

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA Nos.2449/Del/2013 & 2450/Del/2013
Assessment Years : 2006-07 & 2005-06

Smt. Poonam Aggarwal,
H-3/11-A, Krishna Nagar,
Delhi – 110 051.
PAN : AAMPA6866E.
(Appellant)

Vs. Income Tax Officer,
Ward-35(3),
New Delhi.
(Respondent)

Appellant by : Shri C.S. Anand, Advocate.
Respondent by : Ms. Nandita Kanchan, CIT-DR.

Date of hearing : 30.05.2016
Date of pronouncement : 10.06.2016

ORDER

PER G.D. AGRAWAL, VP :-

These appeals by the assessee for the assessment years 2005-06 and 2006-07 are directed against the order of learned CIT(A)-XXVII, New Delhi dated 19th February, 2013.

2. Both the parties admitted that ground Nos.1, 2 & 3 in both the years are common, which read as under:-

"1. That the notice u/s 153A of the I.T. Act 1961 dt. 28.02.2011 (issued by the Id. I.T.O. Ward-35(3) New Delhi/the proceedings initiated are illegal, without jurisdiction and barred by limitation.

2. That the notice u/s 153A of the I.T. Act 1961 dt.28.02.2011 issued by the Id. I.T.O. Ward-35(3) New Delhi and the assessment order dated 30.12.2011 passed by him under section 143(3) r.w.s. 153(C) of the I.T. Act 1961 deserve to be quashed, on various factual and legal grounds.

3. That the assessment framed is against the spirit of section 153C of the I.T. Act 1961, in as much as Id. A.O. had not confined himself to the information/materials provided by the Id. A.C.I.T. Central Circle-13, New Delhi."

3. We have heard the arguments of both the sides and have perused the material placed before us. The Assessing Officer initiated proceedings u/s 153C in the case of the assessee with the following finding in the assessment order:-

"A search & seizure operation u/s 132 of the Income Tax Act 1961 was carried out in the Swastik Group of Concerns on 28.08.2008. As some incriminating documents were found at those premises which belongs to the assessee, and thus notice U/s 153-A dt. 28.02.2011 was issued and served."

4. From the above, it is evident that the Assessing Officer has simply mentioned to have issued notice u/s 153A because some incriminating documents were found at the premises of Swastik Group of Concerns. From this finding, it is evident that no satisfaction has been recorded u/s 153C by the Assessing Officer of the person searched. Which are the documents belonging to the assessee has not been specified and how those documents indicated any undisclosed income of the assessee has also not been specified. From a perusal of the assessment order, we do not find any reference to any seized document while making the addition. The Assessing Officer asked the assessee to produce statement of affairs and, on the basis of such statement of affairs, he made the addition for small amount of cash gift as well as unexplained cash credit. In view of the above, respectfully following the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. RRJ Securities Ltd. – [2015] 62 taxmann.com 391 (Delhi), we hold that the initiation of proceedings u/s 153C is not valid. The same is quashed and consequently, the assessment completed u/s 143(3)/153C is also quashed.

5. Once the assessment order itself has been quashed, the other grounds raised by the assessee in both the appeals against the additions made by the Assessing Officer do not survive for adjudication.

6. In the result, both the appeals of the assessee are allowed.
Decision pronounced in the open Court on 10.06.2016.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Appellant : Smt. Poonam Aggarwal,
H-3/11-A, Krishna Nagar, Delhi – 110 051.
2. Respondent : Income Tax Officer, Ward-35(3), New Delhi.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar