals, along with all pending applications, are dismissed."

8. In view of the above observations and respectively following the judicial precedent relied upon hereinabove, we hold that the examination of veracity of unsecured loan of Rs. 30 lakhs received from M/s Destiny Gems and Jewellers Pvt Ltd could be carried out in the search assessment of the assessee only by taking recourse to provisions of Section 153C of the Act and the same cannot be considered or added in the search assessment under Section 153A of the Act. Accordingly, the addition made in the sum of Rs. 30 lakhs is hereby directed to be deleted on this preliminary ground. Since the relief is granted on this preliminary ground, the adjudication of other grounds raised by the assessee becomes academic and they are left open.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10/12/2024.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10/12/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi