

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 4279/Del/2019
Assessment Year: 2014-15**

Ankit Gupta,
28, Purva Dulichand,
Ghaziabad.
PAN: AJMPG9551D
(Appellant)

vs.

DCIT, Central Circle,
Noida.

(Respondent)

Appellant by : Sh. Mohit Gupta, CA,
Ms. Nandani Mishra, AR
Sh. Naveen Kumar, AR
Respondent by : Shri Zahid Parvez, Sr. DR
Date of hearing : 23.05.2022
Date of order : 25.05.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the assessee against the order dated 05.03.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-IV, Kanpur (in short 'Id. Commissioner') u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2014-15.

2. Brief facts, relevant for adjudication of the instant appeal, are that a search and seizure operation was carried out by the Revenue Department on dated 15.10.2013 in the case of Tyagi Group of cases, on the basis of which the alleged satisfaction was recorded in the case of Assessee on dated 12.08.2015 for initiation of proceedings u/s. 153C of the Act. Ultimately the assessment order u/s. 143(3) of the Act was made by the Assessing Officer.

2.1 The Assessee, being aggrieved, challenged the assessment order before the Id. Commissioner, who vide impugned order sustained the assessment order, while dismissing the appeal of the Assessee, against which the Assessee is in appeal before us.

3. Heard the parties and perused the material available on record. It appears from the assessment order that a search and seizure operation u/s. 132 of the Act was conducted by the Revenue Department on 15.10.2013 in the premises of Tyagi Group of cases and on the basis of search, the alleged satisfaction was recorded in the case of Assessee on dated 12.08.2015 for initiation of proceedings u/s. 153C of the Act, therefore, notices u/s. 142(1) and 143(2) of the Act were issued on 12.08.2015, 28.08.2015 and 09.11.2015, against which the Assessee has claimed to have filed return of income on 22.03.2015 wherein the Assessee had declared total income of Rs.3,62,230/- and ultimately, the Assessing Officer has passed the assessment order u/s. 143(3) of the Act but not u/s. 153C of the Act. Therefore, the claim of the Assessee is that the Assessing Officer was under obligation to frame the assessment as per provisions of section 153C of the Act, but not u/s. 143(3) of the Act because the provisions of section 153 of the Act of the Act mandates that the Assessing Officer is required to make an order of assessment or reassessment in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year, in which such search is conducted or requisition made or satisfaction note is prepared which allegedly in the case of Assessee on dated 12.08.2015 for initiation of proceedings u/s. 153C of the Act, being the date of receiving the books of account or documents or asset seized, therefore the instant case as pertains to AY 2014-15 also falls within 6 years.

In support of its contention, ld. AR of the Assessee relied upon various judgments, out of which we are referring only one by the Hon'ble Tribunal in ITA No. 4051 & 4052/Del/2017, in the case of ACIT vs. Ankit Nivesh, wherein, Hon'ble Bench while taking into consideration various judgments of Hon'ble High Courts, held as under:

11. We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. The Assessee is engaged in the business of investment and sale purchase of shares during the relevant assessment year and filed its return of income u/s.139 of the Act on 30.10.2007 declaring income of Rs.729/-. Consequent to the search and seizure operation u/s.132 on M/s. Prakash Industries of Companies on 31.10.2012 satisfaction was recorded by the Assessing Officer u/s.153C and proceedings u/s.153C was initiated after issuance of notice on 19.09.2014. Here in this case though the date of search in the case of Prakash Industries was 30.10.2012 however the date of recording of satisfaction by the Assessing Officer is on 19.09.2014. Since there is no specific date of handing of material in the satisfaction note, then date of 19th September, 2014 is to be reckoned as date of handing over the material and the time limit of calculating the six years has to be calculated from this date. Prior to the amendment by Finance Act, 2017, in terms of the proviso to Section 153C (1) of the Act, the date of receipt of the books and accounts by the AO of the Assessee is deemed to be the date of search. In the present case in absence of any specific date of handing over of material, the date of recording satisfaction i.e, 19.09.2014 is to be treated as the date of handing over of material and therefore the six AYs preceding the year of the search, for which the assessment was proposed to be reopened, should be A.Y. 2009-10 to A.Y. 2014-15.

12. Consequently the notice u/s. 153C(1) could have been issued for Assessment Years 2009-10 to 2014-15. Prior to the amendment brought by the Finance Act, 2017 the date on which the Assessing Officer of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act.

13. In the following judgments, the Hon'ble Delhi High Court have clearly held that the provisions of six years would have to be counted from the year in which satisfaction note is prepared.

a. **Hon'ble High Court of Delhi in the case of RRI Securities (380ITR 612) hasheld that; - dated 30.10.2015**

Held:

*In terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further **proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment years 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C (1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee: the***

seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year.

b. Hon'ble High Court of Delhi in the case of ARN Infrastructure India Ltd. (81 taxmann.com 260) has held that:

Held:

The decision in RRJ Securities Ltd. (supra) is categorical that under Section 153C of the Act, the period of six years as regards the person other than the searched person would commence only from the year in which the satisfaction note is prepared by the AO of the searched person and a notice is issued pursuant thereto. The date of the Satisfaction Note is 21st July, 2014 and the notice under Section 153C of the Act was issued on 23rd July 2014. The previous six AYs would therefore be from AY 2009-10 to AY 2014-15. This would therefore not include AYs 2007-08 and 2008-09. The decision in RRJ Securities Ltd. (supra) is also an authority for the proposition that for the proceedings under Section 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person.

The Court also stated that - **This position again stands settled by the decision in RRI Securities Ltd (supra). The fact that the Revenue's SLP against the said decision is pending in the Supreme Court does not make a difference sine the operation of the said decision has not been stayed.**

c. Hon'ble High Court of Delhi in the case of Raj Buildworth Pvt. Ltd. (113 taxmann.com 600) has held that: dated - 23.10.2018

The Assessing Officer of the search party and the respondent assessee was the same. In such a factual matrix, the Assessing Officer could not have been initiated and passed an Assessment Order under Section 153C of the Act for the **Assessment Year 2007-08 as the same was beyond the period of six years from the end of**

the financial year in which the satisfaction note was recorded by the Assessing Officer.

d. Hon'ble High Court of Delhi in the case of Sarwar Agency Pvt. Ltd. (85 taxmann.com 269) has held that:

Held:

*Mr. Ashok Manchanda, learned Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in RRJ Securities (supra). The Court declines to do so for more than one reason. First, for reasons best known to it, the Revenue has not challenged the decision of this Court in RRJ Securities (supra) in the Supreme Court. **The said decision has been consistently followed by the authorities under this Court as well as by this court. Thirdly, the recent amendment to Section 153 C(l) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.***

14. This proposition has also been upheld and followed by this Tribunal in catena of judgment as cited by the Id. Counsel. Thus, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court we hold that is a terminal date for determining of six preceding assessment years for the purpose of Section 153C r.w.s. 153A would be the date of handing over the documents or the dated of recording of the satisfaction. Admittedly, the six preceding assessment years in the case of the assessee is from Assessment Year 2009-10 and ending on 2014-15. Accordingly, we hold that Id. CIT (A) was correct in law that no assessment u/s.153C was made in respect of Assessment Year 2007-08 and is barred by limitation.

15. Similarly in Assessment Year 2008-09 also we need the same fate which is also beyond the limitation period of six years as stated above. Accordingly, the order of the Id. CIT(A) is upheld and the Revenue's Appeal is dismissed."

4. The Ld. DR at the outset contented that the Assessee did not raise this issue specifically in it grounds of appeal whereas the Assessee claimed that ground no 2 covers this issue squarely. We have considered the said factual position and find that the Assessee vide ground no. 2 specifically challenged the jurisdiction of the AO and its confirmation by the Ld. Commissioner and therefore the said contention of the Id. DR is untenable. Coming to the issue qua passing

the assessment order u/s 143(3) instead of section 153-C of the Act, considering the peculiar facts and circumstances, as the assessment year under consideration falls under six assessment years for the purpose of section 153C, therefore, the assessment order should have been passed as per provisions of section 153C and but not u/s. 143(3) of the Act. Consequently, the assessment order, being void ab initio, is liable to be quashed. Thus, the same stands quashed and impugned order is set aside.

5. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 25/05/2022

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated: 25/05/2022