

**THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI**

**BEFORESHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
ANDSHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1949/Del/2023

Assessment Year: 2011-12

ITA No. 1950/Del/2023

Assessment Year: 2017-18

Amrish Tyagi, R-9/242, Raj Nagar, Ghaziabad (UP)	Vs.	DCIT, Central Circle, Ghaziabad
PAN :AGMPT9162A		
(Appellant)		(Respondent)

Assesseeby	Shri Rajeev Khandelwal, CA & Shri Jaid Jaiswal, Adv.
Department by	Ms. Rajinder Kaur CIT DR

Date of hearing	07.11.2024
Date of pronouncement	27.12.2024

ORDER

PERSUDHIR KUMAR, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against the common orders passed by the Learned Commissioner of Income-Tax(Appeals), Noida-3(hereinafter referred to as 'Ld. CIT(Appeals) vide order dated09-05-2023 pertaining to A.Y. 2011-12&2017-18 arises out of the assessment order dated

28-12-2018 under Section 143(3)/153A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. In ITA No.1949/Del/2023 the grounds taken by the assessee are as under:

“The Commissioner of Income-tax (Appeals) - III, Noida (hereinafter referred to as the CIT(A)) erred in upholding the action of the Deputy Commissioner of Income-tax, Central Circle, Ghaziabad (hereinafter referred to as the Assessing Officer) in framing an assessment order under section 153A r.w.s. 143(3) of the Act.

The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in framing the order under section 153A r.w.s. 143(3) of the Act inasmuch as no incriminating documents are found during the course of search and seizure operations carried out on the appellant and hence, the impugned assessment order is bad in law and needs to be quashed.

2. The Assessing Officer and the appropriate authority under section 153D erred in not properly complying with the provisions of section 153D of the Act.

The appellant contends that on the facts and in the circumstances of the case and in law, the Assessing Officer and the appropriate authority under section 153D ought to have appropriately complied with the provisions of section 153D of the Act by due application of mind, and having not so complied, the impugned assessment order is bad in law and needs to be quashed.

3. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs 19,00,000 under section 69A of the Act, on account of alleged payments made based on jottings on loose slips/ diary.

The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition of Rs 19,00,000 under section 69A of the Act, on account of alleged payments made based on jottings on loose slips/diary.

The appellant further, contends that the loose slips/ diary based on which the impugned addition has been made is not found during the search and seizure operation carried out by the Department in the case of the appellant, rather found with a third party.

The appellant craves leave to add to, alter or amend the afore-stated grounds of appeal.”

3. In ITA No.1950/Del/2023, the following grounds taken by the assessee are as under:

1. The Commissioner of Income-tax (Appeals) - III, Noida (hereinafter referred to as the CIT(A)) erred in upholding the action of the Deputy Commissioner of Income-tax, Central Circle, Ghaziabad (hereinafter referred to as the Assessing Officer) in framing an assessment order under section 153A r.w.s. 143(3) of the Act.

The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in framing the order under section 153A r.w.s. 143(3) of the Act inasmuch as no incriminating documents are found during the course of search and seizure operations carried out on the appellant and hence, the impugned assessment order is bad in law and needs to be quashed.

2. The Assessing Officer and the appropriate authority under section 153D erred in not properly complying with the provisions of section 153D of the Act.

The appellant contends that on the facts and in the circumstances of the case and in law, the Assessing Officer and the appropriate authority under section 153D ought to have appropriately complied with the provisions of section 153D of the Act by due application of mind, and having not so complied, the impugned assessment order is bad in law and needs to be quashed.

3. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs 13,00,000 under section 69A of the Act, on account of alleged payments made based on jottings on loose slips/ diary.

The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition of Rs 13,00,000 under section 69A of the Act, on account of alleged payments made based on jottings on loose slips/ diary.

4. The appellant further, contends that the loose slips/ diary based on which the impugned addition has been made is not found during the search and seizure operation carried out by the Department in the case of the appellant; rather found with a third party.

4. The Ld. counsel for the assessee has filed an application for taking the additional legal ground. In the light of the decision of the Hon'ble Apex Court in the case of National Thermal Power Co Ltd. vs CIT 229 ITR 383, the additional grounds are admitted for adjudication.

5. The Additional grounds of appeal taken by the assessee are as under:

The Assessing Officer erred in passing the impugned order under section 153A of the Act.

The appellant contends that on the facts and in the circumstances of the case and in law, the Assessing Officer ought not to have passed the impugned order under section 153A inasmuch as there is no incriminating evidence found during the search operations conducted at his residence and hence, the impugned order is bad in law and needs to be quashed.

The appellant further, contends that the Assessing Officer ought to have passed the order under section 153C of the Act inasmuch as the document relied upon by the Assessing Officer is found during search operations conducted inter alia at the residential premises of Mr Deepak Kumar, Accountant of Messrs Vibhor Vaibhav Infrahome Private Limited.

The appellant craves to add to, alter or amend the afore-stated additional ground of appeal.

6. The brief facts of the case are that a search & seizure operation u/s 132 of the Income Tax Act, 1961 was conducted on 03/11/2016 at the premises of the assessee comprising VVIP & Groups of cases. The warrant was issued in the name of Sh. Amrish Tyagi and the search operation u/s 132 was conducted at the residential premises of the assessee at R- 9/242, Raj Nagar, Ghaziabad. In view of search operation, the group cases were centralized to DCIT, Central Circle, Ghaziabad. The jurisdiction order u/s 127 of the Income Tax Act, 1961, in this case, was passed by the Ld. Pr. Commissioner of Income Tax, Ghaziabad and communicated vide F. No. Pr. CIT- GZB/ITO(T&J)/VVIP & SSG Gp./u/s 127/2017-18/1741 dated 14/08/2016.

7. Subsequently, notice under Section 153A of the L.T. Act, 1961 was issued on 24/08/2018 for filing return of income. The assessee has filed his return of income on 05/09/2018 declaring total income of Rs. 2,35,920/- For the assessment year 2011-12 and Rs.4465710/- for the assessment year 2017-18 in pursuance to the notice under Section 153A of the Act. Consequently, notice under Section 143(2) and u/s 142(1) of the Act along with questionnaire was issued on 19/09/2018 as well as written submissions and supporting documents available on record.

8. The assessee, during the year under consideration, derived income from business or profession and other sources. During the assessment proceedings, the assessee furnished various details/information including statement of bank accounts that were looked into and discussed.

9. During the search operation under Section 132 of the I.T. Act conducted at the residence of Sh. Deepak Kumar, accountant of VVIP Group, a handwritten note of date-wise entries for the month of April, 2010 of Annexure A-2 were found and seized. From the perusal of the page, it is noted that a sum of Rs.1,20,00,000 was receivable from Shri Amrish Tyagi out of which funds of Rs.19,00,000/- is already paid and the balance of Rs.1,01,00,000/- is still due. From the perusal of the Annexure 2 it is noted that a sum of Rs 1300000/- was entered in the name of the assessee.

10. In response to this, the assessee filed his reply, which has been considered. But due to lack of cogent explanation and the documentary evidence, it has been found not tenable. Therefore, considering the facts of the case the payment of Rs. 19,00,000/- and Rs 13,00,000/- are treated as unexplained money, and in light of section 69A of the I.T. Act, 1961, the income is added to the total Income of the assessee. The Assessing Officer assessed at total Income of Rs. 21,35,920/- and Rs 57,65,710/- u/s 143(3)/153A Act for the A.Y. 2011-12 & 2017-18.

11. Aggrieved the order of the Assessing officer the assessee has filed the appeal before the Ld. CIT(A) who vide his order dated 09-05-2023 dismissed the appeal against which the assessee is in appeal before us.

12. Ld. counsel for assessee has submitted that the assessment of unaccounted income under Section 153A of the Act can be framed on any person who has been searched under Section 132 of the Act and incriminating documents of such unaccounted income are recovered from the possession of such person. He has further submitted that the assessment should be passed u/s 153C of the ACT. Reliance has placed on the decision of the Hon'ble High Delhi High Court in the case of Commissioner of Income Tax vs Kabul Chawala 380 ITR 573.

13. The Learned AR has stated that no incriminating document was found from the possession of the assessee, therefore the assessment should have made u/s 153(c) of the Act. He has further stated that without incriminating evidence no addition can be made in the hand of the assessee. The loose paper was recovered from possession of the Deepak Kumar. In the case of Krishan Kumar Singhania V Dy CIT, Kolkata 168 ITD page 271 the ITAT Kolkata Bench held that where assessing officer seized documents from office premises of groups of companies in which assessee was a director, said similar material could not be used under Section 153A against the assessee. The Co-ordinate Bench in the case of DCIT vs Sushil Tyagi in ITA No. 1386/Del/2022 and Ors. in para nos. 25 and 26.1 held as under;

“25. It is pertinent to note that the Id CIT(A) in page 20 para 6.9 of his order had categorically stated that Annexure-A page 26 seized document has been found in the residential premises of Shri Praveen Tyagi and accordingly presumption u/s 132(4A) read with Section 292C of the Act would go in favour of the Shri Praveen Tyagi. In other words, as per these 2 sections, the law presumes that whatever is found in the course of search on the premises of the searched person belongs to the searched person, though this presumption is rebuttable with cogent supporting evidences. Hence, in the instant case, when Shri Praveen Tyagi was confronted by the search team with the seized documents Annexure –A, page 26, he admitted the fact that the transaction reflected therein pertaining to cheque and cash transaction received by VVIP Ltd from various flat owners. He never denied that this transaction does not belong / pertain/ relate to VVIP Ltd. It is also relevant to note that the statement of Shri Praveen Tyagi was recorded by the search team of Chief Managing Director in the capacity of Chief Managing Director of VVIP Ltd. If part of a transaction reflected in such seized documents is being used against the third-party, like the assessee herein, then the logical recourse provided in the statute to the revenue is to record a satisfaction note in the hands of searched person that part of document pertains/ relates/ belongs to 3rd party like the assessee herein and hand over such seized documents to the Id AO of the 3rd party like the assessee herein to take any further action known to law. Thereafter, it is the duty of the Id AO of the 3rd party like the assessee herein, after due examination/ enquiries of the transaction of the assessee qua the returns filed and evidences available on record, to record a satisfaction note in terms of Section 153C of the Act that the said seized documents received from the Id AO of the searched persons belongs/ relates/ pertains to the assessee herein and it has a bearing on determination of total income of the assessee. This is clear mandate provided in Section 153C of the Act and has been approved by various Hon’ble High Courts and Hon’ble Supreme Court. In the instant case, no such satisfaction note was ever recorded and no proceedings u/s 153C of the Act were initiated on the assessee herein. The Id AR also placed on record a copy of panchanama drawn on 05.11.2016 in the case of Shri Praveen Tyagi in the premises R-9/242, Rajnagar, Ghaziabad. On perusal of the said Panchnama, we find that the name of Shri Naveen Tyagi i.e. assessee herein, does not figure at all. Hence whatever is being found and seized in the aforesaid residential premises of Shri Praveen Tyagi, if they are sought to be used against the assessee, then the department should have proceeded on the assessee u/s 153C of the Act. It is not in dispute that the assessee was independently covered in the search u/s 132 of the

act and proceedings were initiated u/s 153A of the Act in his hands for the year under consideration. But that does not mean that evidence found in the search of a third-party premises could be used in the search assessment proceedings of the assessee u/s 153A of the Act. The legislature in its wisdom permits two search assessments to be framed for the same assessment year – one u/s 153A of the Act and other u/s 153C of the Act. In the search assessment u/s 153A of the Act, the assessment is to be framed based on the materials found during the course of search of that assessee plus the declared income. In the search assessment u/s 153C of the Act, materials found in the premises of third party could be used on the assessee provided search material has a bearing on determination of total income of the assessee after recording due satisfaction note as mandated in Section 153C of the Act. This is the clear mandate of law in Section 153A and 153C of the Act. This mandate cannot be changed merely because Shri Naveen Tyagi (assessee herein) is also part of VVIP Limited. Reliance has been rightly placed by the Id AR on the coordinate bench decision of Kolkata Tribunal in the case of Krishna Kumar Singhania V. DCIT reported in 168 ITD 271 (Kolkata Tribunal). Relevant operative portion of the said order is reproduced here in below:-

“10. We have heard the rival submissions. We find that it is not in dispute that there were no documents that were seized from the premises of the assessee except loose sheets vide seized document reference KKS /1 comprising of 8 pages, for which satisfactory explanation has been given by the assessee and no addition was made by the Id AO on this seized document. The seized document used by the Id AO for making the addition in section 153A assessment is CG/1 to 11 and CG/HD/1 which were seized only from the office premises of Cygnus group of companies in which assessee is a director. In this regard, it would be pertinent to note that as per section 292C of the Act, there is a presumption that the documents, assets, books of accounts etc found at the time of search in the premises of a person is always presumed to be belonging to him/them unless proved otherwise. This goes to prove that the presumption derived is a rebuttable presumption. Then in such a scenario, the person on whom presumption is drawn, has got every right to state that the said documents does not belong to him / them. The Id AO if he is satisfied with such explanation, has got recourse to proceed on such other person (i.e the person to whom the said documents actually belong to) in terms of section 153C of the Act by recording satisfaction to that effect by way of transfer of those

materials to the AO assessing the such other person. This is the mandate provided in section 153C of the Act. In the instant case, if at all, the seized documents referred to in CG/1 to 11 and CG/HD/1 is stated to be belonging to assessee herein, then the only legal recourse available to the department is to proceed on the assessee herein in terms of section 153C of the Act. In this regard, we would like to place reliance on the recent decision of the Hon'ble Delhi High Court in the case of CIT v. Page | 20 Pinaki Misra & Sangeeta Misra [2017] 392 ITR 347 dated 3.3.2017, wherein it was held that, no addition could be made on the basis of evidence gathered from extraneous source and on the basis of statement or document received subsequent to search. Hence we hold that the said materials cannot be used in section 153A of the Act against the assessee. This opinion is given without going into the merits and veracity of the said seized documents implicating the assessee herein.”

26. Hence, the objections raised by the Id DR in her written submissions that the premises of Shri Naveen Tyagi was also searched as part of VVIP group along with premises of Shri Praveen Tyagi and the premises of VVIP Ltd, has no substance. We have also found that the Id DR has relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. S Ajit Kumar reported in 404 ITR 526 (SC) wherein, it was held that any material or evidence found/ collected in a survey which has been simultaneously made at premises of connected person can be utilized while making block assessment in respect of an assessee u/s 158BB read with section 158BH of the Act as it would fall under words “and such other materials or information as are available with Assessing Officer and relatable to such evidence’ occurring in section 158BB of the Act. It has to be understood that this decision was rendered in the context of erstwhile provisions of Chapter XIVB of the Act for computation of undisclosed income for the block period wherein in Section 158BB of the Act, there was a specific inclusion of the following words “and such other material or information as are available with Assessing Officer relevant to such evidence.” It is pertinent to note that this expression is conspicuously absent in section 153A of the Act. Hence, the decision relied upon by the Id DR in the case of S. Ajit Kumar (supra) does not advance the case of the revenue. Further, we find that the Hon’ble Jurisdictional High Court in the case of PCIT vs Anand Kumar Jain HUF in ITA No. 23/2021 dated 12.02.2021 had an occasion to address the very same legal issue. The relevant question raised before the Hon’ble Jurisdictional High Court

High Court was as under:- “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.”

26.1. This question was answered by the Hon’ble Delhi High Court as under:-

“10. Now, coming to the aspect viz the invocation of section 153A 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 (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to 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 153C 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 153C 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.”

14. The Learned DR supported the action of the lower authorities and prayed for the dismissal of the appeal.

15. Further, the provisions as contained under Sections 153A and 153C of the Income Tax Act, 1961 are reproduced for the sake of convenience and clarifications:

“153A. Assessment in case of search or requisition. Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall-

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139,

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

Explanation. For the removal of doubts, it is hereby declared that,-

(i) save as otherwise provided in this section, section 1538 and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

153C. Assessment of income of any other person - Notwithstanding anything contained in section 130, section 147, section 148, section 140, section 151 and section 153, where the Assessing Officer is satisfied that any money bullion jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned belongs or belong to a person other than the person referred to section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.”

16. Having heard both the parties, we found that during search operation, no incriminating document regarding the unaccounted income was recovered from the possession of the assessee. The document/loose slip was found from the possession of the other person Deepak Kumar accountant of VVIP Group on the basis of the third, party document and statement. The Assessing Officer made the assessment under Section 153A of the Act and he should have made the assessment u/s 153C of the Act. The assessment made by the AO under Section 153A of the Act is not as per law, because no incriminating document was recovered from the possession of the assessee during the search and seizure operation. No addition can be made on the basis of the third party documents and statement made. Therefore, the issue raised by the assessee is liable to be allowed. Thus, the appeals of the assessee are allowed accordingly.

17. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 27 /12/2024.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Dated: 27th December,2024.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi