

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

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.7114/DEL/2018
[Assessment Year: 2014-15]**

DCIT, Central Circle-1, 2 nd Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh-201301	Vs	M/s Dharampal Premchand Ltd. (Earlier known as M/s Affe Technologies Pvt. Ltd., now amalgamated with M/s Dharampal Premchand Ltd.), 4873, Chandni Chowk, Delhi-110006
		PAN-AAACD1952B
Revenue		Assessee

**Cross Objection No.33/Del/2023
(Arising out of ITA No.7114/DEL/2018)
[Assessment Year: 2014-15]**

M/s Dharampal Premchand Ltd. (Earlier known as M.s Affe Technologies Pvt. Ltd., now amalgamated with M/s Dharampal Premchand Ltd.), 4873, Chandni Chowk, Delhi-110006	Vs	DCIT, Central Circle-29, Room No.322, E-2 ARA Centre, Jhandewalan Extn. New Delhi-110006
		PAN-AAACD1952B
Assessee		Revenue

Revenue by	Sh. Atiq Ahmed, CIT-DR
Assessee by	Sh. GN Gupta, ITP & Sh. Mayank Maheshwari, Adv.

Date of Hearing	24.01.2025
Date of Pronouncement	07.02.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the Revenue is directed against the order of the of the Ld. CIT(A)-IV, Kanpur, dated 17.08.2018 pertaining to

Assessment Year 2014-15. The assessee has also filed cross objection in this case.

2. The grounds of appeal raised by the Revenue in ITA No.7114/Del/2018 are as under:-

1. *Whether on facts and circumstances of the case, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice w/s 153C, without appreciating that in the satisfaction note the AO had clearly brought out all the facts and circumstances, which indicated that the assessee company is engaged in transactions in the nature of accommodation entries and hence such documents constituted "incriminating material" for the purpose of the issue of notice u/s 153C in the context of assessee.*

2. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C, without appreciating that while recording the satisfaction for issue of notice u/s 153C, the test for "incriminating material" has to be only in the nature of prima facie belief based on some material having live nexus and not in the nature of absolute evidence established after detailed investigation of facts or law.*

3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that assessment framed u/s 153C of the ACT was bad in law and without jurisdiction because no incriminating document was found and seized ignoring the fact that the assessee company has transferred its assets through transfer of share at nominal value is a colourable transaction.*

4. *Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in applying the decision of the Hon'ble Supreme Court in the case of M/s. Singad Technical Education Society, which was distinguishable on the fact of the present case as the same pertained to prior period to 01.04.2005 whereby 153C notice can be issued when AO is satisfied that seized material has bearing on the assessment of income of the other person.*

5. *The order of the Ld CIT (A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.*

3. Grounds of appeal raised by the assessee in Cross objection are as under:-

That on the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals)-IV, Kanpur while adjudicating our ground of appeal No. 1 which reads as:

"1 That on the facts and in the circumstances of the case, Deputy Commissioner of Income Tax, Central Circle, Noida (AO for short) grossly erred in law in assuming jurisdiction u/s 153 C of the Income Tax Act, 1961" in our favour, erred in dismissing grounds of appeal No.2,3,4 & 5 taken before him which respectively are as follows :

"Ground No. 2 - Without prejudice to the generality of Ground of Appeal No. 1 above, the impugned assessment order is non-est in law as it has been passed without affording proper opportunity to the appellant of being heard.

Ground No.3 - Without prejudice to the generality of Grounds of Appeal No. 2 above, the impugned assessment order is barred by limitation and, therefore, deserves to be quashed.

Ground No.4-That on the facts and in the circumstances of the case, the AO has erred in including a sum of Rs. 13 Crores in the total income of the appellant u/s 68 of the Income Tax Act, 1961.

Ground No.5-That on the facts and in the circumstances of the case, the AO has erred in disallowing interest of Rs. 51,65,890/- paid by the appellant to the unsecured creditors on loans aggregating to Rs. 13 Crores."

4.. Brief facts of the case: The assessee is in the business of software publishing consultancy and supply. A search and seizure operation was carried out in the case of Maconn's, Meenu and Yadav Singh Group, Noida on 27.11.2014. The assessee company is incorporated on 01.04.2007 with 10000 shares held equally by Namrata Manocha and Shri Rajendra Manocha. Notice u/s 153C was issued on 18.06.2015 and the assessee e-filed its return of income declaring a total loss of Rs.42,52,242/-. The

assessment u/s 153C of the Act r.w.s 143(3) of the Act was passed on 28.08.2017 *inter alia* making the following additions:-

Total income as per return of income/system			Rs.(-)42,52,242
Add:	Addition/Disallowance on account :		
(1)	Cash Credit u/s 68 of the Act (As discussed in Para 7)	13,00,00,000/-	
(2)	Disallowance of interest (As discussed in para 7.1)	51,65,890/-	
(3)	Addition of difference of receipts (As discussed in para 8)	3,21,608/-	
			Rs.13,12,35,256/-
		Or say	Rs.13,12,35,260/-

4.1. Against this order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) by a common order for AY 2009-10 to AY 2014-15 quashed the assessment order on the ground that the additions made by the AO were not sustainable as the same were not based on incriminating material. The relevant finding of the ld. CIT(A) in para no.5.8 is reproduced as under:-

5.8 Thus, from the plain reading of language of section 153C of the Act and various judicial pronouncement cited here-in-above, it is abundantly clear that in order to reopen the assessment of other person u/s. 153C of the Act for the assessment year earlier to the year of search, direct correlation must exist between existence of incriminating material and relevant assessment years. In the instance case, admittedly, additions are not based on any incriminating document found as a result of search. In fact, no incriminating document or Assessment year are mentioned in the satisfaction recorded by Assessing Officer. In view of the detailed discussion and the judicial authority mentioned here in above, it is concluded that notice u/s 153C of the Act issued by the AO need to be. treated as void ab-initio, invalid and legally not sustainable.

Therefore, assessment framed on the basis of legally unsustainable notice is hereby quashed and annulled. Thus, these legal grounds of appeals i.e. for A.Y. 2009-10 to A.Y. 2014-15 are decided in favour of the appellant.

5.9 Though, addition made by AO was not justified in terms of provisions u/s 153C of the Act. However, it is open for AO to take remedial action in accordance with the provisions of income tax Act, to assess/reassess the income escaping assessment, if any.”

5. Against the order of the Ld. CIT(A), the Revenue is in appeal before us.

6. At the outset, the Ld. AR submitted that as per ground no.3 in the CO filed by it, the impugned assessment order is barred by limitation and therefore deserves to be quashed. In this regard, the ld. AR filed a written submission, the relevant extract relating to this contention is reproduced as under:-

2.1. The first ground of appeal in the Cross Objections taken by the appellant is that the CIT(A) should have adjudicated upon our ground of appeal that the assessment order was barred by limitation. According to para 6 of the Assessment Order, the time limit for completion of the assessment was 31.12.2016 which according to the AO was extended because the valuation of property at Plot No. B-59, Sector-57, Noida was referred to the DVO Delhi on 23.12.2016.

2.2 The relevant facts lie in a small compass. The AO first made a reference to DVO Meerut - the correct jurisdictional authority in respect of AO and the property both based in Noida - on 1.8.2016 (PB Pg.13 refers). This reference was uncalled for as the issue of valuation of the property was never in dispute as would be evident from the assessment order where there is no reference regarding this issue. Nor was any notice on this issue was raised by AO during the assessment proceedings. Be that as it may, the property in question existed before 18.06.2011 and therefore this reference has nothing to do with Assessment Year 2014-15 under appeal. For some reason known only to the AO there is no mention of the reference to DVO Meerut in the assessment Order. Further without waiting for a report from DVO Meerut, the AO malafidely made a second reference on

23.12.2016 to DVO Delhi. The assessment was completed without obtaining a report from any of the DVO.

2.3. It is respectfully submitted that in computing the limitation period under clause (iii) of the explanation below section 153 B(3), the period commencing from the date of reference to DVO to the date of receipt of DVO's Report is to be excluded. Since no DVO's report was received, the period of exclusion cannot be computed and therefore, there can be no exclusion in view of the decision of Hon'ble Supreme Court of India in the case of Commissioner of Income Tax V B.C. Srinivasa Setty 1981 AIR 972.

2.4 Further a conjoint perusal of the provisions of section 142 A(6) and clause (iii) of explanation below section 153 B(3) would show that the period of exclusion cannot exceed 6 months. Therefore, assuming for the sake of argument, though, not conceding it, that the AO could validity make a second reference to DVO Delhi who could not have the jurisdiction to value a property at Noida- the date of limitation would be 23.6.2017, whereas the assessment order was framed on 28.8.2017. The assessment order is therefore barred by limitation.

6.1. In this regard, the facts noted by the AO in para-6 of the assessment order is reproduced as under:-

“6. During the course of assessment, it was noticed that the assessee company has acquired a property Plot No-v-59 sector 57 Noida -and made investment in the construction. After recording reasons, the case was referred on 23/12/2016 for valuation officer u/s 142A of the Act to determine the fair market value (FMV) of construction/ investment in the said property. Accordingly, the time limit for completion of assessment i.e 31/12/2016 was extended by the period taken by the valuation officer for submission of the valuation report Now, the assessment order is passed within the time limit specified u/s 153 / 153B of the Act.”

7. On the other hand, the ld. Dr supported the order of the AO and the grounds of appeal filed by the Department.

8. We have heard the rival contentions and perused the materials available on record. In this case, a search and seizure operation u/s 132 of the Act was carried out in the case of Maconns, Meenu and Yadav

Singh Group, Noida, covering its business premises and residential of Directors, their family members and other business associates concern and other key persons on 27.11.2014. The AO recorded satisfaction u/s 153C of the Act (placed on 41-42 of the paper book) and issued a notice u/s 153C of the Act on 18.06.2015. As per the facts mentioned by the AO in para no.6 of the assessment order, the time limit for completion of the assessment was 31.12.2016 and the same was extended by the period taken by the Valuation Officer for submission of the valuation report. It is further stated in the assessment order that after recording reasons, a reference was made on 23.12.2016 to Valuation Officer u/s 142A of the Act to determine the Fair Market Value (FMV) of construction/investment in a property acquired by the assessee during the year being plot no.V-59, Sector-57, Noida and accordingly the time limit i.e. 31.12.2016 was extended by the period taken by the Valuation Officer for the submission of the Valuation report. The assessment order in this case was passed on 28.08.2017. As per the provisions of clause (iii) of the Explanation below section 153B(3) of the Act (as it stood at the material time) for computing the limitation period, the period commencing from the date of reference to DVO to the date of receipt of DVO's report was to be excluded. As submitted by the Ld. AR that no valuation report in pursuance to the impugned reference on 23.12.2016 was received by the AO in this case and therefore the extension of time limit as claimed by the AO, was not entitled to him. Further, in this regard as per the provision below to the Explanation of this section, the time limit for passing the assessment order in the case of the assessee was further extendable if where

immediately after the exclusion of the aforesaid period as provided in clause (iii) in the Explanation below to section 153B of the Act, the period of limitation referred to in clause (a) or clause (b) of section 153(B)(1) of the Act available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly. In this regard, the case was put up for clarification on 08.07.2024 directing the DR to furnish a report as to whether any valuation report in pursuance to the impugned reference on 23.12.2016 was received by the AO in this case or not and the date on which it was received so as to compute the period of limitation as per the provisions of clause (iii) of the Explanation below section 153B(3) of the Act and as per proviso to this section of the period available to the AO was less than 60 days. Despite giving opportunities, no such report was furnished by the DR. In absence of the same, it is held that no valuation report was received in this case by the AO in pursuance of the impugned reference u/s 142A of the Act on 23.12.2016. Therefore, in this case as no valuation report was received by the AO, the AO was not entitled for any extension of limitation period as claimed by him. Therefore, in the given facts of the case, the limitation date for passing the assessment order expired on 31.12.2016 and consequently, the assessment order passed by the AO u/s 153C r.w.s. 143(3) of the Act dated 28.08.2017 is barred by limitation and the same is quashed. Ground No.2 of the CO is allowed.

9. In view of the fact that we have held the assessment order barred by limitation and quashed the assessment order, the other grounds in the CO and the grounds of appeal filed by the Department becomes academic in nature and requires no adjudication.

10. In the result, the appeal of the Revenue is dismissed, whereas the cross objection of the assessee is partly allowed.

Order pronounced in the open court on 07th February, 2025.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 07.02.2025.

Shekhar

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi