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

BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 3977/DEL/2015 (A.Y 2009-10)
&
I.T.A. No. 3978/DEL/2015 (A.Y 2010-11)

(THROUGH VIDEO CONFERENCING)

Heera Singh Bhola A-30, Sham Nagar New Delhi BHGPS0586M **(APPELLANT)**	Vs	DCIT Central Circle-8 New Delhi **(RESPONDENT)**

Appellant by	**Sh. P. C. Yadav, Adv**
Respondent by	**Sh. Satpal Gulati, CIT(DR)**

Date of Hearing	**09.03.2021**
Date of Pronouncement	**20.04.2021**

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against order dated 25/-3/2015 passed by CIT(A)-XXV, New Delhi for assessment year 2009-10 & 2010-11 respectively.

2. The grounds of appeal are as under:-

I.T.A. No. 3977/DEL/2015 (A.Y 2009-10)

1. That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts.

2. That the Ld. CIT (Appeal) has erred in law and on facts in not admitting the following additional grounds of appeal involving the issue related to recording of proper and conclusive satisfaction before issue of notice u/s 153C.

1. That the issue of notice u/s 153C, under the facts and circumstances, is bad in law.

2. That the impugned assessment order is bad in law as no satisfaction has been recorded by the Assessing Officer of the person searched that the document belongs to a person (the appellant) other than searched person.

3. That the impugned assessment order is bad in law as the notice under section 153C has been issued without arriving at a conclusive satisfaction, cogent material and basis of arriving at the satisfaction..

3. That the Ld. CIT (Appeal) has erred in law and on facts in not admitting the above mentioned additional grounds of appeal involving the issue related to recording of proper and conclusive satisfaction before issue of notice u/s 153C despite the fact that in the remand report, the AO has accepted that no satisfaction was recorded in the case of the assessee.

4. That the Ld. CIT (Appeal) has erred in law and on facts in not admitting the above mentioned additional grounds of appeal involving the issue related to recording of proper and conclusive satisfaction before issue of notice u/s 153C despite the fact that the additional grounds are purely legal and can be raised any time during the pendency of the proceedings.

5. That the Ld. CIT (Appeal) has erred in law and on facts in sustaining the ex-parte assessment passed by the AO on the basis of the two notice issued on 08.12.11, fixing the date of hearing on 14.12.11 and second and the last notice was issued on 15.12.11 fixing date of hearing on 16.12.11 despite the fact that the assessee was bed ridden and was not in a position to attend the proceedings.

6. That the Ld. CIT (Appeal) has erred in law and on facts in sustaining the ex-parte assessment passed by the AO wrongly stating that various notices u/s 142(1) and 143(2) were issued despite the fact that no notice u/s 143(2) was issued and only one notice u/s 142(l)was issued.

7. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs. 77,62,410/-in respect of investments in building despite the fact that the same was made by the assessee out of the funds received from his father.

8. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

Additional Grounds of I.T.A. No. 3977/DEL/2015 (A.Y 2009-10)

1. On the facts and circumstances of the case the Assessment Order passed under section 143(3) read with 153C and affirmed by the CIT(A) is bad in law as no satisfaction by the AO of the searched person, as mandated under the provisions of section 153C has ever been recorded, and hence the assessment framed is void ab initio.

I.T.A. No. 3978/DEL/2015 (A.Y 2010-11)

1. That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts.

2. That the Ld. CIT (Appeal) has erred in law and on facts in not admitting the following additional grounds of appeal involving the issue related to recording of proper and conclusive satisfaction before issue of notice u/s 153C.

> *1. That the issue of notice u/s 153C, under the facts and circumstances, is bad in law.*
>
> *2. That the impugned assessment order is bad in law as no satisfaction has been recorded by the Assessing Officer of the person searched that the document belongs to a person (the appellant) other than searched person.*
>
> *3. That the impugned assessment order is bad in law as the notice under section 153C has been issued without arriving at a conclusive satisfaction, cogent material and basis of arriving at the satisfaction..*

3. That the Ld. CIT (Appeal) has erred in law and on facts in not admitting the above mentioned additional grounds of appeal involving the issue related to recording of proper and conclusive satisfaction before issue of notice u/s 153C despite the fact that in the remand report, the AO has accepted that no satisfaction was recorded in the case of the assessee.

4. That the Ld. CIT (Appeal) has erred in law and on facts in not admitting the above mentioned additional grounds of appeal involving the issue related to recording of proper and conclusive satisfaction before issue of notice u/s

153C despite the fact that the additional grounds are purely legal and can be raised any time during the pendency of the proceedings.

5. That the Ld. CIT (Appeal) has erred in law and on facts in sustaining the ex-parte assessment passed by the AO on the basis of the two notice issued on 08.12.11, fixing the date of hearing on 14.12.11 and second and the last notice was issued on 15.12.11 fixing date of hearing on 16.12.11 despite the fact that the assessee was bed ridden and was not in a position to attend the proceedings.

6. That the Ld. CIT (Appeal) has erred in law and on facts in sustaining the ex-parte assessment passed by the AO wrongly stating that various notices u/s 142(1) and 143(2) were issued despite the fact that no notice u/s 143(2) was issued and only one notice u/s 142(l)was issued.

7. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs. 70,52,880/-in respect of investments in building despite the fact that the same was made by the assessee out of the funds received from his father.

8. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

Additional grounds in I.T.A. No. 3978/DEL/2015 (A.Y 2010-11)

a) *On the facts and circumstances of the case the Assessment Order passed under section 143(3) read with 153C and affirmed by the CIT(A) is bad in law as no satisfaction by the AG of the searched person, as mandated under the provisions of section 153C has ever: been recorded, and hence the assessment framed is void ab initio.*

b) *The order of assessment framed by the AO under section 144 is void: as the same has been passed ignoring the purport of the 1st proviso of section 153G, which provides that date of receiving of the documents would become date of search, and six years accordingly to be reckoned.*

c) *The AO has erred in assessing the impugned year under the normal provisions of section 144, ignoring that the year impugned is fail in block of six previous years and hence without following the mandatory procedure of* *section 153G assessment is void."*

3. The assessee is an individual and carrying out business of real estate. A search was conducted on Shri Vipin Kumar and thereafter the cases of the assessee for the present Assessment Years were reopened on the ground that certain documents belonging to assessee were found during the search. The Assessing Officer made addition of Rs.76,42,801/- in respect of Section 69C as relate to unexplained expenditure. The Assessing Officer assesseed the total income of assessee at Rs.77,62,407/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that by virtue of additional grounds the assessee is challenging the jurisdiction of the Assessing Officer assumed u/s 153C. It is pertinent to mention, challenging the jurisdiction of the Assessing Officer, the assessee has also taken additional grounds vide his applications dated 23.03.2018 and 29.06.2018. The Assessing Officer has incorrectly assumed the impugned year as search year and hence erred in framing the assessment of the impugned year without issuing Mandatory notice of 153C of the Act. No satisfaction note in the file of searched person as per the guideline of Board has ever been recorded by the Assessing Officer of searched person. Alleged satisfaction note does not prove that anything incriminating against the assessee was found in the search. The Ld. AR further submitted that before going to issues and submission of the assessee, it is worthy to point out certain dates which go to the root of the matter and would be helpful in deciding the legal grounds raised by the assessee.

Important Dates and sequence of events in the case of Ambawatta Build Well Pvt. Ltd.

Date	Sequence of event	Page No of PB
16.02.2010	Search action in the case of Vipin Kapoor was undertaken. So search year for Vipin Kapoor would be AY 2010-11 and F.Y 1.04.2009 to 31.03.2010	Pg -1 of assessment order
02.11.2011	Order u/s 127 transferring the case of the assessee to central circle was made	Pg-1, Para-2 of Assessment order
08.12.2011	Satisfaction note recorded by the AO of assessee has been recorded	Pg-1, Para-3 of assessment order
08.12.2011	Notice u/s 153C was issued to assessee for AY 2009-10. However no notice for AY 2009-10 has ever been recorded by the AO, admitted fact	A.O order

The Ld. AR submitted that before the CIT(A) assessee has challenged the jurisdiction of the Assessing Officer under section 153C by way of additional ground. However the CIT(A) dismissed the application of additional ground. The Ld. AR pointed out that issue whether jurisdiction of theAssessing Officer u/s 153C can be challenged before appellate forum is now settled by Hon'ble Apex Court in the case of Singhad Education Society reported in 397 ITR 344(SC) wherein the Hon'ble Apex Court has held that Jurisdictional issue can be taken up in appellate proceedings. Further CIT(A) failed to appreciate the judgment of NTPC reported in 229 ITR 383(SC) and special bench judgment of Tribunal in DHL Operations reported in 108 TTJ. The Ld. AR submitted that jurisdictional issues can be raised at any stage of the proceedings. The Ld. AR submitted that documents pertaining to the assessee were handed over to the Assessing Officer after 02.11.2011, and hence as per the provisions of proviso to section 153C, the date of search in the case of the present assessee would probably

02.11.2011, which date falls under AY 2012-13. The proviso to section 153C reads as under:-

> *"Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to [sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:]."*

The Ld. AR further submitted that by virtue of 1st proviso, embodied with section 153C, the date of handing over the documents would become the date of search in the case of other person and previous six year period would have to be reckoned from this date. Which means the relevant assessment year of search in the case of assessee would be 02.11.2011 which falls under AY 2012-13 (not AY 2010-11) and six previous years would be as follows.

01.04.2011 to 31.03.2012	2012-13 (Search year for 153C)
1.04.2010 to 31.03.2011	2011-12
01.04.2009 to 31.03.2010	2010-11
1.04.2008 to 31.03.2009	2009-10
1.04.2007 to 31.03.2008	2008-09
1.04.2006 to 31.03.2007	2007-08
1.04.2005 to 31.03.2006	2006-07

The Ld. AR further submitted that as per the sub-rule-5 of Rule 6F every assessee under the Income Tax Act has to maintain the account of six previous years for the purpose of Income Tax. Now supposing a search is conducted in one year and documents of other person are handed over to the Assessing Officer, of other person or to the Assessing Officer with whom jurisdiction is centralized, after two years from the date of search, then for which six years the other person would show his accounts, whether for the years which are applicable for search person or for those years which are governed by the proviso. The Ld. AR submitted that obviously for those years which are governed by the proviso because the Income Tax Rules say so. And that is why the legislature in its wisdom by virtue of proviso, has substituted the date of search with the date of receiving of the documents pertaining to such other person. Otherwise provisions of Rule 6F would become redundant and the Assessing Officer can asked for records of those years also for which an assessee is not obliged to maintain records. However, the Assessing Officer assuming the impugned year, as a year of search, has framed the assessment under normal provisions of Income Tax. The Ld. AR submitted that if we apply the mandate of the proviso of section 153C read with 153A(1) and principle of law as laid down by the Hon'ble Jurisdictional High Court in the case of RRJ Securities reported in 380 ITR 612(Del) then the six years which were to be covered are the years mentioned in above table. The Ld. AR relied upon the following judgments:

a) Jasjit Singh Vs ACIT ITA No-1436/Del/2012 order dated-05.11.2014(Affirmed by High Court)

b) CIT Vs RRJ Securties -380 ITR 612(Del)

c) CIT Vs Swar Agencies- 397 ITR 400(Del)-Delhi High Court wherein it has been held that amendment brought by legislature w.e.f. 1.04.2017 which says that year of assessment of searched person and other person covered under section 153C is prospective.

d) Ambawatta Buildwell ITA No-2592/Del/2015 dated 18.09.2018.

Thus, the Ld. AR submitted that no satisfaction in the file of searched person that is Vipin Kumar and thus, the assessment itself is bad in law.

6. Without prejudice to the above, the Ld. AR submitted it is an admitted position of facts that the Assessing Officer has not recorded any satisfaction in the file of the searched person. The CIT(A) mentioned in the order that the Assessing Officer candidly admitted that he has not recorded any satisfaction in the file of searched person. The Ld. AR submitted that there are two Assessing Officers according to the provisions of Section 153C of the Income

Tax Act, 1961 the Assessing Officer of the searched person who had to record his satisfaction in the file of the searched person mentioning that documents found in search belongs to some other person and prima facie they are incriminating. Thereafter, as per the provisions of Section 153C the (2nd) Assessing Officer of other person shall proceed against such other person**.** In simple words provisions of Section 153C mentions about of two Assessing Officers, 1st, of the searched person and 2nd is of the other person and 153C notice is to be issued by the 2nd Assessing Officer i.e. of the other person. This aspect is further clear from the Circular of CBDT. The Ld. AR submitted that in the present case the Assessing Officer of assessee while submitting the remand report has candidly accepted that he has not recorded any satisfaction in the file of searched person. He has just taken a plea that he was the Assessing Officer of both searched person and of the assessee. The Ld. AR submitted that recently the Tribunal in the case of Ambawatta Buildwell reported in ITA No 2591 of 2015 dated 09.04.2019, after considering the chronology of the sequence of events, in a case where the Assessing Officer of the searched person and person covered u/s 153C was same has observed as under:-

> *In so far as the dates referred to by the learned AR are concerned, absolutely there is no dispute. Search in this matter was conducted on 9.11.2011 and the* seized *documents belonging to the assessee were received in the Central Circle* on *29.8.2013. The satisfaction note was recorded by the ld. AO on 3.10.2013. Basing on this,* as *contended by the learned AR, it is evident that the satisfaction note dated 3.10.2013* was *recorded by the ld. AO of the assessee and certainly, it could not be by the AO of the searched person inasmuch as long prior to these dates, the ld. AO of the searched person parted with the documents which were received in the Central Circle on 29.8.2013. Even if the AO of the searched person and the AO of the assessee are one and the 'same, in view of the dates, namely, date of receipt of documents by the Central Circle being 29.8.2013 and the date of satisfaction note being 3.10.2013, the irresistible inference is that the satisfaction note dated 29.8.2013 was recorded by the ld. AO as the AO of the other person* i.e. *the assessee but not AO of the searched person. Had such a note been recorded* by the ld.*AO any date prior to 29.8.2013 there would have been a possibility of understanding that such a note could have been recorded by the*

ld. AO as the AO of the searched person. However, in view of the admitted dates of receipt of the seized documents by the Central Circle and. *the subsequent satisfaction note, there is no other way of understanding the* same *except as the satisfaction recorded by the other person. Now coming to the law applicable to these facts, both the assessee and the revenue are relying on the decision of the Hon'ble' jurisdictional High Court in the case of Ganpati Fincap Services P. Ltd. (supra).*

The Ld. AR submitted that similarly the dates mentioned in the above Para would show that the Assessing Officer has recorded the satisfaction on 08.11.2011 and documents related to assessee were received on 03.11.2011. Further the Assessing Officer has candidly admitted that he has not recorded any satisfaction in the file of the searched person. The Ld. AR pointed out that the circular of CBDT also clarifies that satisfaction is to be recorded separately in the fife of the searched person. Therefore the jurisdiction of the Assessing Officer is bad in law. The Ld. AR relied upon the following decisions:

a. CIT Vs Niki Drugs reported in 386 -ITR 68Q(Del)
b. CIT Vs RRJ Securties 380 ITR 612{Del)-
c. Peppsi foods Vs ACIT 367 ITR 297(Del)-
d. Adarsh Kumar Vs DCIT Central Circle ITA No-5095/Del/2015

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that no satisfaction was recorded in case of search person and thus, the assessment itself becomes null and void. In fact, in the present case the Assessing Officer of assessee while submitting the remand report has categorically accepted that he has not recorded any satisfaction in the file of searched person. He has just taken a plea that he was the Assessing Officer of both searched person and of the assessee. Besides this the contentions of the Ld. AR that as per the sub-rule-5 of Rule 6F every assessee under the Income Tax Act has to maintain the account of six previous

years for the purpose of Income Tax. Now supposing a search is conducted in one year and documents of other person are handed over to the Assessing Officer, of other person or to the Assessing Officer with whom jurisdiction is centralized, after two years from the date of search, then for which six years the other person would show his accounts, whether for the years which are applicable for search person or for those years which are governed by the proviso. Thus, for those years which are governed by the proviso because the Income Tax Rules say so. And that is why the legislature in his wisdom by virtue of proviso, has substituted the date of search with the date of receiving of the documents pertaining to such other. Otherwise provisions of Rule 6F would redundant and the Assessing Officer can asked for records of those years also for which an assessee is not obliged to maintain records. However, the Assessing Officer assuming the impugned year, as a year of search, has framed the assessee under normal provisions of Income Tax. Thus, while applying the mandate of the proviso of section 153C read with 153A(1) and principle of law as laid down by the Hon'ble Jurisdictional High Court in the case of RRJ Securities reported in 380 ITR 612(Del) then the six years which were to be covered are the years mentioned in table given by the Ld. AR at the time of hearing which is as follows:

01.04.2011 to 31.03.2012	2012-13 (Search year for 153C)
1.04.2010 to 31.03.2011	2011-12
01.04.2009 to 31.03.2010	2010-11
1.04.2008 to 31.03.2009	2009-10
1.04.2007 to 31.03.2008	2008-09
1.04.2006 to 31.03.2007	2007-08
1.04.2005 to 31.03.2006	2006-07

Thus, these contentions of the Ld. AR are sustainable under the provisions of the Income Tax Act as well as Income Tax Rules. Besides this, the CIT(A) has not taken the cognizance of the additional evidence filed by the assessee and thus on the merit also, the assessee succeeds. Hence, the appeal of the assessee being ITA No. 3977/Del/2015 is allowed.

8. In respect of ITA No. 3978/Del/2015 for Assessment Year 2010-11, the assessment order is passed u/s 144 of the Income Tax Act, 1961. The Assessing Officer assessed the income at Rs. 70,52,880/-, thereby making addition in respect of expenditure reflected in the diary that of Rs. 1,45,76,091/- . This amount spread over two different assessment year 2009-10 and 2010-11. Thus, the issue in the present Assessment Year 2010-11 is identical to that of the A.Y. 2009-10 which is discussed hereinabove. No distinguishing facts were brought on record by the Revenue. Hence, ITA No. 3978/Del/2015 is also allowed.

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

Order pronounced in the Open Court on this 20th Day of April, 2021

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated : 20/04/2021

R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	10.03.2021
Date on which the typed draft is placed before the dictating Member	10.03.2021
Date on which the typed draft is placed before the Other Member	20.04.2021
Date on which the approved draft comes to the Sr. PS/PS	20.04.2021
Date on which the fair order is placed before the Dictating Member for pronouncement	20.04.2021
Date on which the fair order comes back to the Sr. PS/PS	20.04.2021
Date on which the final order is uploaded on the website of ITAT	20.04.2021
Date on which the file goes to the Bench Clerk	20.04.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	