

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: C : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

ITA No.1268/Del/2020
Assessment Year: 2012-13

DCIT,
Central Circle-27,
New Delhi.

Vs Jasmine Buildmart Pvt. Ltd.,
406, Elegance Tower-8,
Jsola District Centre,
New Delhi – 110 025.
PAN: AACCCJ5119J

CO No.34/Del/2023
(ITA No.1268/Del/2020)
Assessment Year: 2012-13

Jasmine Buildmart Pvt. Ltd.,
406, Elegance Tower-8,
Jsola District Centre,
New Delhi – 110 025.
PAN: AACCCJ5119J

Vs. DCIT,
Central Circle-27,
New Delhi.

(Appellant)

(Respondent)

Assessee by : Shri Vinod Kumar Bindal, CA;
Shri Anmol Jha, Advocate; &
Ms Rinki Sharma, ITP.
Revenue by : Shri Daya Inder Singh Sidhu, CIT-DR
Date of Hearing : 28.07.2025
Date of Pronouncement : 30.07.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated
22.11.2019 of the Commissioner of Income-tax (Appeals)-3, Gurgaon

(hereinafter referred to as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.44/CIT(A)(C)/GGN/2014-15 arising out of the appeal before it against the order dated 24.03.2014 passed u/s 153B(1)(b) r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the DCIT, Central Circle-I, Faridabad (hereinafter referred to as the Ld. AO). The assessee has also filed the Cross Objections.

2. Heard and perused the records. On hearing both the sides it can be observed that assessee by way of cross objections and taking shelter to the Rule 27 of the ITAT Rules has challenged the assumption of jurisdiction u/s 153A of the Act and that if at all the assessment was to be done same should have been u/s 153C of the Act.

3. Considering that the issue raised goes to the root of assumption of jurisdiction, the same can always be raised by the assessee at any stage so far it can be decided on the admitted facts, the same deserves to be admitted and adjudicated. Reliance can be placed on the decision of Hon'ble High Court at Delhi in the case of **Sanjay Sawhney v. Principal Commissioner of Income-tax, [2020] 116 taxmann.com 701 (Delhi)** wherein while allowing the right of assessee respondent to raise the jurisdictional ground under Rule 27 orally, it was held as under:

"14. It emerges that Rule 27 ought not to be applied narrowly and therefore we cannot agree with Mr. Hossain, that by permitting the Appellant- Assessee (respondent before the Tribunal) to invoke Rule 27

before the Tribunal, to challenge the ground decided against him, scope of the subject matter of appeal would get expanded. We must also bear in mind that jurisdictional issue sought to be urged by the appellant under Rule 27 is interlinked with the other grounds of appeal, and its adjudication would have a direct impact on the outcome of the appeal. The validity of the proceedings goes into the root of the matter and for this reason, the assessee should not be precluded from raising a challenge to that part of the order which was decided against him by the CIT(A). In this regard, it would be profitable to refer the following extract from the judgment of Sundaram & Co. (supra), where the court had also examined as to what constituted 'subject-matter of an appeal' and held as follows:--

21. Therefore, arguably Rule 27 has a limited sphere of operation, but this cannot be whittled or narrowed down to the extent, the Revenue would like us to hold. We cannot read Rule 27 in a restrictive manner to hold that the said provision can only be invoked to support the order in appeal and while doing so, the subject matter of the appeal before the ITAT should be confined only to the extent of the grounds urged by the Appellant. To read Rule 27 in this manner would render the said rule redundant as the respondent before the Tribunal would, even otherwise be entitled to oppose the appeal and raise submissions in answer to the grounds raised in the appeal that are pressed at the hearing of the appeal. With this clarity, we do not find any merit in the submissions of the Revenue that the assessee had accepted order of CIT (A), or that the issue of maintainability had attained finality. We also do not find that by such an interpretation, the scope of Rule 27 is expanded or that it would be contrary to section 253 (4), or that it would render the provision relating to cross objections redundant and otiose. In Sundaram & Co. (supra), the High Court observed that the reason for such a rule [Rule

27] was that when a decision is favorable to a person and comes to be challenged by his adversary, the person must be in a position to support the decision on every ground urged before the deciding authority whether or not it found favor, else such a person would be a victim of wrong reasons if no such freedom was given.”

4. The background to these appeal and CO is that by virtue of the authorization of the Director of Income-tax (Investigation), Chandigarh, under section 132(1)(A) in the case of the assessee, the residential as well as office premises of M/s Jasmine Buildmart Pvt. Ltd. Group of Cases were subjected to search and seizure operations on 09.11.2011. Assessment jurisdiction over the assessee was transferred to the circle the Commissioner of Income Tax (Central) Gurgaon vide order u/s 127 of the Act, F.No. CIT(C)/GGN/2013-14/Centralisation/2654 dated 03.09.2013. The alleged seized documents in the group were received in Commissioner of Income Tax (Central) Gurgaon circle on 29.08.2013.

4.1 The assessee company got incorporated during FY 2010-11. The company is engaged in the business of real-estate. The main project of the company is the "Provence Estate" to develop a Residential Group Housing Society at Gwal Pahari. In accordance with the provisions of section 153A of the Act a notice dated 14.08.2013 u/s 142(1) was issued and served upon the assessee, requiring him to file this return of income in respect of assessment

year 2012-13. In response to the said notice, the assessee company vide letter dated 22.09.2013 filed copy of its return of income already e-filed on 30.09.2012 returning a total loss of Rs 3,35,71,598/-. Notices under section 143(2) and 142(1) along with a questionnaire were issued to the assessee on 22.09.2013 which were duly served upon the assessee.

4.2 During the course of search conducted on 09.11.2011 allegedly various incriminating papers were found and seized from the office premises as well as the residential premises of the directors such as Sh Amit Katyal. These documents were duly confronted to him in the statement recorded u/s 132(4) of the Act. Based on the incriminating documents found during the course of search the director of the company Sh. Amit Katyal admitted an income of Rs.3.02 Crores in the hands of the assessee company on account of expenditure made out of unaccounted income of the assessee company during the course of statement of Sh. Amit Katyal recorded under 132(4) of the Act. The same was shown as revenue from operation in the return filed and expenses were claimed. Ld. AO disallowed the expenses which have been allowed by the ld. CIT(A).

Accordingly the Revenue is in appeal raising following grounds;

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred by ignoring the fact that assessee has failed to substantiate that the surrendered income of Rs.3.02 cr. is business income during the course of assessment proceedings. Hence, question of giving deduction benefit on this surrendered amount does not arise.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred by ignoring the fact that if the search action u/s 132 of the Income Tax Act, 1961 had not been conducted, then the assessee would never had

declared amount of Rs. 3.02 cr. as undisclosed income of the assessee for the year under consideration.

3. That the grounds of appeal are without prejudice to each other.

4. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time hearing of the appeal.”

4.3 The grounds of Cross Objection of the assessee read as under:-

“1. The impugned assessment order passed u/s 153B(1)(b) r.w.s. 143(3) of the Act on 24/03/2014 is void ab initio and bad in law because:

- (i) The assessee was never searched as no panchnama was ever drawn in its name in any premises.*
- (ii) The Revenue has made the impugned assessment with the sole presumption that there was a search on the assessee and then passed assessment orders u/s 153A of the Act for the immediately preceding AY 2011-12.*
- (iii) The section 153B(1) of the Act is applicable only in respect of an assessee searched.*
- (iv) The relevant provisions applicable for assessment are to take a route through the section 153C of the Act and to make an assessment u/s 153A of the Act for the relevant AY where the assessee was not searched.*
- (v) On the facts and circumstances of the case the only remedy to make assessment of income for the assessment order available to the revenue was by taking recourse to the provisions of the section 153C of the Act as it existed then as the alleged incriminating material belonging to the assessee was found in the premises of the person searched on the strength of a search warrant /panchnama where the name of the assessee never mentioned.*
- (vi) In view of the judgment of the Hon'ble Supreme Court in the case of Kanwar Singh Saini vs Delhi High Court 2012 (4) SCC 307 jurisdictional plea can be taken at any stage during the pendency of lis even at the time of execution or before the Supreme Court.*

2. The cross objections must be allowed by dismissing the appeal of the revenue.

3. *The respondent assessee craves the leave to add, substitute, modify, delete or amend all or any ground of this cross objections either before or at the time of hearing.*”

5. The arguments were initially heard on the cross objections. The Id. AR has primarily submitted that admittedly, the incriminating evidence was not found in the possession of the assessee. Therefore, assessment should have been completed u/s 153C of the Act. After going through the Panchnama prepared at the time of search, copy of which is made available at page 153 of the PB, it is evident that the search was not conducted at the premises of the assessee. The alleged incriminating material relied by the Id. AO, establishes that it was received by the jurisdictional Assessing Officer of the present assessee on 29.08.2013. The search year happens to be 2014-2015. Thus in these circumstances the present assessment year 2012-13 falls in the period of six assessment years and, therefore, the assessments should have been completed u/s 153C of the Act. Reliance in this regard can be placed on the decision of Hon'ble Delhi High Court in the case of **CIT Versus RRJ Securities [2015]62taxmann.com 391 (Delhi)** and Hon'ble Supreme Court in **CIT Vs. Jasjit Singh 458 ITR 437(SC)**. The Id. CIT(A) has failed to take cognizance of the aforesaid. Hon'ble Delhi High Court has further elaborated the legal dictum in the case of **Ojjus Medicare Pvt Ltd & Others [2024] 161 taxmann.com 160 (Delhi)**, wherein it has held as under:

"First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten-

year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation Ltd v. Dy.CIT (2012) 346 ITR 177 (Delhi)(HC) and CIT v. RRJ Securities Ltd 2015 SCC Online Del 13085 as well as the decision of the Supreme Court in CIT v Jasjit Singh 2023 SCC Online SC1265. The aforesaid legal position also stood reiterated by the Supreme Court in ITO v. Vikram Sujitkumar Bhatia 2023 SCC Online SC.

370. The submission of the revenue, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted. The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A."

6. The ld. AR has also brought to our attention the order dated 18.04.2024 in ITA No.3911/Del/2019 for similar assessment year 2012-13 in the case of Amit Katyal titled as Amit Katyal vs. DCIT, wherein the coordinate Bench for similar reasons has held that assessment could at all be framed u/s 153C of the Act and not u/s 143(3) of the Act as was applicable in the case of Shri Amit Katyal.

7. In the light of the aforesaid, we are inclined to sustain the additional ground in the Cross Objections and allow the CO. The appeal of revenue becomes infructuous and accordingly dismissed. Consequently, the impugned assessment is quashed.

Order pronounced in the open court on 30.07.2025.

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 30th July, 2025.

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi