

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.610/Del./2016
Assessment Year 2012-2013

M/s. Bina Fashions N Foods (P) Ltd., 53, Community Centre, New Friends Colony, New Delhi 110065 PAN AABCB5582A	vs.,	The DCIT, Central Circle 2, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Ms. Sweety Kothari, C.A.
For Revenue :	Ms. Rakhi Vimal, Sr. DR

Date of Hearing :	13.01.2020
Date of Pronouncement :	17.01.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-29, New Delhi, Dated 31.12.2015, for the A.Y. 2012-2013 on the following grounds :

1. *The Ld. CIT(A) erred in law and on facts in holding the assessment framed u/s. 143(3) of the Act as valid even when the same should have been framed u/s 153A r.w.s. 153C since the satisfaction note was prepared by the Assessing officer on 29/01/14, which became the “substituted” date of search u/s 153C and the A.Y. 2012-13 fell within the six preceding assessment years, i.e., from AY 2008-09 to 2013-2014 for the purpose of assessment u/s 153A. Thus, the assessment framed u/s 143(3) is not valid and should be annulled.*

2. *The Ld. CIT(A) erred in law and on facts in confirming disallowance of Rs.6,23,370/-, i.e., 10% of director’s foreign travelling expenses merely on estimate and asserting that personal element cannot be ruled out, while ignoring that no such disallowance can be made in the case of a company. Thus, the disallowance so made must be deleted.*

2. Briefly the facts of the case are that a search and seizure operation was carried out in the case of Modi Family Group on 09.11.2011. During the search at the residential premises of Shri Krishan Kumar Modi at A-1, Maharani Bagh, New Delhi, a copy of the sale deed executed on 18.12.2007 by Shri Sanjeev Lal in favour of the assessee company through its Director Ms. Bina Modi was seized. Subsequently, the case was centralized with Central Circle-2, New Delhi. The A.O. after examining the seized records was satisfied that the documents seized during the course of search belonged to the assessee-company. Thereafter, he has recorded his satisfaction vide Order Sheet entry Dated 29.01.2014 and issued notice under section 153C of the I.T. Act, 1961 to the assessee company for the A.Ys. 2006-2007 to 2011-2012 on 05.02.2014.

2.1. The A.O. considered the issue of foreign travel expenses and disallowed Rs.62,33,699/- and completed the assessment under section 143(3) on 30.03.2014.

3. The assessee contended before the Ld. CIT(A) that instead of passing the Order under section 143(3), the A.O.

should have passed the Order under section 153C of the I.T. Act. However, such contention of assessee was rejected. The assessee also challenged the addition on merit. The Ld. CIT(A) restricted the disallowance out of foreign travel expenses to 10% and sustained the addition of Rs.6,23,370/-.

4. We have heard the Learned Representatives of both the parties. Learned Counsel for the Assessee submitted that A.O. should have passed the assessment order under section 153C since satisfaction note was prepared by the A.O. on 29.01.2014 which became the substitute date of search under section 153C and A.Y. 2012-2013 under appeal fell within six preceding assessment years i.e., from A.Y. 2008-2009 to 2013-2014 for the purpose of assessment under section 153A of the I.T. Act, 1961. Thus, the assessment framed under section 143(3) is not valid and should be annulled. He has submitted that copy of the satisfaction note Dated 29.01.2014 is filed at page-29 of the PB and that in A.Y. 2007-2008 appeal of assessee has been decided by ITAT,

Delhi A-Bench in ITA.No.5921/Del./2014, Dated 17.05.2016, copy of which is filed at page-1 of the PB, in which the assessee on the basis of the above contention submitted that assessment framed under section 153A/143(3) for A.Y. 2007-2008 is *void abinitio* as barred by limitation. The contention of assessee was accepted by the Tribunal and appeal of assessee has been allowed. Learned Counsel for the Assessee also relied upon Order of ITAT, Delhi A-Bench in the case of M/s. BNB Investment and Properties Ltd., vs., DCIT 68 ITR 567 (Delhi-Tribunal).

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that A.O. has correctly passed the order under section 143(3) of the I.T. Act, 1961.

6. We have considered the rival submissions. In A.Y. 2007-2008 assessee contended before the Tribunal that assessment is barred by limitation since the satisfaction contemplated under section 153C of the I.T. Act was recorded by A.O. on 29.01.2014. Accordingly, the date of search i.e., 09.11.2011 gets substituted by the date of

recording of the satisfaction i.e., 29.01.2014 and the six preceding assessment years in the case of the assessee become A.Ys. 2008-2009 to 2013-2014. Accordingly, A.Y. 2007-2008 gets excluded. The contention of assessee has been accepted by the Tribunal and appeal of assessee has been allowed. The ITAT, Delhi A-Bench in the case of M/s. BNB Investments and Properties Ltd., (supra) in paras 7 to 10 considered the identical issue in the light of Judgment of Hon'ble Delhi High Court and accepted similar contention of assessee. The Order of the Tribunal is reproduced as under:

“7. We have considered the rival submissions. Section 153C of the I.T. Act, 1961, as is applicable to assessment year under appeal reads as under :

“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 and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions 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.

7.1. *The Hon'ble Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (2017) 397 ITR*

400 (Delhi.) (HC) (supra), considering the identical issue held as under :

“Sub-section (1) of section 153C of the Income-tax Act, 1961 provides that the assessment or reassessment of the income of the "other person" would be in accordance with the provisions of section 153A. The first proviso to subsection (1) of section 153C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to section 153A(l) "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". In terms of section 153A(1)(b) of the Act. the Assessing Officer shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted. The second proviso to sub-section (1) of section

153A of the Act states that assessment or reassessment relating to any assessment year falling within the period of six assessment years referred to in the said sub-section pending on the date of initiation of the search under section 132, would abate. In CIT v. RRJ Securities Ltd. [2016] 380 ITR 612 (Delhi), the court held that in the context of proceedings under section 153C of the Act, the reference to the date of initiation of the search in the second proviso to section 153A has to be construed as the date on which the Assessing Officer receives the documents or assets from the Assessing Officer of the searched person, that further proceedings, by virtue of section 153(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 or

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 or documents to the Assessing Officer of the assessee.

The amendment in section 153C of the Act by the Finance Act, 2017 with effect from April 1, 2017 to the effect that the Block Period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment years immediately preceding the year of search is prospective.

*A search under section 132 of the Income-tax Act, 1961 took place on November 11,2010 in the T group of cases. The documents pertaining to the assessee were forwarded along with a satisfaction note by the Assessing Officer of the party in respect of which the search was conducted to the Assessing Officer of the*assessee*

on January 3, 2013. The Assessing Officer of the assessee issued notice to the assessee under section 153C of the Act on January 4, 2013 for the assessment year 2006-07. The Tribunal held that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07, was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision under section 153C of the Act. On appeal:

Held accordingly, dismissing the appeal, that the Tribunal was justified in holding that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07 was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision.”

7.2. *The ITAT, Delhi, B-Bench in the case of ACIT, C.C.-2, New Delhi vs. Empire Casting Pvt.*

Ltd., New Delhi (supra), held in paras 5 and 5.1 as under :

“5. We have heard the rival submission on this issue and also perused the judgment dated 30th October, 2015 of the Hon'ble jurisdictional High Court in the case of CIT Vs RRJ Securities in ITA No. 164/2015 and ITA No. 175 to 177/2015. For ready reference, the relevant Para of the judgment is reproduced as under:

"24. As discussed hereinbefore, 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 year 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."

5.1. *The fact that satisfaction u/s 153C of the Act in the case was recorded on 2nd November, 2009, is not disputed by both the parties. In the judgment cited above, the Hon'ble High Court has held that when the Assessing Officer of searched person and such other person in whose case proceedings under [section 153C](#) are initiated, is the same officer, then the date of recording of satisfaction would be construed as the date of handing over of the seized records by the Assessing Officer of searched person to the Assessing Officer of such other person in whose case proceedings under [section 153C](#) are initiated. Since the Hon'ble High Court has already construed the relevant provisions, we do not concur with the arguments advanced by the ld. CIT DR on this*

count. Respectfully following the above judgment of the Hon'ble High Court in RRJ Securities (supra) the date of handing over of seized material/ record by the Assessing Officer of searched party to the Assessing Officer of the assessee would be 2nd November, 2009. Further, following the judgment, the six assessment years for which assessment/re-assessment could be made u/s 153C of the Act would also have to be construed as from the reference date of handing over of assets/documents to the Assessing Officer of the assessee. In the case in hand, it would be the date of recording satisfaction under [section 153](#) of the Act i.e. 2nd November, 2009, and therefore, six assessment years which would eligible for assessment/re-assessment would commence from assessment year 2004-05 to assessment year 2009-10. The assessment/re-assessment

in respect of assessment year 2003-04 would, thus, be beyond the period of six assessment year as reckoned with reference to the date of satisfaction recorded by the Assessing Officer of the searched person. We, therefore, hold that the learned CIT(A) was quite justified in considering the assessment for assessment year 2003-04 as outside the scope of [section 153C](#) of the Act, being barred by limitation and without jurisdiction. Accordingly, the impugned assessment order is liable to be quashed. We decide accordingly.”

7.3. *The ITAT, Delhi, C-Bench, in the case of Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra) under the same circumstances held that “assessment completed under section 143(3) is invalid”. The relevant para-16 of the order is reproduced as under :*

16. *“We find the year for which the impugned assessment order has been passed u/s 143(3) is for assessment year 2011-12. This year falls within the period of six years when counted from the date of recording of satisfaction note u/s 153/153C of the I.T. Act which is deemed date of search. The Act has been amended recently by the Finance Act, 2017 with prospective effect i.e., from assessment year 2018-19. Thus, the period is same now only for the searched parties as well as the other person as per the amended provisions of the said section. In view of the above, we hold that the assessment completed u/s 143(3) is invalid.”*

8. *It is not in dispute that search was conducted on Krrish Group of cases on 09.11.2011. The impounded documents have been received by the A.O. on 29.08.2013. The satisfaction under section 153C have been recorded on 03.10.2013.*

The A.O. passed the assessment order under section 153B(1)(b) of the I.T. Act, considering the assessment year under appeal i.e., A.Y. 2012-2013 to be the year of search. However, the First Proviso to Section 153C of the I.T. Act provides that the 06 assessment years for which assessments or re-assessments could be made under section 153C of the I.T. Act, would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee. Therefore, the 06 assessment years under section 153C of I.T. Act in the case of assessee would be A.Y. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not issued any notice under section 153C of the I.T. Act before initiating the proceedings against the assessee which is also admitted by the A.O. in reply to the assessee under RTI Act. The Amendment in Section 153C of the I.T. Act by the

Finance Act, 2017, w.e.f. 01.04.2017 to the effect that block period for the person in respect of whom the search was conducted as well as the “other person” would be the same six assessment year immediately preceding the year of search is prospective in nature. The issue have been dealt in detail by the Hon’ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (supra) and by ITAT, Delhi, B-Bench, in the case of Empire Casting Pvt. Ltd., New Delhi vs. ACIT, C.C.2, New Delhi and Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra). The A.O, therefore, should have framed the assessment under section 153C of the I.T. Act in the case of the assessee and at the time of initiating the proceeding against the assessee, should have issued notice under section 153C of the I.T. Act which have not been done in this case. The issue of notice under section 153C is mandatory and a condition precedent for taking action against the

assessee under section 153C of the I.T. Act. The assessment order, therefore, vitiate, void, illegal and bad in law and cannot be sustained. The contention of the Ld. D.R. have already taken care in the above judgments.

9. *Considering the totality of the facts and circumstances of the case, we set aside the orders of the authorities below and quash the same and allow the additional grounds of appeals. Resultantly, all additions stands deleted. Since the assessment order is set aside on legal grounds, therefore, there is no need to decide the addition on merit which has been left with academic discussion only.*

10. *In the result, ITA.No.504/Del./2013 of the Assessee is allowed”.*

6.1. Considering the facts of the case in the light of above decisions, it is clear that the impounded documents have been received by A.O. on 29.01.2014 when satisfaction

under section 153C have been recorded. The First Proviso to Section 153C of the I.T. Act provides that six assessment years in which assessment or re-assessments could be made under section 153C of the I.T. Act would also have to be considered with reference to the date of handing over of the assets or documents to the A.O. of the assessee. Therefore, the six assessment years under section 153C of the I.T. Act in the case of assessee would be A.Ys. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. Further, the A.O. has not issued any notice under section 153C of the I.T. Act, therefore, the issue is covered by the above decision in favour of the assessee. The A.O. in the satisfaction note initiated the proceedings under section 153C only for A.Ys. 2006-2007 to 2011-2012 instead of A.Ys. 2008-2009 to 2013-2014. In view of the above, we are of the view that assessment order is illegal and bad in law and cannot be sustained in Law. We, accordingly, set aside the Orders of the authorities below and quash the

assessment order passed under section 143(3) of the I.T. Act. Resultantly, the additions stand deleted.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 17th January, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

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Delhi.