

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2668/DEL/2019
[Assessment Year: 2010-11]

City Life Projects Pvt Ltd
C - 180, Pratap Enclave
Pitampura, New Delhi

Vs.

The I.T.O
Ward - 6(2)
New Delhi

PAN: AADCC 4494 L

[Appellant]

[Respondent]

Date of Hearing : 15.09.2021

Date of Pronouncement : 17.09.2021

Assessee by : Shri Suresh K. Gupta, CA

Revenue by : Shri R.K. Gupta, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 31, New Delhi dated 25.02.2019 pertaining to assessment year 2010-11.

2. The assessee has challenged the order of the ld. CIT(A), firstly on the point of law that the assessment order framed u/s 147 r.w.s 143(3) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] is bad in law and the ld. CIT(A) erred in confirming the same and secondly, the assessee has challenged on merits the addition of Rs.10 lakhs made by the Assessing Officer u/s 68 of the Act.

3. Briefly stated, the facts of the case are that a search and seizure operation was conducted at the premises of S.K. Jain Group wherefrom certain incriminating material in the form of register and diaries were seized. On the basis of seized documents, information was transmitted to the Assessing Officer of the assessee stating that the assessee has taken Hawala entry from S.K. Jain Group amounting to Rs.10 lakhs.

4. On the basis of such information, notice u/s 148 of the Act was issued on the assessee. During the source of scrutiny assessment proceedings, show cause notice was issued to the assessee asking it to explain the transaction of Rs.10 lakhs with Euro Asia Mercantile Private Limited.

5. The assessee filed a detailed reply, which is incorporated in the assessment order. After considering the reply of the assessee, the Assessing Officer was of the opinion that the assessee has failed to prove the identity, creditworthiness, and genuineness of the transaction and concluded the assessment proceedings by making addition of Rs.10 lakhs u/s 68 of the Act.

6. The assessee challenged the assessment order before the ld. CIT(A) strongly contending that the Assessing Officer should have initiated proceedings u/s 153C of the Act and not section 148 of the Act and, therefore, the assessment order is bad in law.

7. The ld. CIT(A) was not convinced with this claim of the assessee and dismissed the claim. On merits, the ld. CIT(A) confirmed the addition of Rs.10 lakhs.

8. Before me, ld. counsel for the assessee vehemently stated that the issue is decided in favour of the assessee and against the revenue by the coordinate bench of the Tribunal in the case of Naval Oil and Containers Private Limited ITA No. 852/DEL/2019 and also by the

decision in the case of Adarsh Agarwal 777/DEL/2019 and also by the decision in the case of Saurashtra Colour Toner Private Limited ITA No. 6276/Dell/2018.

9. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and vehemently stated that on facts of the case, provisions of Section 148 of the Act squarely apply and, therefore, there is no error or infirmity in the findings of the Assessing Officer. It is the say of the ld. DR that information received by the Assessing Officer from the Investigation Wing/the Assessing Officer of the searched person, was not in the form of any seized material but it was an information simpliciter, and therefore, Section 153C of the Act does not apply.

10. I have given thoughtful consideration to the orders of the authorities below and have carefully perused the decisions relied upon ld. counsel for the assessee. I find that the decision of the coordinate bench in the case of Naval Oil and Containers Pvt. Ltd [supra] squarely applies on the facts of the case in hand, in as much as, in that case also, information was received out of the search operation carried out

in S.K. Jain group of cases which is evident from the facts extracted at Para 4 of the order and the same are as under:

"4. The brief facts of the case are that assessee filed its return of income on 30.9.2009 declaring income of Rs. 2,73,720/-. The AO processed the same u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) on 21.2.2011. On the information received from the office of the Director of Income Tax (Investigation-II), Jhandewalan Extension, New Delhi dated 12.3.2013 mentioning therein that a search operation was carried out in the case of Surendra Kumar Jain group of cases wherein after scrutiny of the incriminating documents seized during the course of search and subsequently post search enquiry, it has been noticed that the said group was involved in providing accommodation entries to the persons who were named in the Report. The Assessee was also figures in the list as one of the beneficiaries of the accommodation entries provided by the Group. After examining the details and copies of seized documents, AO is of the view that assessee company has taken the accommodation entries amounting to RS. 25 lacs in FY 2008-09 from S.K. Jain Group of Companies and specifically from M/s Shalini Holding Ltd. in the garb of share application money on 30.08.2008. On the basis of this information found during the search, AO issued notice u/s. 148 of the Act dated 8.3.2016 after recording the reasons in writing and after obtaining sanction u/s. 151(1) of the Act from PCIT, Delhi-6, New Delhi which was served upon the assessee on 10.3.2016 by speed post. In response to the same, assessee filed a letter dated 06.4.2016 wherein it was submitted that the original

return filed earlier may be treated as returned filed in response to the notice u/s. 148 of the Act. The Assessing Officer issued notice u/s. 143(2) of the Act and u/s. 142(1) of the Act alongwith questionnaire to the assessee. In response to the same, assessee appeared and filed required documentary evidences and answer the query raised by the AO, but the AO did not agree with the explanation given by the assessee and finally made the addition u/s. 68 of the Act of Rs. 25 lacs as discussed in para 15 of the assessment order and completed the assessment at Rs. 28,23,720/- u/s. 147/148 read with section 143(3) of the Act vide order dated 15.12.2016. Against the assessment order dated 15.12.2016, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 30.11.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order dated 30.11.2018 of the Ld. CIT(A), assessee is in appeal before the Tribunal."

11. On the afore-stated facts, the coordinate bench held as under"

"5. At the time of hearing, Ld. Counsel for the assessee stated that assessee has raised as many as 13 grounds of appeal which includes legal as well as on merits. But he draw my attention towards the ground no. 3 regarding jurisdiction of the AO ignoring the provisions of section 153C of the Act which ought to have been applied by the revenue instead of section 147 as the former provisions are non-obstantive provisions and exclude the operations of section 147 of the Act. He draw my attention towards a small paper book containing pages 1-62 in which he has attached various documentary evidences including various judgements on the issue in

dispute and stated that the ground no. 3 has already been adjudicated and decided in favour of the assessee by the various Benches of the ITAT including the ITAT, SMC, Delhi Bench decision dated 08.08.2017 passed in ITA No. 1500 & 1501/Del/2017 (AY 2007-08) in the cases of Sushil Gaur vs. ITO, Ward 2(3), Ghaziabad and Shelly Agarwal. Vs. ITO, Ward 2(3), Ghaziabad. He especially draw my attention towards the facts of the case and the decisions mentioned in para no. 8 at page 7 to 9 of the aforesaid Tribunal's order dated 08.08.2017 and requested by following the same ratio, the appeal of the assessee may be allowed.

6. On the contrary, Ld. DR relied upon the orders passed by the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order on the ground raised by the assessee. He has also filed the written submissions on legal as well as merits with supporting various decisions rendered by various Courts.

7. I have heard both the parties and perused the records and gone through the issue raised by the assessee in grounds of appeal alongwith orders passed by the revenue authorities especially the impugned order. No doubt that Ld. Counsel for the assessee has argued on the issue in ground no. 3 and stated that Ld. CIT(A) has erred in affirming the jurisdiction of the AO that the provisions of section 153C ought to have been applied by the revenue instead of 147, as the former provisions are non-obstantive provisions and exclude the operations of section 147 of the Act. On this issue, he relied upon the various orders passed by the ITAT, Delhi Benches

including the ITAT, SMC, Delhi Bench decision dated 08.08.2017 passed in ITA No. 1500 & 1501/Del/2017 (AY 2007-08) in the cases of Sushil Gaur vs. ITO, Ward 2(3), Ghaziabad and Shelly Agarwal. Vs. ITO, Ward 2(3), Ghaziabad, which was passed by the undersigned by respectfully following the various orders mentioned in para no. 8 of the order at page no. 7 to 9 of the order. For the sake of convenience, the relevant para no. 8 is reproduced as under:-

"8. I have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure

under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of ITO vs. Arun Kumar Kapoor (supra). In the present case before me, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information available with the AO. I thus respectfully following the decision of Co-ordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kapur - 140 TTJ 249 vs. (Amritsar) and the ITAT, Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016 hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the ~ hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Hence, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds."

7.1 After going through the aforesaid finding of the ITAT, SMC, Delhi Bench decision dated 08.08.2017 passed in ITA No. 1500 & 1501/Del/2017 (AY 2007- 08) in the cases of Sushil Gaur vs. ITO, Ward 2(3), Ghaziabad and Shelly Agarwal vs. ITO, Ward 2(3), Ghaziabad, I am of the considered view that ground no. 3 of this appeal has already been adjudicated and decided by the various Benches of the ITAT, which I have mentioned in the aforesaid paragraphs and I am of the view that this issue has already been adjudicated and decided in favour of the assessee by holding that on the basis of incriminating material found, once reassessment proceedings was initiated on the basis of incriminating material found in the search of 3rd party then the provisions of section 153C of the I.T. Act were applicable which exclude the application of section 147 and 148 of the I.T. Act and notice u/s. 148 of the Act and proceeding u/s. 147 are illegal and void ab initio. Therefore,, respectfully following the aforesaid order of the Tribunal dated 08.08.2017, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate the other grounds. Ld. DR has not brought to my notice any contrary decision on exactly similar facts and circumstances of the case mentioned in para no. 8 of the Tribunal order dated 08.08.2017, as reproduced above. Therefore, there is no help can be given to the revenue on the issues mentioned in the written submissions by the Ld. DR."

12. On finding parity in the facts of the case in hand with the facts of Naval Oil and Containers Pvt. Ltd [supra] respectfully following the decision of the coordinate bench, I direct the Assessing Officer to delete the impugned addition.

13. In the result, the appeal filed by the assessee in ITA No. 2668/DEL/2019 is allowed.

The order is pronounced in the open court on 17.09.2021.

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 17th September, 2021.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

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| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
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