

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 3928/Del/2023 (A.Y 2011-12)

Income Tax officer, Room No. 1423, 1 st floor, C. R. Building, I. P. Estate, New Delhi	Vs.	Impose Infratech Private Limited, F-301, Plot No.-3, Ashish Complex, LSC SurajmalVihar, Delhi PAN No:AACCI4760Q
(Appellant)		(Respondent)

C.O No. 15/Del/2024 (A.Y 2011-12)

Impose Infratech Private Limited, F-301, Plot No.-3, Ashish Complex, LSC SurajmalVihar, Delhi PAN No:AACCI4760Q	Vs.	Income Tax officer, Room No. 1423, 1 st floor, C. R. Building, I. P. Estate, New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Mukesh Jain, CA and Sh. Samyak Jain, Adv
Respondent by	Sh. Dayainder Singh Sidhu, CIT(DR)

Date of Hearing	17/12/2024
Date of Pronouncement	19/12/2024

ORDER

PER YOGESH KUMAR U.S.:

The above captioned appeal and the Cross Objection are filed by the Department and the Assessee respectively directing against the order of the

Ld. Commissioner of Income Tax (Appeals) Delhi-26 [‘Ld. CIT(A)’ for short] dated 13/10/2023 for Assessment Year 2011-12.

2. Brief facts of the case are that, a search and seizure operation u/s 132 of the Income Tax Act, 1961 (‘Act’ for short) was conducted on 23/07/2015 at different business and residential premises of Sh. Deepak Agarwal, Mukesh Kumar and ors. Group of cases based at Delhi. The A.O. observed that during the course of search, certain incriminating papers/documents were found related to the Assessee Company. The assessment proceedings have been initiated u/s 153C r.w. Section 143(3) of the Act for Assessment Year 2011-12 and an Assessment Order came to be passed on 28/12/2018 u/s 153C of the Act. Aggrieved by the assessment order dated 28/12/2018, the Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 13/10/2023 set aside the Assessment Order. Aggrieved by the order of the Ld. CIT(A), the Department of Revenue preferred the above Appeal and the Assessee has also preferred the Cross Objection in support of the order of the Ld. CIT(A).

3. The Ld. Departmental Representative relying on the assessment order sought for allowing the Appeal of the Department.

4. Per contra, the Ld. Assessee's Representative submitted that the satisfaction note in the case of the Assessee was recorded by the A.O. of the searched person on 03/10/2018 and as per provisions of Section 153C of

the Act, the date of satisfaction and handing over of seized material would be deemed date of search and the action taken by the A.O. u/s 153C of the Act in the year under consideration is without jurisdiction. Further relying on the findings and the conclusion of the Ld. CIT(A), the Ld. Assessee's Representative sought for dismissal of the Appeal filed by the Revenue.

5. We have heard both the parties and perused the material available on record. In the present case, a search was conducted on 23/07/2015 in the residential-cum-business premises of Sh. Deepak Agarwals group cases. It was found during the search that the Assessee made investment of Rs. 105 lakhs in Mysore Finlease Pvt. Ltd. accordingly, the A.O. of the searched person recorded his satisfaction on 03/10/2018 in relation to the Assessee and handed over the seized material to the A.O. of the Assessee for initiating assessment proceedings against the Assessee. The notice u/s 153C was issued on 08/10/2018 to the Assessee for Assessment Year 2011-12. Considering the fact that, the satisfaction has been recorded on 03/10/2018, the period of six years will be calculated from the date of recording of satisfaction and the six years immediately preceding the year of recording the satisfaction falls in Financial Year 2018-19. Therefore, the A.O. can issue notice u/s 153C for Assessment Year 2013-14 to 2019-20 and the A.O. cannot have jurisdiction over the Assessment Year 2011-12 which is under consideration in the present Appeal.

6. The Hon'ble Supreme Court in the reported Judgment [2023] 458 ITR 437(SC)-Commissioner of Income Tax 14 Vs. Jasjit Singh held as under: _

“9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement.

10. This Court is of the opinion that the revenue’s argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials – of the search party, under Section 132 – would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually “relate back” as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third party assessee’s prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of Section 153-C supports the interpretation which this Court adopts.”

7. Considering the fact that the deemed date of search in the case of the Assessee being 03/10/2018 the A.O, cannot take action u/s 153C of the Act for the Assessment Year 2011-12, which is beyond the scope of six years as per Section 153C of the Act. Thus, we find no error or infirmity in the order of the Ld. CIT(A) in setting aside the Assessment Order. Thus, finding no merits

in the Grounds of appeal of the Revenue, we dismiss the appeal of the Revenue in ITA No. 3928/Del/2023.

8. Since, we have dismissed the Appeal Revenue, the Cross Objection No. 15/Del/2024 filed by the Assessee becomes in-fructuous. In the result, the Assessee' in C.O No. 15/Del/2024 is dismissed.

Order pronounced in open Court on 19th December, 2024

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 19/12/2024

R.N, Sr. PS

Copy forwarded to:

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

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

