

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2962 & 2963/Chny/16

निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09

The Assistant Commissioner of
Income Tax,
Central Circle – 1(1),
Chennai - 600 034.

v. Smt. Surumy Mammotty,
New No.5/Old No.7,
Greenways Road
Extn. Raja Annamalaipuram,
Chennai - 600 028.

(अपीलार्थी/Appellant)

PAN : BEYPS 3339 M
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Sailendra Mamidi, PCIT
प्रत्यर्थी की ओर से/Respondent by : Shri D. Anand, Advocate

सुनवाई की तारीख/Date of Hearing : 16.05.2018

घोषणा की तारीख/Date of Pronouncement : 24.05.2018

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the Revenue are directed against the common order of the Commissioner of Income Tax (Appeals) – 18, Chennai, dated 28.07.2016 and pertain to assessment years 2007-08 and 2008-09. Since common issue arises for consideration in

both the appeals, we heard both the appeals together and disposing of the same by this common order.

2. There was a delay of 3 days in filing both the appeals by the Revenue. The Revenue has filed petitions for condonation of delay. We have heard the Ld. D.R. and the Ld.counsel for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeals.

3. Shri Sailendra Mamidi, the Ld. Departmental Representative, submitted that there was a search in the premises of one Shri Mammotty, father of the assessee. The assessee is engaged in the profession of creative designing. During the course of search operation, according to the Ld. D.R., some material was found. On that basis, notice was issued under Section 153C of the Income-tax Act, 1961 (in short 'the Act'). On a query from the Bench whether any material found? The Ld. D.R. could not identify any material which was said to be found against the assessee.

4. On the contrary, Shri D. Anand, the Ld.counsel for the assessee, submitted that there was a search in the case of one Shri

Mammotty and no search was made in the case of assessee. According to the Ld. counsel, a notice under Section 153C of the Act was issued to the assessee on 30.10.02013. According to Ld.counsel, no incriminating material was found against the present assessee. In the absence of any incriminating material found during the course of search operation, according to the Ld.counsel, initiation of assessment proceeding under Section 153C of the Act itself is not correct. Moreover, according to the Ld. counsel, no satisfaction was recorded for initiating proceeding against the assessee. Entire addition was made on the basis of cash flow statement filed by the assessee during the course of assessment proceeding. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. On perusal of the assessment order and the order of the CIT(Appeals) it appears that other than the details filed by the assessee during the course of assessment proceeding, there was no reference about any new

material relating to the present assessee was found during the course of search operation.

6. We have carefully gone through the provisions of Section 153C of the Act which reads as follows:-

Section 153C. Assessment of income of any other person -

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to ; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total

income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A

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.

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before 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, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

7. The language employed by the Parliament is very clear that when money, bullion, jewellery, etc. or books of account or other documents found during the course of search operation which relates to a person other than the searched person, then the same shall be handed over to the Assessing Officer having jurisdiction over the other person and that Assessing Officer shall proceed against such other person by issuing notice under Section 153A of the Act. Therefore, it is obvious that for initiation of proceeding, there should be some material like money, bullion, jewellery, books of account, documents, etc. In the case before us, no such document was found by any of the Revenue authorities during the course of search operation against the assessee. When the documents or bullion or other material were not available against the assessee, this Tribunal is of the considered opinion that initiation of proceeding under Section 153C of the Act itself is bad in law. Therefore, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer. This Tribunal do not find any

reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. In the result, both the appeals filed by the Revenue stand dismissed.

Order pronounced on 24th May, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 24th May, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT, Central-1, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.