

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

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

**ITA Nos.3201/Del/201 And ITA No. 6783/DEL/2013
[Assessment Year: 2006-07]**

M/s Barnala Steel Industries Ltd., Merrut Road, Muzaffarnagar	ACIT, Circle-2, Muzaffarnagar
PAN-AAFCB2772Q	
Assessee	Revenue

Assessee by	Shri Kapil Goel & Shri Anit Gupta Advocate
Revenue by	Shri Sanjay Goyal CIT-DR

Date of Hearing	04/09/2019
Date of Pronouncement	05/09/2019

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER

These two appeals are filed by the assessee against the orders of the CIT(A), Muzaffarnagar, dated 29.03.2011 and 23.09.2013 for Assessment Year 2006-07.

2. Grounds of appeal of ITA No.3201/Del/2011 are as under:-

- i. *That the notice issued by the AO U/s 153A (a) r.w.s 153C dt 01.08.2008 and assessment order passed U/s 153A are illegal, bad in law and without jurisdiction hence the assessment order passed u/s 153A dt 31.12.2009 is liable to be quashed.*
- ii. *That the Block Assessment order passed by the AO for AYs 2002-03 to 2.007-08 is illegal, bad in law and without jurisdiction as there is no power / authority to pass Block Assessment after 31.05.2003 as provided in the provisions of section 158BI.*

- iii. *That in view of the facts and circumstances of the case the Assessing Officer has erred on facts and in law in making the addition/disallowance without there being any incriminating material found during the proceedings U/s 132A and the CIT(A) has erred in law and on facts in upholding the same. Hence, the addition/ disallowances made are bad in law, without jurisdiction and not within the scope of provisions of sec 153C.*
- iv. *That no notice U/s 143(2) has been issued within the prescribed the period hence the Assessment order passed U/s 153A and the additions made in the said assessment order are illegal, bad in law and without jurisdiction and are liable to be quashed / deleted.*
- v. *That the impugned Assessment Order passed by the Assessing Officer is against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.*
- vi. *That CIT(A) has erred in law and facts of the case in upholding the addition of Rs. 75,00,00.00 on account of short term capital gain and reject the submissions of the appellant solely on the basis of remand report submitted by the AO. The CIT(A) has failed to take into consideration relevant evidences put before him and ignored circumstances of the case.*
- vii. *That the evidence and explanation given by the appellant and the material available on record have not been properly considered and judiciously interpreted and instead solely relied on remand report of AO*
- viii. *That the additions have been made on basis of mere surmises and conjectures and contrary to facts and evidence on record and cannot be justified by any material on record. The addition made is unjust, unlawful and is highly excessive.*
- ix. *That the interests II/s 234B and 234C have been wrongly and illegally charged. The appellant has not committed any default of payment of Advance tax as it could not have anticipated such additions while estimating the current income.*
- x. *That the CIT(A) has erred in law and on facts in non-quashing of penalty proceedings u/s 271(1)(c) which is wrongly initiated by the AO.*

3. Grounds of appeal of ITA No.6783/Del/2011 are as under:-

- i. *That, the notice issued u/s 271 (1) (c) and order imposing penalty of Rs.25,24,500.00 under said section are illegal, bad in law, and without jurisdiction.*
- ii. *That, the A O has failed to appreciate that no satisfaction was recorded before initiation of penalty proceedings U/s 271 (1)(c) and as such the notice issued U/s 271 (1)(c) and the penalty order passed under said section are without jurisdiction and liable to be*

quashed as there is no power/ authority to pass block assessment after 31.05.2003 as provided in the provision of section 158 BI.

- iii. That, the A O has erred in view of the facts and circumstance of the case and in law in not specifying the charge against the assessee for which the penalty has been levied against the assessee. The CIT (A) erred in upholding the same.*
- iv. That in view of the facts and circumstance of the case the A O has erred in law and on facts in imposing the penalty of Rs.25,24,500.00 U/s 271 (1) (c). The CIT (A) has erred the upholding the same.*
- v. That, the A O, in view of the facts and circumstances of the case erred in levying penalty on the ground of addition on account of Short Term Capital Gain at Rs. 1,04,38,715.00 and reject the explanation given by the appellant merely on surmises and conjectures. The addition made is debatable and cannot be treated as concealed income. The CIT (A) erred in upholding the same.*
- vi. That, the A O, in view of the facts and circumstances of the case and in law failed to appreciate the fact, that, the explanation filed/ given by the assessee is bonafide.*
- vii. That the information filed and the material available on record are not properly considered and judicially interpreted. The penalty levied by the A O are unjust, arbitrary are against the facts of the case and are not justified by any material on record.*
- viii. The addition/ disallowance has been made merely on the basis of rejection of explanation of the appellant and no material has been brought on record by the AO in support of said addition / disallowance hence no penalty U/s 271 (1)(c) could be levied on the basis of such a disallowance.*
- ix. That, the submissions filed have not been considered judicially. The impugned order is passed without any application of mind.*

4. The assessee is limited company deriving income from manufacturing of M.S. Bar, Tor and TMT. Return declaring income of Rs.55,53,620/- was filed on 29/11/2009. On the basis of information that an amount of Rs.92,55,000/- was seized by

S.H.O. Kairana from possession of one Shri Naveen Chand Jain. The CIT, Muzaffarnagar issued warrant u/s 132A for requisition of amount in possession of S.H.O. Kairana. In the statement recorded by the police, the aforesaid person deposed that the impugned sum belonged to M/s Barnalal Steel Industries Ltd. The amount of Rs.92,55,000/- was requisitioned u/s 132A of the Act from S.H.O. Kairana on 15/02/2008. The seized money could not be explained by the assessee. The Assessing Officer issued notice u/s 153A of the Act on 26/03/2008 requiring the assessee to file the return of income falling within six assessment years as referred to in clause (b) of Section 153A of the Act. A survey u/s 133A was conducted on the business premises of the assessee on 28/03/2008. At the time of survey, excess stock of raw material and finished goods were found to be short by 1.37 crores approximately. In response, the assessee submitted that the returns of income originally filed may be treated as filed in compliance of the notice u/s 153A of the Act. The Assessing Officer asked the assessee to furnish copies of income tax assessment orders for all the assessment years, copy of bank accounts, wealth tax returns and the details of unsecured loans. In response, the assessee submitted that it was assessed to tax

since long time and had maintained regular books of account. Raw material i.e. Milled Steel Ingot and the finished goods i.e. Saria both are excisable authorities in RG-1 and Form-4. The assessee further submitted that complete vouchers for expenditure and receipts of income have been maintained. The assessee also furnished copy of tax audit report, balance sheet and Profit & Loss Account, copy of assessment orders for Assessment Years 2003-04, 2004-05, 2005-06 and 2006-07 along with details of returned and assessed income. During the course of assessment proceedings, it was observed by the Assessing Officer that the cash found in possession of one Sh. Naveen Kumar Jain on 15/02/2008 by the police could not be explained by the assessee. In the assessment proceedings, for AY 2008-09, the assessee surrendered the sum of Rs.92,55,000/- and the same had been added to the income of the assessee u/s 69A of the Act as unexplained money. The Assessing Officer held that action u/s 132A of the Act was validly taken by the CIT, Muzaffarnagar and consequently the notices issued u/s 153A r.w.s. 153C issued for the assessment years under consideration were legally and validly issued. The Assessing Officer framed assessment order for Assessment Years 2002-03 to 2007-08.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. AR submitted that the assessment is based on vague and invalid notice u/s 153A and 153C dated 26/03/2008 where section 148 of the Act is mentioned. These facts were duly and promptly objected by the assessee on 23/04/2008 and the same objection was never disposed of by the Assessing Officer. Thus, the proceedings based on vague and invalid notice cannot be contumacious/contested. The Ld. AR further submitted that notice u/s 143(2) of the Act issued on 23/11/2009 for all AYs 2002-03 to 2007-08 are also invalid as the notice has to be issued separately for each assessment years. The Ld. AR submitted that at no place, the assessee was subjected to any search /requisitioned action u/s 132/132A and nowhere any valid warrant has been issued against assessee. Mere cash requisitioned with assessee cannot create imaginary search/requisitioned action against assessee and despite assessee's repeated and continuous objections to the Assessing Officer as well as the CIT(A) in this regard. The Ld. AR submitted that nowhere till date, it was brought on records as to how assessee's

subject matter of search/ requisitioned actions u/s 132/132A of the Act. The jurisdictional notice u/s 153A and section 153C was issued in consolidated manner and final assessment for all years was made u/s 153A of the Act, which is not permissible under the provisions of Income Tax Act, 1961. So entire proceedings gets vitiated as for making valid assessment u/s 153A, valid authorization of requisitioned prescribed form 45C of the Act against the assessee is most important which is missing in present case. The Ld. AR further submitted that whole addition is based on documents found from survey on assessee on 28/03/2008. This cannot be made u/s 153A of the Act on the basis of purported requisitioned u/s 132A which has no linkage to the sole addition made and thus addition made is ultravires to section 153A of the Act. The Ld. AR submitted that mechanical notice dated 26/03/2008 nowhere mentions any assessment years, there is no link to the date of search and as to the assessee's case. The ld. AR relied upon the various case laws to that effect.

7. The Ld. DR submitted that the notice is valid as the assessment order has itself mentioned each assessment year separately. The Assessing Officer has given separate finding to

that effect. The Ld. DR further submitted that the Assessee Officer as well as the CIT(A) has rightly made additions on merit.

8. We have heard both the parties and perused all the relevant material on record. From the perusal of the notice issued u/s 153A r.w.s. 153C/143(2) of the Act, it is a clear cut case of overlooking the procedure and provisions set out in the Income Tax Act, 1961. Under these sections, the Assessing Officer cannot issue consolidated notices for different Assessment Years. It is statutory requirement for each assessment year to issue statutory notice separately. The Assessing Officer failed to comply with the statute under which the prescribed procedure is mandatory for the Revenue to be followed. The reliance of the Ld. AR in case of Y Narayana Chetty vs. ITO (35 ITR 388)(SC) is relevant in present case, therefore, the notice itself is bad in law and void ab-initio. Thus, the assessment order does not survive. Thus, ITA No.3201/Del/2011 is allowed. There is no need to go into the merits of the case.

9. As regards, the penalty appeal being ITA No.6783/Del/2013. It is appeal filed against penalty order passed u/s 271(1)(c) of the Act, which is consequential of the quantum appeal. Since, the quantum appeal itself has been

allowed and the assessment order is quashed, the penalty does not survive. Thus, ITA No.6783/Del/2013 is also allowed.

10. In the result, both appeals filed by the assessee are allowed.

Order pronounced in the open court on 05/09/2019.

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Sd/-
[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Delhi; Dated: 05/09/2019.

Shekhar, Sr. P.S

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	04/09/2019
Date on which the typed draft is placed before the dictating Member	04/09/2019
Date on which the typed draft is placed before the Other Member	05/09/2019
Date on which the approved draft comes to the Sr.PS/PS	05/09/2019
Date on which the fair order is placed before the Dictating Member for pronouncement	05/09/2019
Date on which the fair order comes back to the Sr.PS/PS	05/09/2019
Date on which the final order is uploaded on the website of ITAT	05/09/2019
Date on which the file goes to the Bench Clerk	05/09/2019
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	